

CIVIL LAW

OVERVIEW / OUTLINE
CIVIL LAW

RIGHTS / WRONGS / LEGAL REMEDIES

Civil law examines human relations by first establishing the rights of the parties involved. In a private conflict, a right must be recognized before one can have a wrong. Once rights have been established, then a fundamental principle of law can be applied. That is, for every wrong (violation of a right), there is a remedy (solution).

In civil law, persons (referred to as plaintiffs) take civil action (sue) against persons (referred to as defendants) to enforce a private right or redress a private wrong.

CIVIL LAW PROCEDURES

I. COMMENCEMENT OF CIVIL ACTION

- A. Plaintiff files a complaint with the appropriate court.
- B. Court issues summons or writ.
- C. Summons is delivered to and left with person to be notified.
- D. Delivery is done by mail or in person by the sheriff, court officer, or person over eighteen (18) years of age.

II. STATUTES OF LIMITATION

Action must commence within a time limit of one (1) to ten (10) years, depending on type of action and in which state the claim arises.

III. PLEADINGS - COMPLAINTS - PETITIONS - STATEMENTS - PLEAS - ANSWERS

- A. The written statement explaining plaintiff's cause of action, claims, and damages requests is called a Complaint/Title.
- B. The written statement admitting or denying the claims of the plaintiff is the defendant's Plea. The defendant can also use the plea to bring a countersuit against the plaintiff.

(The teacher may wish to explain: replication, reply, demurrer, bill of particulars, and pre-trial proceedings of disclosure.)

IV. SUMMARY JUDGMENTS

There is no trial. Court reviews affidavits and documents and decides case based on written information supplied by both sides. Facts are not being disputed. The interpretation of the facts will be decided by the Court.

V. PRETRIAL CONFERENCES

- A. Trial judge gets attorneys to agree on certain facts.
- B. All parties attempt to narrow the issues.
- C. Many civil cases can be settled at the pretrial conference, making the formal trial unnecessary.
- D. The parties are asked to concentrate on reaching a common ground for settlement.

VI. TRIAL OF A LAWSUIT

- A. With judge and jury:
 - 1. Jury rules on facts.
 - 2. Judge rules on law.
- B. With judge only: Judge hears the case and presides over law at issue and is also the finder of facts.

VII. SIMPLE CIVIL TRIAL PROCEDURES / A SEARCH FOR TRUTH

- A. Opening Statements:
 - 1. By judge--greeting, ground rules, case at hand.
 - 2. By plaintiff--version of facts and what plaintiff is seeking from the Court.
 - 3. By defendant--version of facts.

Opening statements are not legal arguments or evidence. They simply explain to the jury or the judge the nature of plaintiff's or defendant's case so the jury or judge will understand the evidence as it is presented.

- B. Direct Examination:

- 1. First the plaintiff directly examines all witnesses for plaintiff.
- 2. Direct testimony is produced by a combination of lawyer's proper questions and witnesses' answers that tell their story naturally and convincingly.
- 3. If the attorney's questions are deemed improper by the opposing attorney, the opposing attorney should formally object to the questions and give the judge a legal reason why the objection is being made. (See Objection Sheet in Appendix for list of proper, legal objections used.)
- 4. After all plaintiff's witnesses are directly examined, the defense attorney will call and directly examine all the defense witnesses.

- C. Cross-Examination: Test the truth or falsity of testimony given by an opposing witness.

1. Each witness, after he/she has been directly examined by his/her side's attorney, can be cross-examined by the opposing attorney.
2. Generally, good cross-examination probes should be respectful, courteous, gentle, and casual. Bullying, browbeating, rudeness, and offensive language very rarely help prove anything.

Teacher's Notes: The art of properly questioning and testing the truth is an important skill students can and should gain from any legal learning experience.

D. Rules of Evidence: In civil courts, rules of evidence can and should be quite specific. Rather than going into great detail on specific rules of evidence in a civil law unit, teacher might concentrate on the following simple guideline:

1. If the witness saw it, smelled it, touched it, tasted it, or heard it, then he/she can testify to it.
2. Introduction of documents:
 - a. Witness should identify the unexplained document.
 - b. Attorney should ask the Court to accept the document.
 - c. Judge should show document to opposition and seek agreement or objection to the Court accepting it as evidence.
 - d. Judge should reject or accept evidence. If accepted, the document is now an exhibit plaintiff or defendant may use in the case.

Note: Documentary evidence in our ONE ON ONE Moot Court Civil Cases has been made inadmissible. Evidence other than the one witness's verbal testimony tends to produce non-productive nit-picking. However, when we employ full civil or criminal law mock trial action-learning, students employ specific, simple rules of evidence and documentation entry.

E. Redirect - Recross - Recall - Rejoin - Rebuttal Testimony: May be explored in reviewing civil trial procedures. Although important civil procedures, these trial areas can be covered briefly.

F. Final Arguments / Summations:

1. Defense attorney summarizes first.
2. Plaintiff's attorney summarizes last. (Balance and the concept of burden of proof is supported through this procedure.)
3. Summations offer both attorneys wide latitude to draw reasonable inferences on evidence and comment on witnesses' believability. Bound by the evidence presented in the trial, the attorneys without prejudice appeal to the jury to accept their side's position.

G. Charge To The Jury:

1. Judge instructs and advises jury of applicable law in the case.
2. Four-part charge:
 - a. Facts in case (each side's contention); could include outline of all testimony given.
 - b. Explanation of burden of proof, interested witnesses, false testimony, opinion evidence, and the preponderance of evidence standard in civil law.
 - c. What law applies to the case.
 - d. What form the verdict should take.

H. Verdict:

1. General verdict.
2. Special verdict.
3. Directed verdict.
4. Awards / damages / reliefs.
5. Appeals on point of law:
 - a. Appellant--plaintiff is in error.
 - b. Respondent--defendant is in error.

CIVIL LAW CONTENT*

CONTRACTS

I. CONTRACTS

A contract is a promise between two or more parties that creates an obligation the law will enforce.

A. Types of Contract:

1. Expressed : Terms specifically stated by parties involved.
2. Implied : Not stated by parties but their actions and circumstances inferred a contract.
3. Void : Contract bad from the start.
4. Executed : Contract has been carried out.
5. Executory : Contract has not been completed.

*SPECIAL NOTE: The legal definitions of some of the less common terms in this section may need to be researched. Determining the meaning of these terms provides an excellent student activity.

B. General Elements or Requirements for a Contract to Exist:

1. Offer and acceptance by parties (mutual assent).
2. Consideration--something given in return for a promise. (Remember, contracts are promises.)
3. Capacity--did the parties have the right to agree to the promise? Were the persons involved old enough and mentally stable? Was the agreement (promise) within the law?
4. Bilateral/promise for promise : Unilateral/promise for an act.
5. Oral agreements are contracts.

Note: Ads in newspapers or periodicals are only invitations to agree. Inquiries about price and availability are not offers to buy.

II. TIME LIMITS INVOLVED WITH CONTRACTS

A. Offers do not last forever. In general, they end when:

1. Specified time runs out.
2. Reasonable amount of time passes.
3. Death or insanity of either party takes place.
4. Rejection or revocation of an offer takes place.
5. The issue under consideration is destroyed.
6. Mistake of fact dealing with the essence of contract can void the contract.

III. BREACH OF CONTRACT

A breach of contract is the non-performance in part or whole of a contractual obligation. Young persons under the age of eighteen (18) are infants in the Court's eyes. Any contract these young persons (infants) enter into with other parties that does not involve necessities and work agreements are in most cases voidable.

Remedies for breached contracts:

- A. Damages : Money that compensates injury.
1. Nominal / Harm is small.
 2. Compensatory/ Harm or injury is substantial.
- B. Specific Performance : Court commands the parties to carry out full contractual obligations.

INTENTIONAL TORTS

I. TORT

A tort is a civil or private wrong, an injury outside of a contract resulting from a breach of legal duty.

A. An intentional tort is interference or harm to people or property.

1. Persons : Through physical or mental interference or harm.
2. Property : Through trespass or conversion of real or personal property.

B. Examples of intentional torts are:

Assault	False Arrest	Negligence
Battery	False Imprisonment	Slander
Conversion	Libel	Trespass
Defamation of Character	Mental/Emotional Distress	

C. To understand intentional torts, one should:

1. Define the act. (Example: legal definition of assault.)
2. Show intent of defendant. (Did the defendant intend to commit the act?)
3. Show the harm or damage. (What is the injury?)
4. Show the causation. (Place cause for the harm in the hands of the defendant.)

D. Having an understanding of these elements, examine the legal defenses available to any person accused of an intentional tort.

1. Did the accused have the consent of plaintiff to act as he/she did? Consent can be actual, apparent, or implied by law.
2. Was the accused involved in the self-defense of his/her person or property?
3. Was the accused's action an unavoidable accident?
4. Was the accused defending another person?
5. Did the accused have a privilege, a relief held by law to be in the public good?
6. Was the accused's actions done out of necessity? (Example: the accused set fire to your land to stop a large fire from spreading.)

7. TRUTH is a complete defense with respect to defamation of character.
- E. In proving the intentional tort was committed, the plaintiff can seek damages in civil court for loss suffered, injury sustained, or rights denied through the unlawful action or omission of the defendant. The damages (relief)(or demand)(or prayer)(or money) (call it what you want to) will generally be one of the following:
 1. Nominal : Symbolic award of small sum of money. It establishes the wrong.
 2. Compensatory : Money for any actual loss.
 3. Punitive : Money awarded that punishes the defendant's malicious act.

NEGLIGENCE

I. NEGLIGENCE

Negligence is the failure to exercise the degree of care a reasonable person of ordinary prudence would display in the same circumstances. People share some duty to care for each other. If you can foresee your actions or omissions of actions could endanger another person and yet go ahead and act or fail to act, you can be held to be negligent.

- A. To prove negligence, you must show that:
 1. A duty to care was present.
 2. The duty to care was breached.
 3. There was injury sustained.
 4. The injury sustained by the plaintiff was caused proximately by the defendant.
- B. The following doctrines can add to your understanding of negligence:
 1. *Res ipsa loquitur*.
 2. Strict and Products Liability.
 3. *Respondeat superior*.
 4. Vicarious Liability.
 5. Liability with Fault.

C. Defenses Used In Negligence:

1. Assumption of a Risk : Burden of proof rests with the defendant.
2. Comparative Negligence : Both parties share in the negligence. Recovery is not barred but plaintiff's damages can be diminished according to degree of negligence attributed to the plaintiff.
3. Last Clear Chance.

D. Consumerism and how it relates to negligence and products liability are areas one may wish to explore:

1. Misrepresentation.
2. Expressed or Implied Warranty.
3. Merchantability.

DEFAMATION OF CHARACTER

I. DEFAMATION OF CHARACTER

False statements that tend to harm the reputation of another become intentional torts as follows:

- . Libel : Through written words or pictures.
- . Slander : Through spoken words or gestures.

A. Defamation of character includes the following elements:

1. Harm to reputation.
2. Person's esteem in a significant part of the community is lowered.
3. People stop dealing with the person who was defamed.
4. Scorn and ridicule is present.
5. Intent is present. The power of the written or spoken words can be better understood if one recognizes how the law views statements made that tend to harm or hurt an individual.

B. Defenses Used In Defamation of Character:

The best defense is TRUTH. Other defenses are consent, privilege, and mistake.

TRESPASS

I. TRESPASS

Trespass is the act of entering or causing a third person to enter or remain upon property of another without consent of owner.

A. Elements Involved In Trespass:

1. Act must be volitional movement (intrusion).
2. Intruder must intend to go on land.
3. Knowledge that land belongs to someone else is not needed. Mistake is not a defense.
4. Failure to remove something from another person's property.
5. Trespass to Chattel : Interference to plaintiff's chattel through physical contact or dispossession.
6. Conversion to Chattel : Exercise dominion, control, or harm to chattel.

B. Rules Concerning Trespass:

The general rule in trespass is that the owner or tenant is not liable for harm to trespassers even if his property is unsafe. Two major exceptions to this general rule are important:

1. When discovery or knowledge of frequency of trespassing is well-known to the property owner, then the property owner has some duty to care for the well-being of the trespasser.
2. Attractive Nuisance: Owner is liable for bodily harm to trespassing children if they are injured by some structure that attracts the children to it.

C. Requirements For Liability:

1. Licensee : Social guest or person who enters defendant's land with consent.
 2. Invitee : Public or business visitor. Reasonable care for the safety of the trespasser is the Court's guideline.
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NOTE FOR TEACHER

The preceding overview covers much of the materials our ONE ON ONE Civil Law Mock Trial Activity will deal with. The overview/outline should be shared with students. It will give the students a good idea which topics will be covered in the ONE ON ONE cases. However, by no means is this overview complete but we recommend that you use it as a guideline in preparing your own unit on civil law.

There are several excellent civil law reference books to assist you with the development of a formal civil law unit. The following is a compendium of materials we in the P.A.T.C.H. program have used.

CIVIL LAW REFERENCE BIBLIOGRAPHY

American Casebook Series (Hornbook Series & Basic Legal Texts Series--Selected Topics in Civil Law). St. Paul, Minnesota: West Publishing Company.

Casnote Legal Briefs (Selected Topics in Civil Law). Beverly Hills, California: Casenotes Publishing Co., Inc., 1982. (Distributed by Law Distributors, Inc., Gardena, California)

Coughlin, George Gordon. *Your Introduction to Law*. New York: Harper & Row, 1979.

Deming, Richard. *Man Against Man : Civil Law At Work*. New York: Dell Publishing Co., Inc., 1975.

Legalines : Selected Topics in Civil Law. Gardena, California: Law Distributors, Inc. 1977.

McKay, Susan. *Living Law Civil Justice*. New York: Scholastic Book Services (C.R.F.), 1978.

Nutshell Series : Selected Topics in Civil Law. St. Paul, Minnesota: West Publishing Company, 1978.

Ross, Martin J. *Handbook On Everyday Law*. Greenwich, Connecticut: Fawcett Publications, Inc., 1975.

Street Law: A Course in Practical Law. 2nd Edition. Mineola, New York: West Publishing Company. (Edited by National Institute for Citizen Education in the Law)

University Casebook Series : Selected Topics in Civil Law. Mineola, New York: Foundation Press, Inc., 1981.

SPECIAL NOTE FOR ELEMENTARY TEACHER

Refer to Law, Youth & Citizenship Program's *Living Together Under The Law : An Elementary Education Law Guide*, published by the New York State Bar Association, Albany, New York. The thematic approach to basic legal concepts was prepared to enrich and supplement the new K-6 social studies curriculum.