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issues should be based upon the nature of the issues and the particular situation before the court, keeping in mind what the result would have been historically and to the policy that favors the protection of the jury trial right.[31] When a plaintiff has prayed alternatively for legal or equitable relief he should have the obligation to state his preference when a jury trial is demanded. If he prefers the legal remedy the jury should be called at the start of the trial, and the case will proceed on the legal issues. If the legal theory fails on a legal ground then the court may dismiss the jury and decide the equitable question.[32]

When cases arise in which the plaintiff is seeking legal and equitable relief there are two choices: (1) The court may hear the equitable issues along with consideration of the legal issues by the jury. After which the court may enter the proper judgment on the various findings.[33] (2) If the court does not wish to try the questions concurrently it might follow the procedure used by some of the federal decisions mentioned, including the *Ford* case. The trial of the equitable issues, whether raised by the plaintiff or the defendant on an equitable defense, may be tried entirely apart from the trial of the jury issues.

Thus, under such practice, the historical right to jury trial will be preserved without prejudice to any of the parties to the litigation.

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APPEALS FROM A PLEA OF GUILTY IN JUSTICE COURT

At common law there was no right of appeal from a plea of guilty in any court. Blackstone said that the kind of penalty, if not the degree, was ascertained for every offense, and neither a judge nor a jury could alter that penalty.[1] Since all persons were presumed to know the law and the sanctions for violating the law, a man who admitted the facts as charged, by pleading guilty, was not aggrieved and could not appeal. On the other hand, if a party had pleaded not guilty and was aggrieved by some irregularities in the trial or judgment, he could sue out a writ of error based on "notorious mistake."[2]

In the United States the federal courts follow the common law rule to some extent. While appeals from a justice court are not involved, the general rule in federal courts is that if the defendant has pleaded guilty in the trial court, he can only appeal if collateral issues are raised.[3] Some

31. Clark, Code Pleading §§ 110-113 (2d Ed. 1947).
32. Morris, Jury Trial Under the Federal Fusion of Law and Equity, 20 Texas L. Rev. 427.
33. Bruckman v. Hollizer, 152 F.2d 730 (9th Cir. 1946).

1. Blackstone, Commentaries, § 377.
2. Id. at § 391.
3. Braffith v. The People of the Virgin Islands, 29 F.2d 740 (3d Cir. 1928).

collateral questions which have been considered on appeal from a guilty plea are procedural irregularity,[4] failure of the indictment to state a crime against the United States,[5] and the constitutionality of the statute under which the defendant was convicted.[6]

Since appeals in the United States are not essential to due process, appeal in the state courts exists merely as a matter of legislative generosity.[7] The statutes allowing appeals in the state courts govern not only the circumstances under which appeals will be allowed, but also the scope of review which will be allowed upon appeal.[8] But even where the state legislatures have adopted statutes which appear to abandon the common law and allow appeals in *all* cases, the courts, when called upon to interpret these statutes, have not been in harmony as to the limit of effect to be given the legislation.

In some states the common law is closely but liberally followed. In these jurisdictions, appeals from a justice court where the defendant pleaded guilty are allowed only for the purpose of reviewing collateral questions.[9] Although the statute may provide that a defendant in a criminal action may appeal as a matter of right from *any* judgment against him, in the absence of collateral questions the courts of these jurisdictions treat the right to appeal as having been waived by a plea of guilty. By analogy to the situation in federal courts, these states limit review to cases where there has been an irregularity in the jurisdiction of the court or in the legality of the proceedings.[10]

In Washington, the controlling statutes allow "every person convicted before a justice of the peace" the right to appeal,[11] and the state constitution provides for "the right to appeal in all cases."[12] The superior court, on appeal from justice court, has jurisdiction to try the case de novo.[13] Nevertheless, the Supreme Court of Washington held that these rights were waived by plea of guilty.[14] With such a strict interpretation the only appeals allowed after a plea of guilty in Washington's inferior courts are those which question the validity of the statute under which the defendant was convicted, the sufficiency of the complaint to state a crime, the jurisdiction of the court, or the circumstances under which the plea was made.[15]

Ruling on a very similar statute ("any person convicted . . . shall have

4. Forthoffer v. Swope, 103 F.2d 707 (9th Cir. 1939).
5. Blain v. United States, 22 F.2d 393 (8th Cir. 1927).
6. United States v. Ury, 106 F.2d 28 (2d Cir. 1939).
7. State v. Sorrentino, 36 Wyo. 111, 253 Pac. 14 (1927).
8. 24 C.J.S., Criminal Law, § 1837 (1941).
9. See, e.g., People v. Fore, 384 Ill. 455, 51 N.E.2d 548 (1943).
10. Hardy v. State, 35 Okla. 75, 248 Pac. 846 (1926); Lowe v. State, 111 Md. 1, 73 Atl. 637 (1909).
11. R.C.W., § 10.10.010.
12. Wash. Const., Art. I, § 22.
13. State v. Bringgound, 40 Wash. 12, 82 Pac. 132 (1905).
14. State v. Eckert, 123 Wash. 403, 212 Pac. 551 (1923).
15. State v. Rose, 256 P.2d 493 (Wash. 1923).

the right to appeal"),[16] the Supreme Court of Delaware held in 1955 that the ordinary meaning of the word "convicted" was a determination of guilt after an assertion of innocence.[17] Because the defendant in that case had pleaded guilty, he was held not to have been "convicted" and was denied the right to appeal. The court limited its review to the constitutionality of the sentence imposed.[18] The word "conviction" is said to have both a popular and a legal meaning. The popular meaning is referred to as denoting a verdict of guilty, while the strict legal meaning includes a judgment against the defendant on either a plea or a verdict of guilty.[19] The Delaware court obviously applied the popular meaning.

At least one other court has held that a "conviction" based on a plea of guilty does not preclude appeal.[20] These courts are apparently confining the interpretation to legal meaning.

The courts which have interpreted statutes by using the meaning of "conviction" as it is regarded in common parlance, have not noted any authority for prefering the popular to the legal definition. While the Supreme Court of Colorado, in *People v. Brown*,[21] indicated that the meaning to a layman was more appropriate as a basis for laying down a rule, an examination of legal and non-legal dictionaries[22] indicates similar confusion in both the lay and the legal definitions. If the narrow, popular construction of "conviction" is in fact not intended by the legislature, the opinion in *People v. Brown* suggests a way for the Colorado legislature to make its contrary intention clear. The court said that use of the word "sentence," rather than "conviction," as a prerequisite to appeal would clearly show that appeal could be had even after a plea of guilty.[23]

In 1956 the Supreme Court of Wyoming, in deciding *State v. Hungary*,[24] adopted what would seem to be a rule more closely following the intent of the legislature. The court held in the *Hungary* case that a defendant who pleaded guilty in justice court had a statutory right to appeal from any judgment thereon in *all* cases, and to have a trial anew in the district court.[25]

It was the statutory right to a *trial de novo* that led the Wyoming court to decide that appeal from any judgment in justice court must be an unqualified right. It has been shown that courts can treat the right to appeal as waived by a plea of guilty unless the statute shows a clear intent

16. 21 Del. Code, § 708.
17. See, e.g., People v. Brown, 87 Colo. 261, 286 Pac. 860 (1930).
18. Martin v. State, 49 Del. 344, 116 A.2d 685 (1955).
19. Commonwealth v. McDermott, 224 Pa. 363, 73 Atl. 427 (1909).
20. Williams v. Commonwealth, 307 Ky. 37, 209 S.W.2d 477 (1948).
21. 87 Colo. 261, 286 Pac. 860 (1930).
22. Webster's New International Dictionary (2d ed. 1956), Black's Law Dictionary (4th ed. 1951).
23. Supra note 17.
24. 75 Wyo. 423, 296 P.2d 506 (1956).
25. Wyo. Comp. Stat., § 15-207 (1945).

that such a plea is not to operate as a waiver. But the right to a trial de novo is not waived by a plea of guilty in the court appealed from.

A trial de novo is extraordinary in that the district court is to try the case as though it were originally brought before that court. Jurisdiction is only in a sense appellate, because the defendant has a new trial on the merits and the district court has no power to review, affirm or reverse the judgment of the justice court.[26] As Justice Parker said in *State v. Hungary*, "it is difficult to visualize how a trial could be *anew* and *as an issue of fact upon an indictment,* if a plea of guilty prevented any trial at all."

It would seem then that those courts which have interpreted their statutes as not allowing appeals from a plea of guilty in spite of a further right to a trial de novo, have given the legislation an illogical construction.[27]

The reason some courts are hesitant to interpret their state statutes in favor of the right to appeal is partly at least the fear of an excess of minor traffic cases coming before the higher courts to be reviewed or retried.[28] Also it has been said that there are dangers in allowing defendant to plead guilty in justice court to test what disposition will be made of his case, with the knowledge that if the judgment is unsatisfactory he can later plead not guilty in district court and exercise his statutory right to a new trial on the merits.[29] Policy, however, should not interfere with statutory rights[30] and the Wyoming court in the *Hungary* case recognized that it had no right to look for or impose meanings different from those conveyed by the plain, unambiguous language of the statute.

The Wyoming court in the *Hungary* case did not hold that the decision would apply to appeals from a municipal court or police court as well as from a justice court. However the implication is clear that the *Hungary* rule would apply to appeals from these inferior courts too, because the statutes allowing appeals from municipal or police courts provide that these appeals shall be in the same manner as appeals from a justice court.[31]

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WHAT CONSTITUTES THE PRACTICE OF MEDICINE IN WYOMING

The modern medical patient enjoys the benefit of a vast fund of medical knowledge and a body of law assuring him, to a considerable degree, that those to whom he entrusts his health and life are possessed of that knowledge. These laws regulating the practice of medicine are found in every state, controlling the medical profession and its competitors.

26. 22 C.J.S., Criminal Law § 403 (1941).
27. Supra note 14, see dissent; supra notes 12 and 18.
28. See, Martin v. State, 49 Del. 344, 116 A.2d 685, 688 (1955).
29. Ex parte Jones, 128 Tex.Cr.R. 380, 81 S.W.2d 706 (1935).
30. State v. Hedges, 67 Kan. 76, 72 Pac. 528 (1903).
31. Wyo. Comp. Stat., § 29-1805 (1945).