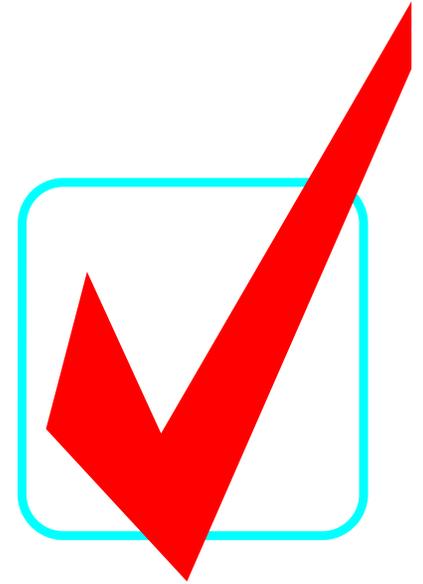




THE TRIAL PROCESS

Chapter 3

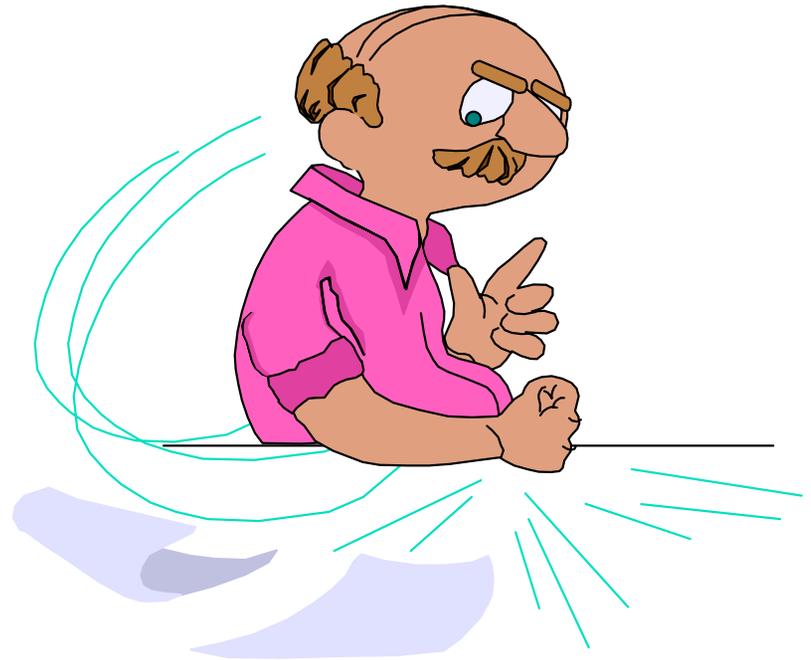
Chapter Issues

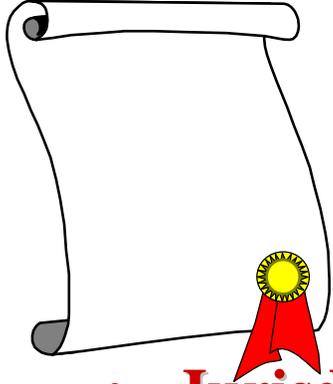


- **Nature of a lawsuit**
- **Factors involved in litigation**
- **Procedures and processes of litigating a dispute**

The Adversary System

- **Parties argue positions before a court**
- **Underlying belief: Best way to discover the truth is through competing evidence**
- **Lawyers represent competing claims**
- **Judges don't investigate**
- **Court applies legal rules**





The Pleadings Stage



- **Jurisdiction needed over subject matter & parties**
- **Notice given of lawsuit by *service of process* through *summons***
- **Complaint**
 - Alleges facts for jurisdiction & remedy/remedies
 - Requests remedy(ies)
 - See Exhibit 3.3
- **Responses to Complaint**
 - Motion to Dismiss (Demurrer)
 - By defendant
 - Answer
 - Counterclaim
 - Affirmative Defenses
 - Reply
 - Motion for Judgment on the Pleading
 - Either party may file after pleadings have been completed



Discovery Stage

(Legal Tools to Obtain Evidence)

- **Rules of Civil Procedure set guidelines & limits to the process**
- **Purposes to 1) preserve evidence, 2) limit element of surprise, 3) encourage settlement**
- **Depositions of parties and witnesses (including experts)**
- **Interrogatories of the parties**
- **Requests for Admissions**
- **Orders of Production of Documents**
- **Physical/Mental Examinations**
- **Impacts on business--expensive & time-consuming**
- ***See Wauchop v. Domino's Pizza, Inc.***



Wauchop v. Domino's Pizza

- **Domino's Pizza had a 30-minute delivery rule**
- **Wrongful death action by family of woman killed during accident with Domino's delivery vehicle**
- **Monaghan (Pres.) is requested to give deposition**
- **Pres. says he is not personally liable and 30-minute rule is not an issue of the case**
- **Pres. claims that information may be gathered by other means and refuses to give deposition**
- **Plaintiffs file motion for default judgment because Pres. refuses to give deposition**
- **Court does not enter default judgment against Pres. And gives him an opportunity to comply with court's orders**
- **Held: Plaintiffs are entitled to take the deposition**
- **Pres. must give deposition and pay plaintiffs' fees**

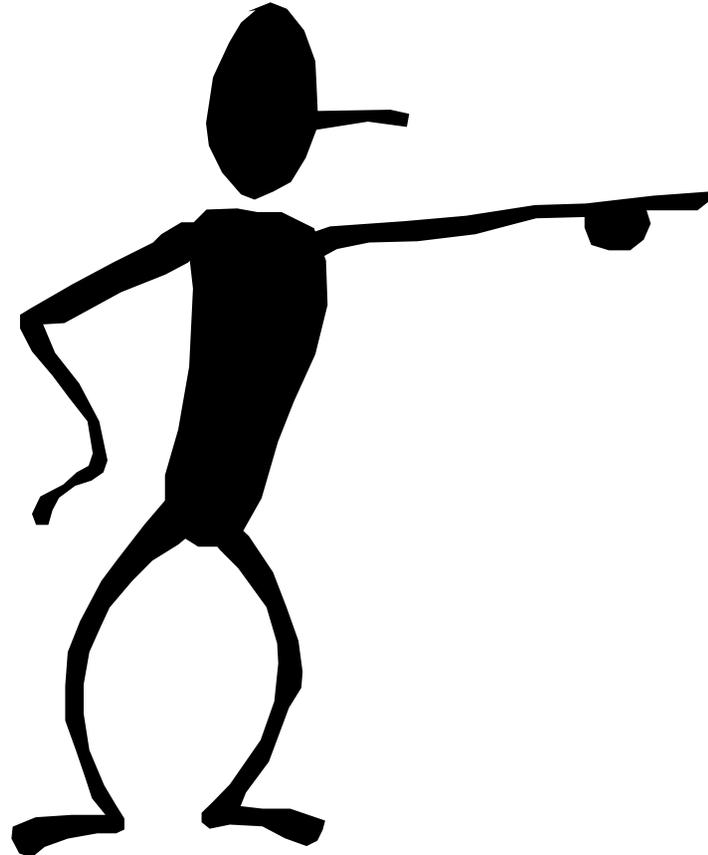
Pretrial Stage

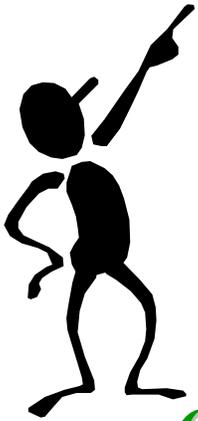
- Use of pretrial conference to simplify issues and plan course of the trial
 - Usually attorneys and judge attend
 - Judge's role is often to work openly for settlement
 - Summary Judgment-- either party may request



Jury Selection

- **6th & 7th Amendments** gives right to a *jury* in criminal and common law cases
- If no use of jury, judge becomes trier of fact
- Selection of jury involves *voir dire*
 - *Challenge for cause--a juror disqualified for a reason*
 - *Preemptory challenges--attorney rejects a juror w/o stating a reason*





Trial Stage

- *Opening Statements by attorneys*
- *Presentation of Direct Testimony*
- *Motion for Directed Verdict* requested by defendant's attorney after plaintiff's presentation of case; after both parties rest, either may request a *Directed Verdict*
- See *May v. Hall County Livestock* (directed verdict)
- *Closing arguments*
- *Instructions to Jury* (also called *charges*)
- *Verdict by jury. Judgment may be set aside for jury misconduct.*
 - See *Powell v. Allstate* (Jury misconduct)
- *Posttrial motions (Motion for New Trial or j.n.o.v.)*



May v. Hall County Livestock Improvement Assn. **(Directed Verdict Case)**

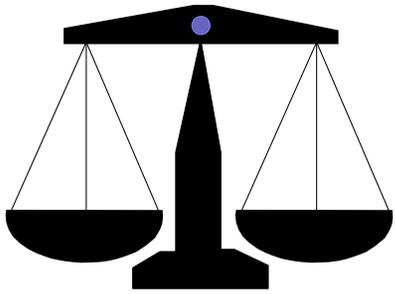
- **May attended horse races; was at a table and made various trips to and from it**
- **Stood up for the 6th race; saw that her horse was going to win; stepped away from table and slipped and fell; tried to catch her fall; lost consciousness**
- **Sustained head injuries and a broken hip**
- **Racetrack owned by Hall County; May sues Hall**
- **She says there was liquid on the floor; concession manager says that the floor was dry**
- **Hall moves for directed verdict; court grants it; she appeals**
- **Held: Affirmed trial court's decision for directed verdict. Plaintiff failed to produce evidence that there were any conditions that were the proximate cause of the plaintiff's injuries.**

Powell v. Allstate Insurance Co.

(Jury Misconduct Case)



- **Powell (African-American) injured in vehicle accident**
 - **Collects \$10,000 from other driver; sues Allstate for over \$200,000 under underinsured motorist coverage**
 - **Case tried by jury (all White); Powell is awarded \$29,320**
 - **After trial, juror informs Powell's attorney & judge about racial jokes and statements during trial**
 - **Powell requests new trial**
- **Trial court denied request for new trial; Powell appeals**
 - **Appeals court affirms**
 - **Powell appeals to Supreme Ct. of Florida for new trial based on jury misconduct**
 - **Held: Reversed. Case remanded for trial court to conduct a hearing to learn if racial statements were made. If so, trial court is directed to order new trial.**



Remedies

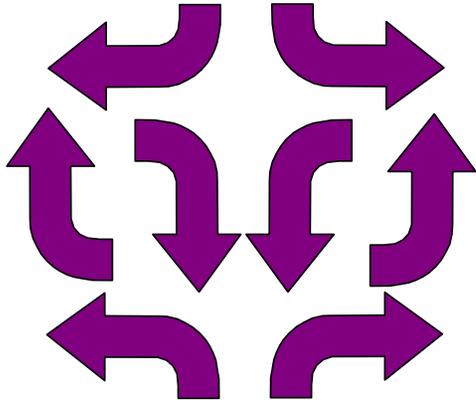


- **Monetary damages**

- Compensatory
- Punitive or exemplary
- Nominal

- **Equitable remedies**

- Specific performance
- Injunction
 - Permanent
 - Temporary



Appellate Stage

- **Arguments before the court**
 - **Written Briefs**
 - **Oral Arguments**
- **Decisions by the court**
 - **Majority opinion**
 - **Concurring opinions**
 - **Dissenting opinions**
- **Outcomes of decisions**
 - **Affirmed**
 - **Modified**
 - **Reversed**
 - **Remanded**
- **See “*German Trial Procedure*” re: a different country’s system**

Enforcement Stage

- If no further appeal is available, judgment becomes final
- It is *res judicata*
- Enforcement of judgment is through *writ of execution*
- Court may order an official (i.e. sheriff) to help satisfy judgment through an act (such as seizure/sale of property, garnishment, etc.)





New Maine National Bank v. Nemon

- Nemon borrows \$125,000 from bank & promises to pay collection costs if he did not repay loan
- Nemon doesn't pay; bank sues for breach of contract
- Trial court grants summary judgment; grants relief w/bank costs
- Bank obtains *writ of execution* against Nemon
- He does not comply; fails to produce documents or appear in court
- Court charges Nemon with contempt & authorizes arrest, but stays sentence so that Nemon may appear re: contempt charge
- Nemon fails to appear; court issues arrest warrant
- Nemon pays balance due on original judgment; bank moves to collect the additional sums of post-writ-of-execution expenses
- Court grants expenses of \$8000 to be paid; Nemon appeals
- **Held: After “merry chase” of this man, judgment is affirmed. Treble costs are awarded to New Maine National Bank.**

Burdens of Proof

- Criminal Standard: Beyond a reasonable doubt.
- Civil Standard: Beyond a preponderance of the evidence.
- Res Judicata – “the thing is settled.”

Judgment Notwithstanding the Verdict

- Civil case: The judge may override the jury verdict in either direction.
- Criminal case: The judge may override the jury verdict **ONLY** in favor of the defendant.
- Judge may also change jury award in civil.
 - Additur or Remittitur

Other Terms

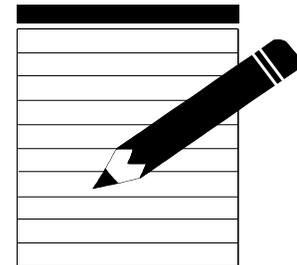
- Statutes of Limitations
- Class action suits – recently limited by Supreme Court
- Contingent Fee vs. Fixed Fee
- Loser Pays Winner's Legal Fees
- Attachment and Garnishment
- Grand Jury vs. Indictment (Criminal)
- Standing

Damages

- **Compensatory:** Compensate for actual injuries suffered; med. exp., lost wages, property damage, pain and suffering.
- **Punitive or Exemplary:** Punishment for outrageous behavior.
- **Nominal:** Jury thinks you are right, but you haven't proven damages; \$1.



Should Judges Have to Give Reasons for Decisions?



Article: *“Justice in the Dark”*

- **Concerns over appeals courts that dispose of cases without published reasons**
- **Article states that federal appeals judges dispose of 79% of the 26,819 cases in unpublished decisions**
- **Over 7% of unpublished decisions have a single word, such as “Affirmed”**
- **The U.S. Supreme Court almost never accepts for review an unpublished opinion**
- **Complaint is that this is precedent without known reasoning to prevent same problems in the future**
- **The “shortcut system” stems from a backlog of cases that create a veritable avalanche of caseload on the appeals courts**
- **“Judges insist that unpublished decisions are only in simple, non-controversial cases, where the answer is clear-cut.”**