PROCEDURAL LAW

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2. General Criteria for determination of what should be considered as procedural rules.

Key words

• Procedural Law/Instrumentality/Public Law Nature
• Substantive Law
• Judges/Courts
• Rules
• Process/proceedings
• Jurisdiction
• Legal action/Access to Justice
• Parties/Auxiliary staff/collaborating personnel
1. Meaning of Procedural Law

-Set of rules part of the Legal System.

-They are the tools the Judges use for applying substantive Law rules to a case.
Procedural Law Vs Substantive Law

P.L. comprises the rules by which a Court hears and determines the result of a civil, criminal or administrative proceeding.

S.L. refers to the actual claims and defences whose validity is tested through the procedures of procedural Law.
Examples

We want to know our rights, duties and obligations when sign a contract or the consequences of driving when drunk.

• We should go to substantive law rules and see and look the ones that govern those particular questions-----
• Civil Law Code
• Criminal Law Code.

A particular law has been broken, or two people have entered into a contract and one of them alleges a breach of contract

Procedural law prescribes the means of enforcing rights and comprises rules about jurisdiction, evidence, appeal, etc.
- Civil Procedural Law Codes.
- Criminal Procedural Law Codes
In short

• Procedural rules are related:

- To the power of Judges (jurisdiction, creation of courts, etc.) Organic Laws (LOPJ).

- The way Proceedings should be conducted (procedure stages and steps, time limits, etc.) Rules of Procedure (Civil Procedure Code, Criminal Procedure Code...).
Remember

• 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.
General Criteria for determination rules of Procedural Nature

1. In relation to Jurisdiction.

2. In relation to Legal Action.

1. Jurisdiction: rules governing....

-Structure of Judiciary, creation of courts...
-Legal status Judges, jurisdiction and venue..

-Auxiliary staff (judicial clerks)

-Collaborating personnel (Prosecutors, lawyers, procuradores)
2. Legal Action: rules governing....

-Fundamental Right to Access to Justice.

-The Thema Decidendi (matter at issue)
3. Process: rules governing....

- Legal requirements for being a procedural party.
- To have capacity
- Procedural activity of the parties
Features of Procedural Law

1. Instrumentality.

Instrumentality

Procedural law is a mean for enforcing substantive rules:
- It is necessary that the right is recognised in a specific substantive law rule.
- The alleged right has been violated
- The situation of conflict is a necessary fact in order to put the process into action
Public Nature

-The individual cannot solve the conflict on his own by means of revenge, or settling the way in which the conflict should be solve.

-Underlying Principle: principle of procedural legality (article 1 LEC)