

CHAPTER TWO: CIVIL PROCEDURE

As previously noted, the areas of law are divided into the *Civil side* and the *Criminal side*. In this Chapter, we will look at the Civil side. This course will not cover, in any detail, the Criminal side.

CIVIL PROCEDURE consists of the rules followed by all case participants (including judges, attorneys, and the parties to the civil case) to navigate through the court system in civil suits or trials. Likewise, *CRIMINAL PROCEDURE* consists of the rules followed by all the case participants, (including judges, attorneys, and parties to the criminal case) to navigate through the court system during a criminal trial.

SUBSTANTIVE LAW deals with the legal relationship between people, or the people and the state, thus defining the rights and duties of people.

PROCEDURAL LAWS define the rules by which Substantive laws are enforced in a court of law. Procedural laws are necessary to ensure fair practice and consistency in the "due process" of the law.

Examples:

- **Substantive law – Florida Statute Chapter 767.13 Attack or bite by dangerous dog; penalties; confiscation; destruction.—**
 - (1) If a dog that has previously been declared dangerous attacks or bites a person or a domestic animal without provocation, the owner is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- **Procedural law - Florida Statute Chapter 767.13 Attack or bite by dangerous dog; penalties; confiscation; destruction.—**
 - (3) If the owner files a written appeal under s. 767.12 or this section, the dog must be held and may not be destroyed while the appeal is pending.

Due process of the law prohibits any levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty, and property. The due process clause of the Fifth Amendment, ratified in 1791, asserts that no person shall "be deprived of life, liberty, or property, without due process of law." This amendment restricts the powers of the federal government and applies only to actions taken by the federal government.

The Due Process Clause of the Fourteenth Amendment, ratified in 1868, uses the same eleven words. It declares, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law". This clause limits the powers of the states and describes a legal obligation of the states. This is the only decree that the US Constitution states twice.

www.law.cornell.edu/wex/due_process

Thus, there has to be a fair and impartial set procedure in place to ensure that as a Plaintiff or Defendant, you are not unfairly deprived of money, possessions, freedom, etc.. that rightfully belong to you. Therefore, because of the Due Process Clauses, every court has 'Rules of Civil Procedures'. Now days, these are posted online. For example, Florida Civil procedures required by the Florida Constitution are listed at

www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Index&Title_Request=VI

The Orange County Ninth District Court rules are listed at www.ninthcircuit.org/research/rules-

policies

Small claims Court processes are discussed online at www.flcourts.org/resources-and-services/family-courts/family-law-self-help-information/small-claims.shtml

WHERE DOES IT ALL BEGIN IN A CIVIL CASE?



Before starting litigation, a plaintiff needs to ensure that there are no issues of **STANDING**, **RIPENESS**, and **MOOTNESS**.

STANDING

In order to bring a case/complaint to Court, the Plaintiff (person complaining) must have Standing or a personal stake in the outcome. There are **three requirements** that a Plaintiff must demonstrate to the Court: 1) Injury-in-fact, 2) Causation 3) Redressability.

1) Injury-in-fact

- The plaintiff must have suffered or imminently will suffer injury. The injury may be either economic, non-economic, or both. The injury cannot be one that is conjectural, hypothetical, or abstract. It must be an invasion of a legally protected interest that is
 - (a) concrete and particularized, and also
 - (b) actual or imminent.
- *Example of NO Standing:* Kevin owns a house in the city of Bridgeport. The neighboring city of Willisma has enacted an ordinance requiring all Willisma homeowners, wherein the home has a fireplace, to have an annual inspection of the fireplace conducted by the fire department or a certified fireplace inspector. Kevin is furious because he feels like Willisma has gone too far! He is worried that soon Bridgeport may enact a similar statute. So, he brings a suit against Willisma to challenge its ordinance. Kevin's suit will be dismissed for lack of standing. Kevin does not own a home with a fireplace in the city of Willisma. Therefore, he has no standing to bring a suit regarding this issue.

2) Causation

- Plaintiff's injury must be legitimately traceable to the defendant's challenged action.
 - *Example:*
 - A Court would find causation where Mary brought a suit against Paul

because she suffered neck injuries when Paul crashed into her car. Mary would have standing to bring a case against Paul.

- A Court would not find causation where: Jane was walking down the street. George, who was standing five feet away took off his shirt revealing his Adonis chest. Jane was so enamored that she stumbled hurting her foot. Jane bought a suit against George for her injured foot. The suit was quickly dismissed for lack of Standing (no causation link). A reasonable person would not link George to have been the *cause* of Jane's injury.

3) Redressability

- The injury alleged by the Plaintiff must be one that could be redressed by a favorable judicial decision.
 - *Example:* In *City of Los Angeles v. Lyons* 461 U.S. 95 (1983), the Court held that a plaintiff who had suffered injuries as a result of a chokehold administered by Los Angeles City Police Department officers could **not** seek an injunction because the injunction would not help redress any injury in the absence of a showing that plaintiff likely would be subjected to a chokehold again in the future.
(The plaintiff didn't prove he would definitely do something against law enforcement in the future that would cause law enforcement to chokehold him.)

RIPENESS

A Plaintiff must have exhausted any administrative procedures available to address the issue or injury. The injury must be one that either has occurred or is sufficiently likely to occur as it is imminent and concrete in nature, not conjectural, hypothetical, or abstract.

- *Example:* Linda has a Contract with Bob to deliver 5,000 muffins on December 24. Bob, a worry-wart is concerned that Linda will not perform because of the holidays. On December 20, Bob brings a suit of breach to ensure that Linda performs as contracted. The case will be dismissed because it is not ripe. It is unknown whether Linda will breach or not.

MOOTNESS

There is nothing to settle as the issue has been resolved. A court decision would have no effect on the outcome.

- *Example:* A student challenged a school's racially discriminatory admissions standards, but the court dismissed his claim because he his claim was moot because he was admitted to the college directly after he filed the suit.

So, if a plaintiff has **Standing**, the issue is **Ripe**, and there are no concerns with **Mootness**, where does the Plaintiff begin? The Plaintiff begins by filing documents with the proper Court. The documents that begin a lawsuit are called the **Pleadings**. Basically, all parties involved will plead their side with the court. The Pleadings consist of the **Complaint**, the **Answer**, and *sometimes*, the **Reply**.

THE PLEADINGS – all the documents that begin a lawsuit.	
COMPLAINT	<p>Filed by Plaintiff (person or entity bringing the suit)</p> <p>Plaintiff must file to initiate a case.</p> <p>The Complaint is served on the Defendant with the Summons. The Summons tells the Defendant that he/she should appear in Court to defend against the allegations in the Complaint or suffer the consequences of the Plaintiff automatically winning. A no-show (or no response) by the Defendant results in a default judgment in favor of the Plaintiff.</p>
ANSWER	<p>Filed by the Defendant (whom the suit is filed against) – to respond to the Complaint allegations by agreeing with or denying the facts in the Complaint.</p> <p>Defendant does not have to file, but if defendant does not, the Plaintiff wins!</p> <p>Usually must be filed within 20 days, but could be only 5 days. IF NOT FILED, THE PLAINTIFF WINS BY DEFAULT!!!! So, always file an Answer!</p> <p>An Answer can also contain a ‘Counterclaim’. A counterclaim is where a defendant asserts a claim against the Plaintiff, usually in regards to the same issue at hand. A counterclaim must contain facts sufficient to support the granting of relief to the defendant if the facts are proved to be true. These facts may refer to the same event that gave rise to the plaintiff’s Cause of Action or they may refer to an entirely different claim that the defendant has against the plaintiff. Where there is more than one party on a side, a counterclaim may be made by any defendant against any plaintiff or plaintiffs.</p> <p>For more details conduct a web search or see: https://www.law.cornell.edu/wex/counterclaim</p> <p>A defendant might also file a crossclaim (asserting claims against a co-defendant) or a third party complaint (bringing in an outside party who was not named as a defendant in the original complaint.</p>
REPLY	<p>Filed by Plaintiff to reply to the Answer.</p> <p>Plaintiff does not have to file, but may want to file to refute new information or allegations in Defendant’s ANSWER.</p>

TO ELABORATE ON THE LAWSUIT PROCESS

The first thing that must be established is a **CLAIM**. What does the Plaintiff want? Money? New car? Attorney fees? For someone to stop doing something?

One definition of a **CLAIM** is: To demand or assert as a right. Facts that combine to give rise to a legally enforceable right or judicial action. Demand for relief. (From Free-Dictionary.com)

Note that a court will not allow a Claim where the Plaintiff demands that the Defendant complete services or a particular action, as this is akin to court enforced slavery. For example: Plaintiff hired Defendant to paint her house. Defendant was given a down payment, but never completed the work. Plaintiff could not plead to the Court for the Court to enforce that Defendant complete the work. The Plaintiff would only be entitled to the payment returned and any other reasonable damages that would make Plaintiff **whole** (place Plaintiff in the position that the Plaintiff was in before the agreement).

The **CLAIM** is written on a Complaint. See an example of a Complaint at the end of this chapter. The Complaint consists of three parts:

1. **Statement of Jurisdiction**
2. **Details of the case**
 - i. Defendant violated xyz law (Constitution, Statutes, Common Laws, Administrative laws), when defendant did
 - ii. Plaintiff suffered.... (injury or loss)
 - iii. Causation analysis – Defendant illegal action(s) was the direct, or indirect cause of Plaintiff's injury/loss.
3. **Remedy** demanded (demand for judicial relief). Plaintiff wants money damages in the amount of xxx, etc..

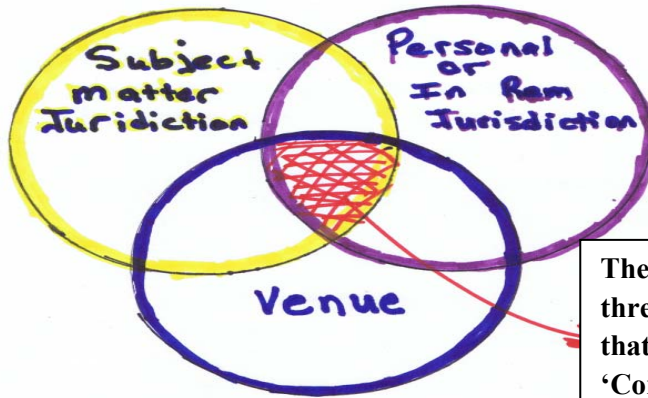
A **Statement of Jurisdiction** states 'why the Court, we are filing our Complaint with, is the proper court'. Appropriate jurisdiction is needed because it would be unfair to haul the Defendant into a court at a location where the Defendant did not have any contact. The Defendant is not the one wanting to go to Court, but must go to Court to defend against the Plaintiff's allegations.

There are many types of courts because the laws are very complex. It makes sense to have courts separated by areas of the law. Having specialized courts streamline the court processes. Accuracy and consistency of judgments are more likely ensured if a court is an expert on that particular area of law. For instance, a complaint for a Divorce would be filed with a Family court, not with a Bankruptcy Court.

To determine Jurisdiction, we have to determine three things:

1. Whether the Court has **Subject Matter Jurisdiction**
2. Whether the Court has **Personam** or **In Rem Jurisdiction**
3. What is the proper **Venue**, as under a Venue statute

Personam means Personal - over the 'person'. It is often referred to as '**Personal Jurisdiction**'.



The “**Perfect Spot**” is found where all three rings converge. That is ‘the court’ that the plaintiff needs to select to file the ‘Complaint’

SUBJECT MATTER JURISDICTION

Subject-matter jurisdiction is the authority of a court to hear cases of a particular type or cases relating to a specific subject matter.

There are three types of *subject matter jurisdiction*:

- **General Jurisdiction**, which means that a court has the ability to hear and decide a wide range of cases. Unless a law or constitutional provision denies them jurisdiction, courts of general jurisdiction can handle any kind of case.
- **Limited Jurisdiction**, which means that a court has restrictions on the cases it can decide. Small claims court is a court of limited jurisdiction. It can only hear and decide cases that claim damages of \$10,000 or less. Limited civil courts can only hear and decide cases for up to \$25,000.
- **Exclusive Jurisdiction**, which means that only a particular court can decide a case. For example, Bankruptcy court is a court with exclusive subject matter jurisdiction. A person can only file a bankruptcy action in a federal bankruptcy court. State courts have no jurisdiction in bankruptcy cases. Whereas, Probate Court is a County court where only matters of Probate are heard. In Florida, a Probate action must be brought the county in which the deceased person resided.

A Probate action takes place when someone dies. The Probate action determines how the deceased person’s assets and liabilities are to be handled.

Federal District Courts are limited to jurisdiction subject matter concerning cases where there is *either*:

1. Complete diversity of the parties. None of the defendants’ claims residence of the same state as any plaintiff AND the amount in controversy exceeds \$75,000.
2. The subject matter is a “Federal Question.” In other words, a federal statute, the US Constitution, treaty or federal subject is involved. It is said that the matter must “arise under federal law”. http://en.wikipedia.org/wiki/Federal-question_jurisdiction

That means that a Federal District Court can only hear a case that has either one of both of the above features involved. Therefore, sometimes, depending on the subject matter, you may have a *choice* of heading to a State court or a Federal District. A reason to choose one or the other may include how the courts have ruled on cases similar to yours in the past.

PERSONAM OR IN REM JURISDICTION

Personam jurisdiction is whether or not the court has jurisdiction over the parties (people, and/or business entities, and/or government entities) to a lawsuit. Where do the parties reside? Has the

Defendant had contacts within the jurisdiction of the court that the defendant could foresee being hauled into court? For example, has the defendant conducted business in that State? Has the Defendant been in that State several times?

In rem jurisdiction refers to jurisdiction over a particular piece of property, most commonly real estate or land that is of issue in the court matter. In rem jurisdiction may even be satisfied in a case where the property is a boat and the boat is docked in a particular City, State. The Court in that particular 'City, State' area would have In Rem Jurisdiction.

Venue

Usually, **Venue** is in the county where:

- The person you are suing lives or does business (if you are suing a business or organization); or
- The dispute arose, like where an accident happened, or where a contract was entered into or broken.

Every court system, federal or state has Venue provisions. These provisions are most often codified in a statute. See Florida's Venue Statute supplement at the end of this Chapter. Also, see a basic analysis of Federal Venue at the end of this chapter.

So, **remember**, a Plaintiff **MUST** satisfy all three of the rings and stand in the 'Perfect Spot' to get to the proper Court!

- ✚ SUBJECT MATTER JURISDICTION
- ✚ PERSONAM OR IN REM JURISDICTION
- ✚ VENUE



YOU'VE BEEN SERVED

Once the Complaint is ready, the Plaintiff files the Complaint with the proper court and completes a **Summons** Form. The Summons is a document ordering the Defendant to appear in Court and defend the allegations alleged in the Complaint. A copy of the Complaint is attached to the Summons. And, depending on the State procedural

Statutes, a **Process Service Memorandum** form may also be required to be filled out and filed. A Process Service Memorandum provides the Instructions from the Court to the process server (Sheriff or Private Process Server) on how to serve the other party.

SERVICE OF PROCESS

The **Summons and Complaint** are called "process". Because there are different requirements in different States regarding process servicing, (process of how a Summons and Complaint are to be served on a Defendant), we won't delve too deep. Just know that in many States, process service is not required to be effected through a Sheriff. Follow your Court's or Attorney's instructions if you ever find yourself in this unfortunate situation. But note that it is the Plaintiff's responsibility to effect service of process on the Defendant. If a Plaintiff cannot prove that this service of process was **effected**, the Plaintiff's case will be dismissed.

RESPONSES TO THE COMPLAINT (Answers and Motions)

If the Defendant does not provide the Court and Plaintiff(s) with a ‘Answer’ to the Complaint, the Defendant will suffer the consequence of a Default Judgment, which allows the Plaintiff to win the case, right then and there. Responses to a Complaint should always consist of the Answer, but may also have a Motion. The Answer and any Motion must be filed with the Court and served on the Plaintiff.

Motions - asking the Court for something!

A motion is an oral or written request made to the court for a ruling, or an order, on a particular point. Basically, a Motion is a request asking the court or judge for something. A Motion can be made before, during, or after a trial. It is a common court procedure for deciding issues that come up during the course of a lawsuit. A Motion must be filed with the Court and provided to the opposing party because the legal system is all about transparency and providing the opposing side to defend itself against allegations and/or to add clarity to facts.

A Motion must do all of the following:

1. Identify the party or parties bringing the motion;
2. Name the parties to whom it is addressed;
3. Briefly state the basis for the motion and the relief sought; and
4. If a pleading is challenged, state the specific portion challenged.

There are many types of Motions. Examples are: Motion for an extension of time, Motion to clarify the allegations in the complaint, Motion for dismissal, etc.. See

http://en.wikipedia.org/wiki/Motion_in_United_States_law

If the issue is complex, or if the other side objects to the Motion, the judge may schedule a hearing to decide that point. A hearing gives the people involved a chance to answer questions from the judge and to argue for or against the motion.

Before making a written Motion - or responding to one - try informally to reach an agreement with the opposing party about the issue involved in the Motion. If both sides can agree on their own, they can prepare a document called a “stipulation.” Ask the court clerk and check the rules in your court for any special procedures for preparing and filing a stipulation. A stipulation will usually be much simpler and cost less than filing a Motion.

The procedural process of a Court case follows a basic pattern. The following is a summary of the steps to in a lawsuit.

- 🚩 Starting the Lawsuit (Note that at any time a plaintiff can drop the lawsuit! Aka – file for dismissal of the suit.)
 - Complaint
 - Statement of jurisdiction
 - Basis of the Claim – Law violated Facts, and analysis of the two.
 - Claim for Relief - remedy sought
 - Summons
 - Service of process -each state is different
 - Responses to Complaint
 - Preliminary Motions

- Answer
- Counterclaim
- Crossclaim
- Response to the Answer
 - Reply
 - Motions directed to the Answer
- ✚ Pretrial Procedures
 - Scheduling Conference and Order – may be ordered by the court so the parties can work out the issues and settle instead of continuing with litigation
 - Discovery – both sides exchange information
 - depositions - oral questions to the other party or a nonparty witness
 - interrogatories - written questions to the other party only
 - requests to produce documents - written requests to the other party to produce documents, including electronically stored information, and tangible things
 - requests for admissions - written requests to the other party to admit the truth of facts, the application of law to fact, opinions, or the genuineness of any described documents.
 - Summary Judgment Motion – Always do one of these because you could be successful and save tons of time and money.
 - Pretrial Conference
- ✚ The Trial (Can be a Jury Trial or a Bench Trial) – Bench trial is where a Judge decides all.
 - Selection of jury
 - opening statements
 - cases-in-chief
 - Plaintiff's rebuttal
 - Summations
 - Change to the jury
 - Jury deliberations
 - verdict
 - Judgment
- ✚ Appeal



TIPS AND PREVENTIVES MEASURES

- Know the law or at least be familiar enough with areas affecting your business.
- Train staff to understand the law and how to avoid violating laws. Have quicktip sheets for everyone to follow to help prevent violations of the law and potential lawsuits
- Have a variety of checklists of what to do if something happens, like a slip and fall accident, or delivery of bad goods, etc.. Keep these checklists updated and in convenient locations
- Hire a business consultant to review your business flow, training measures, etc..

- Know a great attorney that specializes in Business law

If something happens

- If it is an emergency, have someone dial 911!
- Grab your tailored corresponding checklist that matches the issue at hand, example: guest injury such as slip & fall, employee issues, theft, wrong delivery of ordered goods, etc... Gather evidence immediately.
 - Statements from witnesses and the parties involved. Make sure to get complete names and contact information.

You, as the Defendant

If you receive a complaint, contact an attorney immediately. The type of attorney you select should practice in the particular area that the suit entails. Do not seek a criminal attorney for business advice and vice versa. You can look on State Bar sites to see if the attorney holds a current license and if there are any past complaints against the attorney. For example: <https://www.floridabar.org/names.nsf/MESearchDK?OpenForm>
If the Complaint is against the Company that you are working for and you are a co-defendant, the Company's attorney represents the Company, not you! And, anything you do or say can be presented in court against you. Get yourself an attorney and work with the company's attorney through your attorney.

You, as the Plaintiff

If you have been wronged in a business matter, seek the advice of a Business attorney and maybe your business consultant. Sometimes a lawsuit may be your only recourse. Other times, it may cost more time and money than it is worth to pursue a claim. Pick your battles wisely!

This concludes our discussion on Civil Procedure.