

The Stages of a Civil Lawsuit

By Joe Mack

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1) Prefiling

a. Personal Jurisdiction

- i. Does the state have personal jurisdiction over the defendants?
 1. Limits imposed by the Due Process Clause of the 14th Amendment.
 2. Are there sufficient minimum contacts between the defendant and the forum state for the state to exert jurisdiction to determine the defendant's rights and obligations?
 3. Can be one of two types:
 - a. Specific – i.e. due to contacts with the state arising out of the same occurrence giving rise to the lawsuit, or
 - b. General – i.e. the defendant has continuous and systematic connections to the state.
- ii. Can be gained by consent.
 1. Plaintiffs – i.e. those who initiate the lawsuit, consent to personal jurisdiction by filing a complaint.
 2. Defendants can also consent; if their first response does not raise the issue, they are deemed to have consented.

b. Subject Matter Jurisdiction

- i. Different courts have different types of matters that they are permitted to hear.
 1. Courts of general jurisdiction can hear any type of claim.
 2. In contrast, there are many other types of courts with specializations.
 3. Indeed, Congress controls the jurisdiction of all federal courts and since 1776, all federal courts have been of limited jurisdiction. Generally, in order to be able to bring a claim in federal court, there must either be:
 - a. A federal question – i.e. the complaint raises a federal cause of action, or
 - b. Diversity jurisdiction – i.e. none of the plaintiffs are residents of the same state as any of the defendants and the amount in controversy exceeds \$75,000.
- ii. Cannot be waived by the defendant, and in fact can be raised at any time, including for the first time on appeal.

c. Venue

- i. The place of trial.

- ii. Governed by statute and determines which jurisdiction is appropriate among many that could otherwise hear it.
- iii. Can be waived.
- iv. Typically, location of the incident or the residence of the defendant.
- d. Often, multiple jurisdictions have all three of personal jurisdiction, subject matter jurisdiction, and venue. In that case, it is pretty much a race to the courthouse for the faster party to initiate the case in the more convenient forum to them.

2) Pleading

a. Complaint

- i. A concise statement of the allegations that, if assumed to be true, show a plausible entitlement to relief from the court.
- ii. Tested by good faith; the allegations in the complaint do not have to be certain, there must just be a good faith belief that they might be true.
- iii. If brought in bad faith, or if frivolous, can be sanctioned by court, often by assessing the defendant's legal fees against the plaintiff – but very rare.
- iv. Filing of the complaint stops the statute of limitations, which is a time limit on filing a claim after it "accrues" (which is typically at the time the incident occurs, but can be later if the plaintiff had no reason to know of the cause of action until later).

b. Service of Process

- i. Minor variations by jurisdiction about how to deliver a copy of the complaint and the summons to a defendant, but safest route is having a process server personally give it to the defendant.

c. Preliminary Motions

- i. The defendant, before answering the allegations in the complaint, can make a motion to dismiss on various grounds, including:
 - 1. Incorrect venue.
 - 2. Insufficient service of process.
 - 3. Lack of personal jurisdiction.
 - 4. Failure to state a claim upon which relief can be granted – even if the allegations in the complaint are taken as true, they do not show a plausible cause of action.
 - 5. Lack of subject matter jurisdiction.
- ii. These motions must be ruled on by the court before the defendant is required to answer.

- d. Answer
 - i. The defendant must file an answer, generally within 30 days of being served, confirming or denying the allegations in the complaint.
 - ii. For some kinds of lawsuits, can be a general denial, which means that the defendant need not specifically confirm or deny each allegation in the complaint. Otherwise, the defendant must address each allegation.
 - iii. The answer must also raise defenses, including as contributory negligence, assumption of the risk, statute of limitations, and res judicata (issue and claim preclusion, which are akin to double jeopardy in the criminal realm; generally, issue preclusion applies when an issue has already been resolved in prior litigation between the parties, and claim preclusion applies when the cause of action should have been raised in prior litigation between the parties but was not – you only get one bite at the apple).
- e. Request for Jury Trial?
 - i. If desired and appropriate in the case, one of the parties must specifically request one. Otherwise, it will be a bench trial, in which the judge acts as the finder of fact.

3) Discovery

- a. Designed to reduce unfair surprise and allow factual investigation.
- b. Scope of discovery includes everything that is non-privileged and reasonably calculated to lead to admissible evidence.
- c. Largely run by the parties themselves; the judge only gets involved if the parties have a disagreement, and disagreements are discouraged.
- d. If done skillfully, can be used as “fence building;” i.e. determining what the opposing side is going to argue and making everything else off limits.
- e. Includes the following types of discovery:
 - i. Required Disclosures – Each party is automatically required to disclose certain items of information, such as expert reports.
 - ii. Interrogatories – a limited number of questions to the opposing party that must be answered in writing under oath.
 - iii. Requests for Production of Documents – these are request to the opposing side to produce documents – can be electronically stored documents such as e-mail, text messages, tweets, instant messages, etc. Once litigation begins, there is a duty to preserve written documents relating to the litigation.

- iv. Requests for Admissions – request to the other party to concede issues – often used to settle the authenticity of documents in advance of trial in order to save time.
- v. Depositions – recorded questioning on the record, under oath.
- vi. Mental or Physical Examinations – extraordinary, only discovery that requires court order in advance.
- f. Typically discovery is the most expensive and time consuming part of litigation. There is much opportunity for abuse. If discovery requests are overly broad or burdensome, a party can make a motion for protective order to ask the court to determine that the discovery will not be taken.
- g. If a party fails to answer proper discovery, the requesting party can move for discovery sanctions, which can range from having to pay the consequent attorneys fees to a default judgment resolving the case entirely.

4) Summary Judgment

- a. A motion by one party that asserts that there is no genuine dispute as to material facts and that the party making the motion is entitled to judgment as a matter of law.
- b. The motion is ruled on by the judge, who does not decide disputes as to fact or credibility, but rather only if such issues exist with respect to material facts. If material facts are in dispute, then the motion is denied.
- c. Can be partial; i.e. on only some issues, or can apply to all issues.

5) Trial

- a. Voir Dire (jury selection)
 - i. Many potential jurors gather together in a courtroom.
 - ii. Each party has the chance to ask questions of the potential jurors to determine any reason why the potential juror may not be able to be objective.
 - iii. If a bias is clear, the potential juror can be challenged for cause.
 - iv. Each party also has a limited number of preemptory challenges, which can be used to eliminate jurors for most reasons (other than those based on race, gender, etc.).
 - v. Usually six to twelve, with a few alternates, are chosen, depending on the rules of the jurisdiction.
- b. Opening Statements
- c. Calling Witnesses
- d. Motions for Judgment

- i. Also called a motion for a directed verdict. This is similar to a motion for summary judgment, but is made at the close of evidence based on what was presented by the parties.
 - ii. Must always be made in order to preserve the issue for a motion for judgment notwithstanding the verdict after the verdict is entered and to preserve the issue for any potential appeal.
- e. Closing Arguments
- f. Deliberation and Verdict
 - i. Most jurisdictions require unanimous verdicts, but some allow less than unanimous verdicts.

6) Post-Trial Motions

- a. Motion for Judgment Notwithstanding the Verdict
 - i. Also called a JNOV.
 - ii. Just a renewal of the motion for judgment.
 - iii. Essentially, this allows the judge, even if the judge is inclined to rule in favor of one party on a motion for judgment, to see if the jury gets it right before ruling because taking the issue away from the jury before it renders a verdict is often seen as more controversial.
- b. Motion for a New Trial
 - i. New trial can be limited in scope, such as only on damages.
 - ii. Can also be made conditional, as in "accept a lesser amount or there will be a new trial" (this is called remitter).

7) Appeal

- a. One Appeal as of Right
 - i. Appellate courts do not hold trials, but instead review the decisions of lower courts, generally only for those issues raised on appeal by a party.
 - ii. Since appellate courts do not perform fact-finding, the facts as found below are entitled to extreme deference ("abuse of discretion" for judges and "clearly erroneous" for jury decisions).
 - iii. In contrast, the trial judge's questions of law are not entitled to a presumption of correctness and are decided fresh – called de novo review.
 - iv. Even if a party is successful on convincing the appellate court that the trial judge made an error, must also avoid the harmless error doctrine, which requires that you not only show that there was an error, but also that it may have affected the outcome of the case.

- b. Generally must be a Final Judgment
 - i. This requires parties to wait until a final judgment is entered in the lower court.
 - ii. This rule prevents piecemeal litigation that would take forever if an appellate court could be forced to get involved each time a judge made a ruling that a party objects to.
 - c. Certiorari to the High Courts
 - i. State high courts and the Supreme Court of the United States hear cases on certiorari, which means that those courts only hear those cases that they choose to hear.
 - ii. High courts try to grant certiorari only to decide important issues of law.
- 8) Enforcing a Judgment
- a. Can be a Huge Pain
 - i. The defendant's ability to pay a judgment must always be considered before filing suit; if the defendant has no assets, it can be very difficult to get any money out of them even if a judgment is entered against them.