El Derecho Procesal. Concepto y caracteres.

Introducción al tema:

Procedural Law is a set of rules that are part of the legal system and they are the tool the judges use for applying substantive law rules to a case. That is, procedural law comprises the rules by which a court hears and determines the result of a civil lawsuit, criminal or administrative proceedings. In contrast, the substantive law refers to the actual claims and defenses whose validity is tested through the procedures of procedural law.

The Law has amongst its main goals to establish the rules that govern the relationship between citizens and citizens and the State.

The nature of those rules could be public or private and, at the same time, could be referred to as civil, criminal, administrative or labour matters.

For instance, if we want to know our rights, duties and obligations when we sign a contract, or we want to marry someone; or the consequences of driving when drunk, or maybe if we harm someone, we should go to the substantive law rules and see and look at the ones that govern those particular questions. In order to do that, we need to consult something called Codes, which are legal bodies that comprise all the relevant rules depending on the nature of the offence or illegal action, so that we need to use a Criminal Code, or a Civil Code, and so on.

However, conflict arises when substantive rules have been broken, for example because a particular right protected by a substantive law has been violated, or when two people have entered into a contract and one of them alleges a breach of contract.
In those circumstances procedural law is the law governing the machinery of the courts and the methods by which both the state and the individual enforce their rights, in the different types of courts and jurisdictions. Procedural law prescribes the means of enforcing rights or providing redress of wrongs and comprises rules about jurisdiction, pleadings and practice, evidence, appeal, execution of judgments, representation of counsel, cost and other matters. Procedural rules could be related to the power of the Judges (jurisdiction, creation of courts, etc., (in Spanish normas orgánicas), or rules of procedure (normas de procedimiento), that are in relation to the way that the procedure should be conducted, i.e., the procedure stages and steps, time limits, etc.

**General criteria for determination of what should be considered as rules of procedural nature**

1. In relation to jurisdiction, all those rules governing the structure of the judiciary and the judicial power, creation of the Courts, etc., are of a procedural nature. As are the rules that govern the legal status of the judges, jurisdiction, competence and venue, auxiliary judicial staff such as judicial clerks and police; and what we called collaborating personnel such as Prosecutors, lawyers or procuradores. (Venue means the territorial location in which a litigation should be conducted. All those matters are regulated by the LOPJ.

2. In relation to legal action, these rules govern the fundamental Right of Access to Justice and the thema decidendi (matter at issue –objeto del proceso).

3. In relation to the process, the rules govern the predetermination of jurisdiction; in relation to parties, the rules govern the legal requirements in some cases for
being a procedural party (for example, the so called the real party in interest rule that is the person who owns the right or obligation under suit), or to have capacity to be a party or the legal capacity to sue or plead and standing; the rules govern the procedural activity of the parties, as for instance, the time limits within which to perform a procedural act with legal effect, etc.

**Features of Procedural Law**

1. **Instrumentality.** This means that its application depends on the substantive rules, in so far as procedural law is a means for enforcing substantive rules. It is necessary in the first instance that the Right is recognized in a specific substantive rule, and that the alleged Right has been violated. The situation of conflict is a necessary fact in order to put the process into action.

2. **Procedural rules are of public law nature, thus the individual cannot solve the conflict on his own by means of revenge or settling the way in which the conflict should be solved.** For instance, the individual cannot decide that a specific court is competent to judge the matter (except in those cases that the law determines that possibility). The underlying principle is the principle of procedural legality, according to article 1 LEC (“In civil procedures, the courts and those who appear and act in court shall act in keeping with the provisions herein”).
Application of Procedural rules.

**Application of civil procedural rules in time**

**Temporary Efficacy**

The general principle is that procedural rules in force are never retroactive (article 2 LEC), with the sole exception being where the law prescribes precisely the opposite. In the same way, see article 9.3 Spanish Constitution.

Thus, when the Civil Procedure Code says that procedural rules shall never be retroactive it means that, a specific procedural law rule being in force, this shall always be applied to the process. In contrast, the substantive law, -even in the case where at the beginning of the process, the substantive rules have been modified, the former law will still apply. And this is because the substantive law was in force when the facts took place. Substantive law applies to the moment when the illegal action was done. When the legal process begins, it does not matter that the substantive law has been derogated and no longer applies. In contrast, Procedural law always has to be in force.

Example:

The fact (breach of contract, bodily harm, etc.) took place the 2nd of February 1998. The process starts the 2nd of February of 2000. The procedural rules that the court shall apply are the Procedural Code in force the 2nd of 2000. In contrast, the substantive law
(Criminal Code, Civil Code), that the Judge should apply in order to determine, among other questions, the responsibility of the accused or defendant, or the validity of the contract, is the Civil or Criminal Code in force in 1998.

The non retroactive effect of the procedural law is, thus, different from the substantive law, as they operate having as a point of reference elements that are different. In short, the substantive law rules (criminal or civil) will apply to the facts that occur at the time that that law was in force. In contrast, the procedural law rule takes as a point of reference the very moment that the plaintiff brings a court action, which is the moment that the machinery of justice starts, or when a procedural act is taking place (file the claim).

Remember:

Substantive law: applies to the date on which the contract has been signed.

Procedural law: applies when a breach of the contract has occurred and the party brings a court action.

The problem arises with the so called transitional laws. However the legislator can solve those problems through transitional provisions. The methods that the legislator usually provides are as follows:

1. The court applies the law in force in relation to procedural acts that take place after the date the law has come into force (for example for the admission of a claim the court applies the former procedural law, and for the counterclaim, applies the law in force).
2. Maintaining the former law until the end of the proceeding.

3. Dividing the process into stages and the former law applies until the end of the current stage, and the law in force then applies from there to the end of the process (First Instance former law, 2nd instance, appeal and enforcement of the judgment, the law in force).

Usually, the criterion that the Legislator applies is the last one. You can see it from the Civil Procedure Code. Transitional Provisions (first to seven).

**Territorial scope of civil procedural rules**

With the sole exception which may be stipulated in international treaties and conventions, civil procedure taking place in Spain shall only be regulated by Spanish procedural rules (article 3, LEC). That is to say that even when the facts occurred in a different country, and under these circumstances the substantive law that applies could be the alien one (by virtue of International Law rules), the procedural law shall be Spanish.

In relation to Spanish Autonomous Communities, article 149 of the Spanish Constitution provides that the State holds exclusive competence over procedural matters without prejudice to the necessary special applications in these fields derived from the peculiar features of the substantive law of the Autonomous Communities. And this is another example of substantive laws differing from procedural laws, which, at the moment are the exclusive competence of National Parliament.