

Judge Without Lawsuit

Civil law countries created an institution to prevent lawsuits from arising in the first place: the notary. The notary is a highly trained jurist entrusted with public power to give neutral advice to the parties of a transaction, to translate their preferences into legally binding documents, and to provide legal certainty. In that way, notaries avoid litigation costs.³

Notaries are best understood as judges without lawsuits.⁴ In drafting legally sound and binding acts according to the preferences of the parties, they are bound by precise procedural rules, similar to those that structure litigation. These rules justify the high evidentiary value of notarial authentic instruments⁵ and are the reason that they can serve as title in foreclosures.⁶ Indeed, notarial acts function as anticipated judgments.⁷

Both, judges and notaries serve justice, but they do so in different ways. Whereas judges serve justice ex post, notaries do so ex ante. According to this difference, the judiciary in civil law countries is divided between judges dealing with litigation and notaries serving what is called preventive justice.⁸

Key takeaway: Notaries provide for legal certainty ex ante and thereby reduce litigation costs ex post.

Did you know?

The profession of the civil law notary has a long-standing history. It has existed for thousands of years. Predecessors of notaries can be found in Ancient Egypt, the late Roman Empire, and the Mayan culture.² Notaries are an integral part of civil law countries throughout history.