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Jurisdictionary®

Presents

How to Win in Court

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Table of Contents

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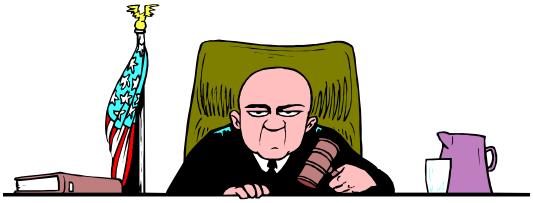
The Rules of Court



Don't worry. We're going to make this easy because it is easy.

It's common sense, actually. We're going to analyze the rules of court to see that there's a pattern, a simple process from the initial step where someone files a complaint to the final step where the guy in the black robe signs the final judgment.

It's going to be fun, so sit back, relax, grab a soda or cup of coffee, put on your reading glasses (if you need them), prop up your feet, and get ready for one of the most exciting adventures of your reading life … learning the rules that make justice possible.

We'll begin with an overview, the anatomy of every lawsuit, so you can see the big picture. Then, we'll get into the details – always taking it one step at-a-time, so you don't get lost or confused. Study the table of contents preceding this page carefully. This is an outline of what you're going to learn and an important part of your learning. See how the subject is arranged. Notice there is a pattern. Keep this pattern in mind, and you've won half the battle already.

Winning lawsuits begins with knowing the rules.

Can you imagine winning at poker or baseball if you didn't know the rules?

Of course not!

The same is true going to court.

And, the consequence of not understanding what's going on in court is much more severe. The stakes are higher and potentially catastrophic.

On the other hand, if you know the rules and are a person who *should* win your case, you probably *will* win. That's why we have the rules we have: So the good guys can win! Indeed, the rules are written for that purpose. Justice for all (who know and abide by the rules). The court system itself is established on these rules. Without them courts could not function. There must be rules.

Rules control judges. Rules control the other side. And, of course, rules control you, while giving you an open opportunity (within the rules) to present your case and demand fair hearings and an impartial trial.

The Rules are truly easy to understand, if you keep in mind that they follow a plan of procedure – one step at-a-time.

Let's get started.

First Things

Before we get started, let's agree about one thing.

This stuff is easy.

Don't let anyone tell you otherwise. Believe it is easy, and stop looking for complexity. It isn't there!

You can understand the rules as well as anyone.

Learn for yourself. Let **Jurisdictionary**® make it easy!

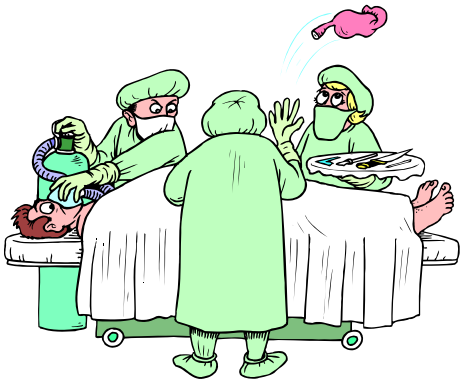
We recommend you order the Rules of Court for your home state from West Group, Minneapolis, Minnesota 1-800-328-9352 to be assured of having the official rules that actually control the courts where you live. For many states, the complete set of rules is less than $50. Stand on solid footing when you fight for your legal rights. Official State Rules are not expensive. If you're involved in a lawsuit now or anticipate being involved in a lawsuit anytime in the future, it's the best investment you can make! Know the rules that control the courts in your state ... and make everyone obey!

Lawsuits are fights. See this now. Litigation is not a parlor game.

In the balance hang the lives and fortunes of both sides.

If you don't know what weapons are at your disposal, you're not prepared to fight. No need to suffer loss from ignorance. The principles of civil law are easy to understand. In fact, it's quite a bit of fun using the official rules to force your opponents to follow them to-the-letter and obey the law.

Live free! Learn the rules!



Anatomy of a Lawsuit

Learning the anatomy of civil lawsuits is as easy as spelling "CAT".

Complaint - Answer - Trial

Master this simple truth and you will soon be operating successfully in court.

Plaintiffs file complaints. Defendants file answers. Judges examine the facts and law at trial to decide who wins. It's not difficult if you keep these three steps in mind. Every lawsuit has this same fundamental anatomy.

Complaint. Answer. Trial.

If you can spell “CAT”, you can master the basics.

C = Complaint … Where the case begins, when the plaintiff complains.
A = Answer … Where the defendant responds to the plaintiff’s complaint.
T = Trial … Where the judge (or jury) decides the final verdict.

After the plaintiff files his complaint, the defendant may file a flurry of motions that seek to have the complaint stricken or dismissed so he need not answer. If the flurry of motions fails, the defendant must answer the complaint.

Once the defendant is compelled to answer the complaint (and sometimes before) both parties are permitted to engage in discovery of evidence procedures, i.e., to demand production of documents and things, to require the other side to admit facts and law under oath, to ask relevant questions of anyone, to put evidence on the public record, and to attempt to settle the case and avoid the expense, delay, and uncertainty of going to trial.

If the parties cannot settle their dispute during the discovery phase, the court must examine the evidence, hear testimony, consider arguments of law, and render its final judgment.

It’s just that simple.

In the following pages you'll learn how to write a powerful complaint. You'll learn how to avoid filing an answer by moving the court to dismiss or strike the complaint or require a confusing or poorly worded complaint to be re-written. You'll learn how to get the evidence you need with effective discovery tools. You'll discover how to get facts into evidence and demand your rights in court.

In all of this, you'll learn how conflicts can be resolved peacefully … according to the rules taught here.

Parties

Parties are participants with a stake in the outcome of lawsuits -- win or lose.

Participants having a stake in the outcome are called *parties* to distinguish them from *persons* who are not involved nor likely to be affected directly by the final judgment.

Persons have no stake in the result.

Parties do.

Parties may be individuals, like you and me, or they may be giant corporations, trusts, probate estates of decedents, or any other business or political entity having the power to sue and be sued.

Participants in lawsuits having no stake in the outcome include witnesses and officers of the court (e.g., lawyers, judges, judicial assistants, bailiffs, and court reporters). Other possible participants in lawsuits include interpleaders and amicus curiae (explained below).

Plaintiffs and defendants are the only participants with a stake in the outcome. They are the folks who “have a dog in the fight", i.e., a genuine interest at risk in the lawsuit.

Plaintiffs are parties who file complaints.

Defendants are parties who answer them.

Plaintiffs have an axe to grind with defendants.

Defendants wish to be left alone.

Plaintiffs urge the court to grant the relief sought by the plaintiff's complaint.

Defendants seek to get the complaint dismissed or stricken as soon as possible.

Plaintiffs seek to prove they are entitled to the court's favorable verdict.

Defendants seek to prove the plaintiff cannot meet his burden to present evidence sufficient to win.

Multiple plaintiffs are called "co-plaintiffs". Multiple defendants are called "co-defendants". Remember? I told you this isn’t rocket science.

A co-defendant who files a complaint against another co-defendant or a co-plaintiff who files a complaint against another co-plaintiff is called a "cross-plaintiff". The party being sued in these situations is called a "cross-defendant". Actions between co-plaintiffs and actions between co-defendants are called cross-claims.

Not too hard so far, is it?

A defendant who files a counter-complaint against a plaintiff is called a "counter-plaintiff", and a plaintiff sued by a defendant is called a "counter-defendant". Actions filed by defendants against plaintiffs are called counterclaims.

A defendant who sues someone other than the plaintiff or a co-defendant (bringing a third party into the fight) is called a "third-party plaintiff", and the third party being sued is called a "third-party defendant". Actions filed by defendants against third parties are called third-party claims.

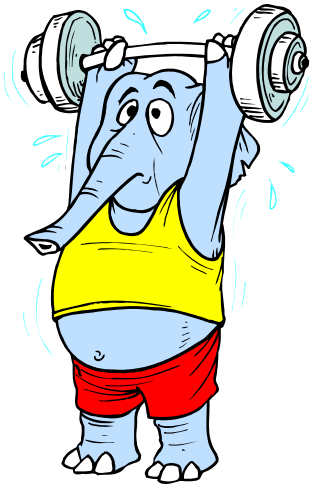
It’s really just common-sense.

Anyone wishing to stand between a plaintiff and defendant without being involved in the battle is called an “interpleader”. For example, a bank threatened by disgruntled heirs who are fighting over their dearly departed Aunt Suzy's accounts may deposit contested funds with the clerk of court (i.e., interplead the funds) and thereby avoid the conflict by leaving it up to the court to decide who gets Aunt Suzy's money. Interpleader actions are common where parties claim conflicting rights over property held by a trustee, executor (personal representative) of an estate, bank, insurance company, etc. The losing party is frequently required to pay the interpleader's reasonable legal fees and costs.

Another type of participant who doesn't get directly involved is the "amicus curiae” (Latin for friend of the court). An *amicus* may obtain permission from the court to file a brief statement setting forth facts or argument of law hoping to affect the outcome. This brief statement is called an *amicus* brief. The *amicus* states law and facts he hopes will influence the court, a story or argument neither party is likely to present. For example, if the outcome of a particular case threatened some dangerous precedent that would affect your condominium association, you might be permitted to file an amicus brief with the court. You might tell the court a side of the facts or offer an argument of law different than anything the plaintiff or defendant might be willing to admit, facts and laws that might not otherwise be considered. You show the court a side of things from your point

of view or that of the class of persons you represent. An *amicus* is not awarded damages and cannot recover legal fees and costs. The *amicus* brief, however, may influence the court to decide between the parties in a way it might not otherwise consider. Anyone with a genuine interest in the outcome of a case may petition the court for permission to file an *amicus* brief.

You now know how to identify parties to a lawsuit, how parties relate to each other, and how to refer to parties and persons when addressing the court.



The Burden to Prove

Every person who comes to court claiming or demanding a right is required to prove he or she is entitled to relief.

This requirement to prove is called "the burden".

Suppose your neighbor sues you for running over her dog with the lawn mower. She files her complaint and demands judgment. To get from complaint to the court's judgment, however, she must meet a burden.

She must prove you did what she says.

You are *not* required to prove you didn't.

The burden is on her. It's her case to prove.

The burden of proof in court is always on the person asserting a claim, making a motion, demanding a right. Before the court can lawfully grant relief of any kind, the party seeking relief must carry his burden of proving he is entitled to relief.

You may have heard the expression, "It's your word against his." That is not true in court. In fact, one side always has the burden. The burden may shift back and forth during a complicated lawsuit, depending on who is claiming what. However the burden is always on the side seeking relief, the party making a claim, the litigant moving the court, the claimant alleging a fact, etc.

This is part of our American system of justice ... and it is a good part.

For example, suppose you are sued by an angry woman who says you kicked her dog. You say you didn't do it. Is it your word against hers? Not at all. It is up to her to carry the burden of proof to show that you did, indeed, kick her dog. You are never required to prove you didn't do it. The other side is required to prove you did. After all, they're the ones who started the fight!

Some lawyers attempt to put the other side "on the defensive", i.e., they try to get the other side to prove something did not happen ... like the kicked dog incident. Inexperienced defendants may go to great lengths to show they were out of town that day or that they were confined to a wheelchair or even that they are devoted dog lovers. This

is what the plaintiff wants. If the defendant ignorantly tries to prove the dog-kicking did not take place, the plaintiff will be spared the effort of trying to prove that it did take place. A smarter defendant would move the court to take judicial notice that the burden of proof is on the plaintiff, then sit back and wait to see what the plaintiff can show in the way of admissible evidence in support of her claim. Put the ball in the court where it belongs.

Every person asserting a claim, making a motion, seeking relief, or otherwise coming to court with an allegation upon which he expects the court to act favorably to his cause must first meet his burden to prove what he says is true.

In civil court cases the burden is a preponderance of the admissible evidence, i.e., by "the greater weight" of admissible evidence. In criminal cases (and a few other matters like incompetency proceedings) the burden of proof is clear and convincing evidence, i.e., "beyond a reasonable doubt".

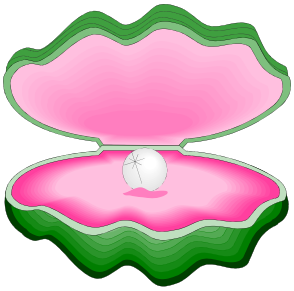
This business of meeting the burden cannot be overstressed. Many cases are won on no more clever tactic than sitting back and requiring the complaining party to prove his claim. If the party seeking relief cannot prove his claim, i.e., if he cannot meet the burden of proof, he loses ... (upon the defendant's motion for a directed verdict at the close of the plaintiff's faulty case) ... and the defending party can go home without anything further.

Sometimes in a lawsuit the burden shifts from one side to the other. For example, if a plaintiff sues for breach of contract alleging he delivered goods or services to the defendant but that the defendant failed or refused to pay, the plaintiff has the burden to prove both that the goods or services were delivered and that the defendant did not pay. (Proving a negative can be difficult.) If the defendant files what is called an affirmative defense alleging he did pay the bill, however, the burden shifts to the defendant to prove payment. (Be careful filing affirmative defenses, because they shift the burden of proof.) Before the affirmative defense was filed, the burden was solely on the plaintiff to prove the breach. When the defendant filed his affirmative defense alleging he paid the bill, however, the burden was then on the defendant to prove payment ... which he may easily do by filing a canceled check or signed receipt if he has one.

Put the burden where it belongs.

Resolve conflicts peacefully.

Learn the rules.



Stringing Pearls

Like stringing pearls, every successful argument in court depends on making points one-at-a-time. You can only string pearls one-at-a-time. You can only make points in court one-at-a-time.

You cannot win arguments unless you string your pearls logically and effectively. State and prove each and every point of your case ... one-at-a-time. Be methodical. Take your time.

You don't have to make all your points at once.

Each point you need to prove is like a pearl you must thread onto a single string. The string is the court record. The pearls are points of law and points of fact. There are no other points you need to make in court. If you prove all your facts and establish all the controlling laws, the court must rule in your favor. Each point of law or fact is like a pearl on the string of the court record. When all necessary pearls are strung together your necklace is complete. If a single necessary pearl is left out, the necklace is incomplete.

When all necessary points are proven, you win!

It really is that simple.

Winning lawsuits is a process of proving points ... points of law and points of fact ... just like stringing valuable pearls to make a necklace.

Every winning lawsuit depends solely on facts and law ... nothing else. American courts are not supposed to rely on any other factors in making their decisions. It isn't supposed to matter if the parties to a lawsuit are skinny people with orange skin and green hair or quite ordinary citizens. It isn't supposed to matter if one is rich and the other unemployed. The only things that are supposed to be considered by the court are points of law and points of fact.

Each point of fact and each point of law needed to win your case is a separate pearl. You win only by proving each and every point. You do this the same way you string pearls.

One-at-a-time.

Don't try to prove your case all at once! You don't have to. Take your case apart. Analyze each point of fact you need to prove. Analyze each law you need to establish. Make a list. Write each fact you need to prove on a 3x5 card or on a separate piece of paper. Write each law you need to establish on a 3x5 card or separate piece of paper. Treat them separately. Deal with each point before you go on to the next. Make each point one-at-a-time. Get each and every point of law and fact upon the public record of the court. It is much easier to win if you don't try to do it all at once. One thing at a time.

Just remember the court record is your string. Winning requires little more than making a record of the facts you can prove and also a record of the law that controls the outcome.

You win by stringing all necessary pearls on the court's record ... one-at-a-time.

The rules control how your pearls of fact and pearls of law get on the record. The rules decide what facts come in. The rules decide which laws apply. Therefore, learning the rules is critical ... for the rules tell you how to string your pearls … fundamental rules to get you started and guide you to a successful outcome.

Though different state and local courts have slight variations in specific rules, most civil courts in the free world today follow the same fundamental rules. Particular rules may vary from place to place. The fundamental rules do not change.

For example, the anatomy you already learned (complaint, flurry of motions, answer, discovery, and trial) is pretty much the same no matter where you go. Fundamental rules control.

It doesn't matter if you're before the Superior Court in New York City or seeking relief in the Small Claims Court of an obscure Kentucky town. The fundamental rules of court are pretty much the same no matter where you go in the civilized world today. You find the same fundamental rules in London or Calcutta, in the highest federal courts or in the smallest chambers of your local magistrates.

Any sharp eighth-grader can understand the fundamental rules and how they are used to string pearls of fact and pearls of law on the public record.

Learn how to overcome liars and cheats. Resolve conflicts peacefully.

String your pearls of fact and law to win in court.

Belief v. Knowledge

Sometimes one says left and the other says right, or one says up and the other says down ... and two are set against each other like warriors bent upon destruction.

What can the law do to keep peace?

In court each must tell the truth or risk severe penalties for perjury. Witnesses and lawyers are bound by more than honor to tell the truth. The consequence of lying in court may be a long jail term or even worse. The rules demand truth from all parties.

"A thing similar is not exactly the same," said Sir William Blackstone, whose English commentaries on law established the foundation of civil justice in America and in most courts in the civilized world today.

A thing similar is not exactly the same.

Some truth is evident.

Of all things courts promise to do, getting at the truth is the most important. Indeed, one might suggest civil courts have no jurisdiction to rule us by orders entered upon inferences, conjectures, imaginations, beliefs, or hunches. We are entitled to courts that rule on facts ... not counterfeits, substitutes, or approximations.

Perhaps there is no rule higher than the principle that courts may not lawfully predicate their actions other than by fair and forthright analyses of truth that is set before them. Every litigant is entitled to equal status and due process before the court (notice and an opportunity to be heard) without regard to station, rank, or privilege ... and every litigant is entitled to court rulings based on fact, not fantasy or imagination. This the American way. It is a good way.

The first rule is that truth alone should win. Falsehood should fail. No other rule should be permitted to take precedence to this. The truth deserves its just reward. Lies and liars do not. This principle should guide our courts at all times.

Don't let conjecture outweigh certainty in your case. Make a point about the difference. Call upon the court to take judicial notice of the difference between fact and

inference. Insist upon it. Demand that your judges recognize on the public record that there IS a difference between fact and inference. Truth is not imaginary substance. There really is a difference between what is known for certain and what is argued by lawyers by inferences and outright extravagant guesswork.

The civil law in America is not built on intuition nor divine insight. The civil law does not trust intuition nor human divinities ... nor should it. The law in all the United States seeks truth ... the facts and nothing more.

Reality	**Imagination**
Certainty	**Conjecture**
Knowledge	**Belief**
Direct Facts	**Inferences**
Self-Evident Truth	**Only Heaven Knows**

Here is your power. Learn how to get at the truth and put it in the court record. Accept no substitutes. Don't be a victim to liars. If you are an honest person, the court rules are written for you. The good guys are supposed to win!

Many lose not because their cause is unjust but because they do not know how to get at the truth in their lawsuit. They don't know how to make an effective public record. They don't know how to get evidence into the court file. They know next to nothing about discovery. It is amazing how many lawyers don't know about such simple things as requests for admissions. Many lawyers literally haven't a clue.

Procedures well known to every competent attorney can be used to get at the truth. These are the procedures that give you the power to exercise your rights in court as a free citizen! Use them!

The focus of American justice is getting at the truth. Finding out. Discovering what can be known for certain ... uncovering what people actually believe and contrasting that with what they know for certain. There is a difference. Wise litigants take advantage of this essential difference to win their lawsuits. There is a difference. Knowing how to separate the two in your case will decide the outcome. Win or lose? Many who should win do not win because they don't know how to get the truth upon the record of the court.

Truth is essential to human justice.

What is known for certain is known for certain.

That which is known by belief, i.e., upon hunches or inferences from known facts but not directly known for certain, is circumstantial. Circumstantial evidence should never outweigh contrary direct evidence.

What is known is known. What is believed is believed.

There is a difference. The difference is inference. Circumstantial evidence requires inferences or assumptions to get from the known fact to the fact to be proved. Direct evidence requires no inference or assumption at all. (Remember the equation for "assume"?) Evidence that is circumstantial evidence is indirect, inferred from known facts. Presumed. Direct evidence is direct, i.e., requiring no inference, presumption, assumption, imagination, conjecture, or hunch whatsoever.

Many troubles arise today from refusal to acknowledge the difference between direct and circumstantial evidence. There is a difference as experience and common sense have shown us all.

That which is believed may be but fleeting.

That which is in truth remains, cannot but be true, and can be counted on with absolute certainty.

Every truly civil court may be required to rule upon the truth that is known for certain and only upon that truth. A judge may properly refuse to be influenced by evidence presented only as circumstances infer. It is by this fundamental principle that multitudes today enjoy freedom. It is in the lack of this knowledge that needless sufferings occur.

Truth is truth. Everything else is not.

Be prepared to defend the difference.

Moving the Court

Here's how to get what you want.

Move the court.

Everything that happens in court results from motions. Either one side or the other moves the court or the court may move itself. Every motion seeks to change the court's position. Motions force courts to decide issues. Motions require courts to move.

Once a court is moved, the court must act. The court has no option. It cannot ignore a motion. It must grant the motion or deny it ... and, very importantly, if you move the court to state on the public record why it granted or denied your motion, i.e., "by what authority" it acts, the court must do so. The judge does not have a choice. Judges must obey the law just like everyone else!

Use this power.

Move the court!

Don't expect any judge to act without a motion. Don't sit back and expect a judge to do what's right. Judges are humans, just like you. Don't wait. Don't hesitate.

Move the court.

This is how you win.

Don't wait for justice to come your way. Life just doesn't work that way. Anything worth having (and justice is certainly no exception) is worth working for. Move the court.

Move the court to do what's right and, if the court doesn't do what you believe justice and fair play demand, move the court to clearly state its reasons. Move the court to cite the law upon which it relies. Don't allow the court to make its own laws. Require the court to obey the rules and laws of the land just like everyone else must do in free societies. Force the court to honor the Rule of Law. Refuse to allow any judge to act without clearly stating the law that justifies the judge's decisions.

Say, "I move the court to state by what authority it denies my motion."

Don't take no for an answer.

Fight for your rights.

Motions in writing are always preferable to spoken motions. Write your motions whenever you can. If you must speak a motion, make certain there is a court reporter to write it down for you. (Spoken motions are sometimes referred to as ore tenus motions.) In the heat of trial or at hearings one may be compelled to speak motions. Always have a court reporter present when spoken motions are made so your words and the court's responses are precisely recorded so there can be no dispute over what was said. Never speak to the court unless there is an official court reporter present to record every word. Never go off the record. Make a record of everything ... especially your motions, the motions of opposing parties, and the court's official responses.

Justice is secured by moving the court to grant justice. Justice is not secured by hoping. Justice is not secured by wishing. Justice is secured by moving judges to grant justice ... and by demanding that the court state its reasons for doing anything you believe is unjust or unfair.

Move the court to explain itself.

Move the court to take judicial notice of the rules and laws that control it.

Move the court to take judicial notice of commonly known facts about which reasonable persons cannot disagree.

Move the court to prevent the other side from violating the rules in any way whatsoever.

Finally, move the court to grant its judgment in your favor.

If the court denies your motions, move the court to tell you why ... on the record.

You can move your courts, and by moving them properly you improve justice for us all and secure liberty for future generations. It is perfectly proper to demand that courts act fairly to dispense justice. It is perfectly proper to require courts to answer you in writing. It makes good sense to do so. Require the court to state on the record by what authority it acts or refuses to act.

This is your power to win. Use it!

Move the court to open a window if the courtroom is too stuffy for you.

Move the court to explain on the record everything it does to restrict what you believe should be your free right to continue living without interference from others.

Move the court in any way you believe necessary to obtain justice, and make a record of every word that is said. It is your right to move the court. Do so!

Move the court until you get what you want.

Exercise your rights. Speak the truth. Make a record of every word.

Demand a successful outcome … on the record.

Making a Record

Probably the most important point we can make is that you must create a complete and readable record of your case whenever you are before the court. Everything that supports your position needs to be made a part of the court file.

Making a record is the sum and substance of courthouse procedure. You cannot win without a proper record. Some lawyers think cases are won at trial. In fact, if a case is not won long before trial by putting together a record of facts and law that cannot be refuted, it is *never* a good idea to go ahead to trial. The time for trial is when you're ready for trial … when you've already made your winning record.

Everything you do in court should be aimed at making an effective record.

Lots of people think winning a lawsuit depends on pleasing the judge. They make the mistake of thinking the judge can rule however he wants to. The fact is that a good lawyer makes the judge rule in favor of his clients by making a record of the case *before* the judge rules, then making certain the judge rules in accordance with the record and the law.

Make your record. Get your truth in the clerk's file.

Win your case on paper. That's how successful lawyers do it.

Losing lawyers try to sway the court with rhetoric. One desperate lawyer was heard saying to the court, "You know judge, we go way back, you and me." That is not the way to win, and a smart litigant can literally steal his silver-tongued opponent's thunder just by making an effective record and demanding that the court rule *on the record before it* and not upon the rhetoric of the other side's desperate lawyer. Judges must decide in accordance with the rules and the law … if you see to it. That's also the whole point.

- **Make a record.**
- **Put in all the necessary ingredients.**
- **Force the other side to show their hand.**

Then, if the judge refuses to rule in your favor, you can win on appeal by showing that the judge did not follow the rules. This *is* the bottom line, after all. American justice

is a system of laws, not men's opinions nor the granting of judicial favors to a privileged few. The record is *everything! everything!*

You must make an effective record … or there'll be nothing to appeal.

Making a record is easy. Every paper filed in the court file, whether the court ultimately admits it as evidence or not, becomes part of the record. It may be ignored or passed over if it has little or no merit, however anything that is not scandalous or outright nonsense may be filed with the clerk of court and made a part of the case file. Making a record begins by filing papers. Making an effective record means filing the *right* papers, the papers necessary to prove your facts and establish your legal arguments that tell the court why you – and not the other fellow – should be the winner.

Make no mistake about it, your power over the outcome is your right of appeal. Judges don't like their rulings to be overturned. They particularly do not like to be overturned by non-lawyers. By keeping the judge "fully advised in the premises" as lawyers say, the court will be unwilling to rule against you if you've made a solid record of your cause and clearly presented in the file itself indisputable reasons why you should win instead of your opponent.

Take every opportunity to put your case concisely and effectively on the record.

Do not attend any hearing without an *experienced* and *accurate* court reporter.

Do not go "off the record" with a judge at any time ... unless it's to discuss your golf handicap.

Make certain *everything* that is said or done gets on the record ... in the court file.

In particular, make certain every fact and every law you must establish is established rationally, readably, and conclusively *on the record.*

Due Process

Whenever you speak to the judge or jury, you are required to give prior notice to the other side to prevent "trial by ambush". Failure to do so is forbidden by the rules. Any such communication behind the other side's back is called *ex parte*, from the Latin "without the party". In some probate matters, such as proceedings to establish a decedent's will, *ex parte* proceedings may be allowed. In most civil cases they are not.

The sad fact is that some lawyers talk to judges behind everyone's back – rule or no rule. They meet in the hall, at the club, or in the courthouse parking lot. They talk about actual cases. They talk about evidence. They talk about how much the lawyer likes to vote for the judge at polling time or how the judge's brother owes the lawyer money … that sort of thing. It happens. If you know of such practices you should notify your state bar association at once. Demand a written report on the progress of its investigation and the ultimate outcome, i.e., whether the offending attorney will or will not be disciplined and why. Don't tolerate it in any case that involves you.

- **Due process is the engine of human liberty.**
- **Due process is essential to victory.**
- **Due process is where justice and fair-dealing begin.**

Everyone in a civil lawsuit is supposed to be on an even footing. What's good for the goose is good for the gander. That is the sum and substance of due process.

Due process is the law that applies the state's force evenhandedly to both parties – rich and poor, landed or homeless, red or blue, old or only three days new. Due process means fair practices, no star chamber, no groundless edicts by conceited magistrates. Due process means you get your day in court. You get to call hearings and require the other side to attend, whether or not the other side is represented by an attorney. You have the right to cross-examine those who do you harm, and you have the right to examine every single witness that knows anything about it whatsoever. You get to make your record. If the other side gets four hours to argue its points, *then you get four hours to argue yours.*

This is one of those places where the rubber hits the road. To demand your due process rights you may have to stand up against the judge and insist on having your say. If you won't stand up for yourself, you cannot be surprised when the other side wins.

By following the rules and demanding that the other side and the court itself also follow the rules, you guarantee yourself a victory ... if your cause is just.

Substantive Law

The rules (i.e., the procedural rules of court and rules of evidence) form only a tiny part of the law. (That's what makes them so easy to learn. There's not really that much to it.) The rest of our legal literature, tens of thousands of volumes worth, are substantive laws – laws about contracts, property, torts (damages), and other restrictions or conditions on various aspects of human behavior. Substantive laws include speed limits, statutes imposing jail sentences for theft and other crimes, requirements for public notices in elevators, laws forbidding use of lead-based pigments in paint, etc.

The rules of court and rules of evidence are perhaps more important than substantive law, however knowing the "substance" of issues pertaining to your case is critical to winning. You should know the substantive law pertaining to the causes of action involved in your case and, in particular, to the elements of those causes of action that must be proved or disproved so you can win.

Lawsuits arise from broken substantive law. Breach of contract and personal injury are the major categories of substantive law that give rise to civil lawsuits.

- **Contracts ... breach of promise**
- **Injuries (also called Torts) ... breach of duty**

You will want to familiarize yourself with these areas of substantive civil law and understand the causes of action involved in *your* lawsuit. Out of these two broad areas of substantive law come the issues that give rise to nearly *all* civil lawsuits. In these two areas of law you are most likely to encounter difficulties that will land you in court. Study them in depth to help *prevent* lawsuits. Be particularly familiar with the principles of substantive law that give rise to *your* lawsuit.

Substantive law in all its myriad complexity is beyond the scope of the Jurisdictionary®. We will attempt to provide as much as you may wish to explore, however it just isn't possible to put it all here in a single website. The written laws themselves fill entire buildings of books called law libraries. By applying basic principles

of these two areas as taught by our Jurisdictionary®, however, you may avoid many legal troubles and stay one step ahead of your opponents … perhaps avoiding the costs and delays caused by going to court altogether!

If you find yourself in a legal controversy before the court, you may be wise to employ an attorney for direction and counsel. When Abe Lincoln remarked, "He who represents himself in court has a fool for a client," he was speaking about people unable to detach personally from the attack on their character or the threat of punishment that makes people act unreasonably and therefore not in their own best interest. He was particularly speaking about people who find themselves accused of crimes, not participants in civil litigation. You *can* understand what's going on in your case. If you have any doubt about substantive laws that may affect your case or the procedural steps to *win* your case, by all means hire an attorney to advise and guide you (even if you cannot afford it).

Do not, however, turn your case and all its burdens over to your attorney. Learn what you can. Know the anatomy of your lawsuit. Know what comprises a proper complaint. Know what can be done to avoid filing an answer. Learn these things. Make sure your lawyer is doing his or her very best on your case. In particular, make certain your lawyer uses all available procedures to obtain discovery of facts you must prove to win. All necessary facts should be discovered and placed into the court record long before you allow the court to set your cause for trial.

Know what your lawyer *should* be doing.

Planning

Winning 1/2 the Battle Up-Front

Just like many other things in life, planning is essential to a successful outcome in court. Make a plan. Work your plan.

Decide before you begin (1) what must you prove to win, (2) how you will prove it. Wishful thinking has no place in the courtroom. Either you prove what you must prove or you lose the case. Decide what must be proven (the facts & law upon which you intend to establish liability & damages), then decide how to go about it.

Begin with an analysis of each cause of action in your case. By examining causes of action you learn what must be proven. To prevail on any cause of action, the pleader must prove each element of the cause of action. Each cause of action requires the proof of certain essential elements. More about this in the materials that follow in the outline.

Once you know the elements of each cause of action, decide what facts in your case tend to prove each element, and list these facts. Write them down. List all facts necessary to prove each element of every cause of action in your case.

Next to each fact write down what needs to be done to prove the fact in court. Do this for all facts that must be proven to establish each cause of action. Do this whether you are the plaintiff pleading the causes of action or the defendant defending against the causes of action. If as plaintiff you can prove each fact necessary to establish your causes of action, you win. If as defendant you can disprove any necessary fact or if you can prove that any fact asserted by the plaintiff's case cannot be proven, you win. If you want victory, therefore, start with an analysis of all causes of action and list each fact that must be proven to establish each cause of action.

Also important in your planning is an analysis of the law that controls the outcome. If a contract in your state for sale of personal property valued at more than $500 must be in writing signed by both parties, you'll need a written agreement to prevail on a breach of contract count seeking more than $500 in your state. This gets into what's called substantive law, touched on elsewhere in the materials. Suffice it to say here that you

need to know not only the facts of your case that must be proven, you must also know the law that controls the outcome once those facts are established by a preponderance of the evidence. [See The Burden.]

Winning is really no more complicated than this. It just takes a lot of work to win. Good work begins with a good plan.

If you're the plaintiff, plan your complaint carefully. Anticipate your opponent's defenses and be ready for them. Plan your discovery of evidence. Decide how you'll use requests for admissions, requests for production, interrogatories, depositions, and subpoenas. Plan how to get the evidence you need into the clerk's record.

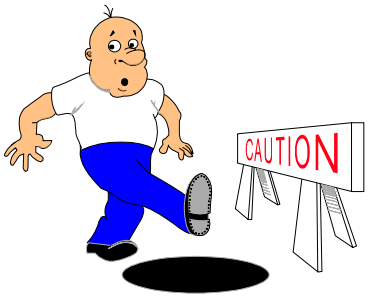
If you're the defendant, plan your responses carefully. If you can move for dismissal, do so. If you can move to have the complaint stricken in its entirety or in part, do so. If you cannot understand what the complaint is saying, move for a more definite statement. If you can avoid answering the complaint, do so. If you must file an answer, do so very carefully. Plan your discovery with an eye to your list of facts that must be proven. Plan how you will use admissions, production, interrogatories, depositions, and subpoena power to prove facts you need to prove.

Winning results from following-through with an effective plan.

The thing to do first is to make a plan.

Make a plan.

Work the plan.



Causes of Action

A cause of action is the right to sue.

Without a cause of action, the plaintiff's case must be dismissed. Every case must state at least one cause of action.

If your neighbor runs over your cat with his lawn mower, you may have one or more causes of action against him. If you can state at least one cause of action the court will recognize, you may convince a local judge to render judgment in your favor against your neighbor and receive money to compensate you for losing your cat.

That's what a cause of action is ... the right to sue.

If you don't have at least one cause of action the court is willing hear, you don't have a case. If you cannot state at least one recognized cause of action you lose even before you begin.

Every legitimate cause of action is a cause (i.e., a reason or excuse) to trouble the local judges or magistrates to take action on your complaint and award you damages against the offending party. The first paper you file is called the complaint. The complaint must state at least one cause of action the court recognizes. If it does not state a cause of action the court will recognize, the defendant will win his motion to dismiss your complaint for failure to state a cause of action.

Why are causes of action important?

For one thing, we wouldn't want farmers coming to town with grievances that city folk were having too much fun. We wouldn't want comedians to file lawsuits when the audience refuses to laugh. We wouldn't want politicians to sue when they aren't elected. To allow such cases to be brought before our courts would open floodgates of acrimony no legion of judges and sheriffs could repair.

This is why, over a very long period of time counted in centuries by most, in millennia by others, a number of legitimate causes of action have been recognized as worthy of judicial attention and police enforcement.

Breach of contract is a cause of action most will recognize. If Black promises White, "I'll mow your lawn for $20," takes the $20, then refuses to mow the lawn, you have a breach of contract. Lawyers say a case will lie for breach of contract, i.e., the court will be required to hear it.

In a breach of contract case three essential elements must be present. First a contract was formed (the parties had a meeting of the minds and made promises to each other). Next, one of the parties breached the contract by failing to perform a promise. Finally, the plaintiff suffered damages. By alleging each of these elements of the cause of action known as breach of contract, you lay your case before the court and survive the defendant's motion to dismiss your complaint for failure to state a cause of action. You have stated a cause of action for breach of contract by stating all its elements.

One thing more is needed to prevail, however. You need to prove the facts. You should, therefore, begin with the complaint to put the facts and the law on the record. Every fact upon which you intend to rely at trial should be stated in the complaint. Many lawyers fail to do this, alleging only the necessary elements of their causes of action. (Remember: About one-half of all lawyers lose cases.) Be precise. Be complete. Begin by precisely wording your complaint to allege every fact you must prove to win your case. For a breach of contract count, in addition to alleging the contract, the breach, and the damage elements required by law, you should also allege every fact you can ultimately prove, every fact that supports your contention that there was a contract (an agreement expressed), that there was indeed a breach of the contract (defendant failed perform as promised), and that you did suffer damages (lost money, lost expectations, etc.) By alleging every fact you need to prove to win the case, you establish your first beach-head. Allege every fact that must be proven to prevail.

The next phase of the proceedings is obtaining the defendant's written answer.

Here's how it works.

Plaintiff asserts at least one cause of action and alleges each and every fact he intends to prove in order to establish his cause(s) of action. This is done in the complaint.

Assert every element of your causes) of action and also allege every fact you must prove to prevail.

Use only SINGLE SUBJECT SINGLE VERB SENTENCES WITH MINIMUM ADVERBS AND ADJECTIVES. There is no excuse for losing if you are right and state a cause of action supported by provable facts that constitute the greater weight of the evidence.

For example, if you made a written contract with the defendant, say so in your complaint with a SINGLE SUBJECT SINGLE VERB SENTENCE WITH MINIMUM ADVERBS AND ADJECTIVES. Say, "Plaintiff and defendant entered into a written contract."

In the next numbered sentence, you may say, "Plaintiff and defendant both executed the written contract on 12 May 1997."

Do not use complex sentences. Let each sentence state a single fact. One fact per sentence. Make each allegation of fact one the other side must admit or deny. Don't give any waffle room. Allow no margin for your defendant to hedge his bet. Give the opposing party no advantage whatsoever. From the very outset of your case, state the required elements of each cause of action and allege sufficient facts to prove your case. State only facts you can prove, facts that will outweigh the other side's defense. In this way you establish your factual and legal right to a favorable judgment on each and every one of your causes of action.

Each cause of action is properly set forth in a count. For example, "Count One: Breach of Contract. Count Two: Negligence". A complaint should have as many counts as it has separate causes of action. Each count should stand on its own, i.e., it should assert a single cause of action and allege all facts that must be proven to establish that particular cause of action.

The burden of proof in civil cases is a preponderance of the evidence, so you need to allege facts that make your complaint more probable than not, facts that outweigh the other side's position, facts that preponderate, facts constituting the greater weight of evidence. In criminal cases, guardianship cases, and similar controversies where a citizen's civil rights are being threatened, the burden of proof is clear and convincing evidence or "beyond any reasonable doubt". In civil court, however, the winner is the party who presents the greater weight of admissible evidence.

Each count states a cause of action. Each cause of action states its required elements. Each cause of action should also state every fact you can prove. The object is to outweigh the opposing party's position.

Once you grasp this simple principle, the rest is truly easy.

Use "BACK" on your browser to return to the outline and go to the next level.

Stating Causes of Action

Here's where you get serious about fighting.

Every cause of action is a breach of duty. All you need to do to properly state a cause of action is to allege sufficient facts to put the other side on notice (1) what duty was breached, (2) how it was breached, and (3) how you were injured.

Of course, like most things in life, it's a bit more complicated than that, however the process is exactly the same in every case.

Where it gets tricky is in the necessity to allege what are called the "elements" of each cause of action. Different causes of action have different elements that must be alleged by stating sufficient facts to explain each element factually, i.e., as the facts supposedly exist in your case.

For example, the elements of a cause for breach of contract (in most jurisdictions) are:

- Formation of a contract
- Breach of the contract
- Damages

Pretty simple, right?

Hold on, though. It's a bit more complicated. You must alleged the *facts* that explain each element. This might be done as follows:

1. Danny Defendant and Peter Plaintiff entered into a written agreement whereby Danny Defendant promised to paint Peter Plaintiff's car for $900.
2. Peter Plaintiff paid Danny Defendant $900 cash and delivered his 1982 Oldsmobile to Danny Defendant's paint shop on 4 October 1998.
3. On 31 October, Danny Defendant phoned Peter Plaintiff to report the car was ready to be picked up but that Peter Plaintiff owed an additional $300 for body work.
4. When Peter Plaintiff refused to pay the additional amount, Danny Defendant threatened to put a lien on the car and hold it for payment.

5. Peter Plaintiff paid the additional $300 and was allowed to drive his car home.
6. When he arrived home, Peter Plaintiff discovered that the right passenger-side door had not been painted.
7. Peter Plaintiff suffered damages in the amount of $1,200.

WHEREFORE Peter Plaintiff demands judgment in the amount of $1,200 together with all his court costs and reasonable attorney's fees.

See? It's not as complicated as you thought. It's certainly not rocket science. Yet, it is essential that you follow this method to effectively state sufficient ultimate facts to properly state *all* the essential elements of your causes of action. The purpose of all this is to put the other side on notice as to what actually happened, i.e., all things that create the issue you wish the court to decide.

These things that cause the issue are called elements of your causes of action.

Let's try another example.

Many cases are brought before the court on negligent counts, i.e., stating a cause of action for common negligence. The elements of this cause of action are similar to those for breach of contract.

- Existence of a duty
- Breach of the duty
- Damages

The Complaint

This is where it all starts.

One side, called the plaintiff, files a paper called the complaint. The clerk issues another paper called the summons. The summons and complaint (together called process) are served on the defendant. (The person who delivers these two documents is called a process server.)

The complaint tells the defendant what the case is about. The summons makes certain the defendant knows additional matters, like the court's address and the consequence of failing to file an answer within the time allowed by law.

The purpose of the complaint is to state the plaintiff's cause, i.e., the facts and law that give him a right to seek redress from the courts. Every case depends upon the facts and law ... nothing else. Facts and law. The complaint states the facts and law about which the plaintiff is complaining.

In the materials you will find discussions about liability and damages, i.e., the two elements of every lawsuit that must be proven to prevail. Liability and damages depend on facts and law. When the facts and law stated in the complaint make a clear case of liability on the part of the other side then, if the plaintiff can prove his damages, the court will award a money judgment.

Not too difficult so far, is it?

As a practical matter -- in addition to stating facts and law that allege liability and damages -- the complaint should identify the court, display the case file number in the upper right corner of the first page, state the name of the plaintiff, state the name of the defendant, prominently bear the title "COMPLAINT", and be signed at the end. A sample complaint is provided in the materials as a form. This form provides the fundamental requirements.

The seven (7) parts of every complaint:

- Heading
  - Court Identification
  - Case No.
  - Plaintiff's Name.
  - Defendant's Name
- Title ("COMPLAINT")
- Preamble (one sentence telling story)
- Jurisdictional Allegations
- General Allegations of Fact & Law
- Counts (at least one must be stated)
  - Restate prior allegations
  - State elements of cause of action
  - Wherefore clause requesting relief
- Closing
  - Final Prayer
  - Date
  - Signature

Every lawsuit begins with a complaint containing these 7 parts. The tricky parts are the counts, for each count must state a cause of action (also covered elsewhere in the materials). Each cause of action, e.g., breach of contract, requires allegation of certain elements required by the rules of pleading for that particular cause of action. If any element of a cause of action is omitted from the pleading, the other side may move to dismiss the complaint.

It should be noted that not all lawsuits are for money damages. Suits may be brought for injunctive relief, i.e., to obtain the court's assistance to get something done. In a suit for injunctive relief, such as a suit to compel the school board to install seatbelts in school buses, the plaintiff must plead legal necessity and reasonableness of the relief sought. This type of suit (which can be combined with suits for money damages) is discussed elsewhere in the materials. All who love their neighbors should know how to bring suits for injunctive relief, for this is one of the finest ways to control government. More on this later.

- Form
- Heading -- Identifying the Court and the Clerk's File No.
- Caption -- Identifying the Parties
- Title -- Identifying the Document
- Preamble -- Who Sues Whom, Why, and For What?
- Jurisdictional Allegations -- Why This Court?
- General Allegations of Fact and Law -- Stating the Case
- Counts -- Stating the Right to Sue
- Closing and Signatures -- The Finishing Touch

Form of the Complaint

Let's cut through some red tape.

Pleadings (like the complaint) and other papers filed in court do follow a prescribed format, however the format is quite simple to understand, as you're about to discover. As I've said before, the thing to keep in mind is common sense.

So, let's see how a complaint is put together.

Much of what this section has to say about the form of the complaint is also true of other pleadings, motions, discovery requests, and court process. The body content is different, but the form will be quite the same.

All papers filed with the court should bear the same heading, for example. Bold centered text looks good and tells everyone what the paper is. (Local rules may differ.)

Each paper requires a title that tells us who the parties are.

And, of course, all papers filed with the court should bear a dated signature.

The complaint in particular requires the following seven (7) parts.

- **»« Heading**
- **»« Title**
- **»« Preamble**
- **»« Jurisdictional Allegations**
- **»« General Allegations of Fact & Law**
- **»« Counts**
- **»« Closing**

The first three parts comprise the caption.

The next three state what the case is about, i.e., what the plaintiff is seeking and why he thinks he has a right to relief.

The closing is simply that, a final statement, certification that copies were served on the other parties, and a signature line that should include the plaintiff's (or his attorney's) name, address, telephone, and (if he has one) fax number.

The form that follows demonstrates how each of the 7 parts are laid out on paper.

FORTY-THIRD JUDICIAL CIRCUIT COURT
HOPE COUNTY, FLORIDA
CIVIL DIVISION

Case No. 99-123
Hon. Horace Grump

PETER PLAINTIFF
v.
DANNY DEFENDANT
_____/

COMPLAINT

Peter Plaintiff sues Danny Defendant for breach of contract and quantum meruit, stating in support:

JURISDICTIONAL ALLEGATIONS

1. Peter Plaintiff resides in Hope County.

2. Danny Defendant resides in Hope County.

3. The events giving rise to this lawsuit occurred in Hope County.

4. The amount in controversy is over $15,000.

5. This court has jurisdiction.

GENERAL ALLEGATIONS OF FACT & LAW

6. Danny Defendant and Peter Plaintiff entered a written contract on 10 December 1998 whereby Plaintiff agreed to paint Defendant's warehouse before Christmas for $20,000.

7. Plaintiff completed painting Defendant's warehouse on Christmas eve.

8. Defendant failed and refused to pay Plaintiff as promised.

9. A copy of the written contract is appended as Exhibit "A".

COUNT I: BREACH OF CONTRACT

10. Plaintiff restates the foregoing paragraphs 1-9.

11. The parties entered into a written contract.

12. Defendant breached the contract.

13. Plaintiff has performed all acts prerequisite to the bringing of this action.

14. Plaintiff made reasonable demand of Defendant for performance of the contract.

15. Plaintiff suffered money damages as a direct and proximate result.

WHEREFORE the Plaintiff prays this Honorable Court will enter an Order adjudging the Defendant liable to Plaintiff in the amount of $20,000 together with such other and further relief as the Court may deem reasonable and just under the circumstances.

COUNT II: QUANTUM MERUIT

16. Plaintiff restates the foregoing paragraphs 1-9.

17. Plaintiff performed valuable services for Defendant under conditions that would cause a reasonable person to anticipate that Defendant would pay the fair market value of such services.

19. Plaintiff made reasonable demand for payment after performing the valuable services.

18. Defendant failed and refused to pay for the services.

19. Plaintiff suffered money damages as a direct and proximate result.

WHEREFORE the Plaintiff prays this Honorable Court will enter an Order adjudging the Defendant liable to Plaintiff in the amount of $20,000 together with such other and further relief as the Court may deem reasonable and just under the circumstances.

DATED this 7th day of January 1999.

Peter Plaintiff
Peter Plaintiff
123 Main Street
Anytown, U.S.A.

Some lawyers may dispute whether Peter Plaintiff can sue Danny Defendant for breach of contract *and* quantum meruit (which means "for what it's worth") in the same lawsuit, however the foregoing form lays out the 7 parts of every well-stated complaint (and we won't quibble over the on-going argument that as-yet is unresolved in some jurisdictions).

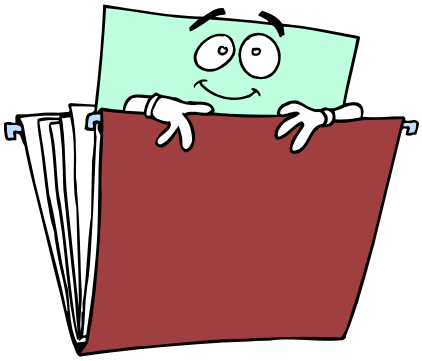
Please note carefully the numbering system. Both counts refer to the same jurisdictional allegations and general allegations of fact & law. The counts do not refer to

each other. This method makes the case easier for the court to understand. The court can see at a glance what facts give rise to its jurisdiction over the matter by reading the jurisdictional allegations. The court can see generally what the case is about by reading the general allegations of fact and law. And, the court can see clearly each cause of action upon which the plaintiff is relying in his pleading to the court for relief by reading each count of the complaint. Each count states the elements of only one cause of action. For each separate cause of action the plaintiff may have against the defendant, a separate count is included in the complaint.

Winning a lawsuit is 99% telling the court what you want and why you are entitled to relief. Whether you're the plaintiff or defendant, the winner will be the one who tells the most compelling story -- facts and law on which the court can act favorably. The complaint, therefore, is the most important paper of all, because the complaint tells the court (or should tell the court) what your case is all about, every last detail that must be proven to prevail. Make certain your complaint is well-pleaded and in proper form.

Next, we'll examine the heading in closer detail.

Headings



Every document filed with the court should bear the name of the court prominently at the top of the first page. This is true of pleadings (complaint, answer, counterclaim, etc.), motions, discovery requests, proposed orders, and every other document that gets filed with the clerk.

In this way the court clerks and others who must wade through the papers filed in your case can see at a glance what court the case is in, what case file number has been assigned to the case and, in some jurisdictions, what judge has been assigned to hear the case. All documents filed with the court should include this same information at the top of the first page.

The county is listed directly under the name of the court.

If the court is divided, the division should be stated directly under the name of the county. The following is an example.

FORTY-THIRD JUDICIAL CIRCUIT COURT
HOPE COUNTY, FLORIDA
CIVIL DIVISION
Case No. 99-123
Judge Horace Grump

After the court's name, the case number is displayed at the right margin.

In some jurisdictions, the name of the assigned judge is added beneath the case number. This is not necessary in all jurisdictions. Consult your local rules.

Though lawyers and judges differ on where the name of the court and file number should appear, bold centered caps make a readable paper that clearly puts everyone on notice where the case is being heard. Unless the court in your jurisdiction specifically requires a different format, follow this form. The prevailing practice among lawyers is not the guiding star, for lawyers differ widely in the way they structure the appearance of their court documents. Putting the court's name top-center in bold-face caps does the job nicely. If there are no specific rules in your jurisdiction, let common-sense be your guide.

Caption - Identifying the Parties

Just below the heading that identifies the court, case number, and (optionally) the assigned judge appears the caption that identifies the parties.

The parties names appear at the left margin, plaintiff first, followed by a comma. Under the name of the plaintiff, spaced well to the right, is the word "Plaintiff" followed by a comma. Below this spaced in somewhat from the left margin is a little "v." that stands for "versus", indicating the controversy that the court is being called upon to resolve. Below the little "v." is the defendant's name, again in all capital letters, set against the left margin and followed by a period. Below this is an underscore that extends to the right of the rightmost letters above it and ended with a forward slash. This is the caption, and it is by this caption that the case will be referred to by the court, the litigants, the clerk, and all persons who must deal with the case and its issues.

If there are more than one plaintiff, they are listed, separated by commas, and the word "Plaintiffs" is substituted for the word "Plaintiff". Similarly, if there are more than one defendant, they are listed one under the other, also separated by commas, and the word "Defendants" is substituted for the singular "Defendant".

If the names of parties contain commas, you may use semi-colons to separate the names to avoid confusion.

There follows an example of a simple caption, placed at the left margin under the heading. This form is acceptable in most courts. Check local rules for details. Remember, the fact that certain lawyers may make a practice of doing this differently does not alter the fundamental requirements. Follow the method that is the least complex while providing the necessary details to guide the court in handling papers filed in your case. Keep it simple.

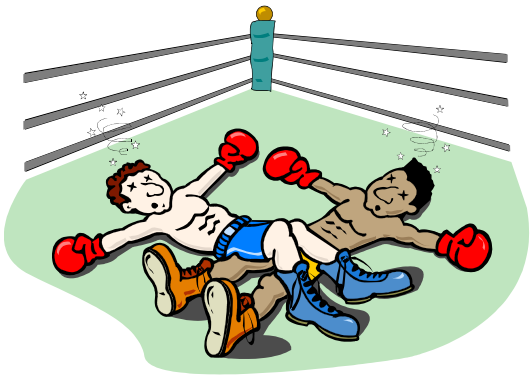
FORTY-THIRD JUDICIAL CIRCUIT COURT
HOPE COUNTY, FLORIDA
CIVIL DIVISION

Case No. 99-123
Judge Horace Grump

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

This same format is used for all pleadings, motions, discovery requests, memoranda, and notices to the court. Below the form you see here will be the title of the paper, e.g., complaint, answer, motion to dismiss, motion for more definite statement, or other title ... however the heading and caption at the top of the page will remain the same for ALL papers filed with the court in your case.

Preamble – Who's Fighting for What?



Just below the title, the preamble introduces the plain language of the complaint (or other official paper, e.g., motions, notices, etc.). It should be plain language, too. No flowery stuff. Fancy language in legal papers doesn't impress anyone who's been around the courts any length of time, anyway. In fact, if you use too flowery a written manner you'll signal your inexperience.

Come to the point.

"PLAINTIFF Peter Plaintiff sues defendant Danny Defendant for money damages arising from breach of contract and states:"

That's all that's required. Keep it simple.

The preamble tells us in plain language what we cannot figure out from the heading, caption, and title. We may know who is plaintiff and who is defendant, however we don't know what the plaintiff seeks or what grounds he has for bringing his suit. The preamble should state this essential information precisely, with no more words than necessary.

FORTY-THIRD JUDICIAL CIRCUIT COURT
HOPE COUNTY, FLORIDA
CIVIL DIVISION

Case No. 99-123
Judge Horace Grump

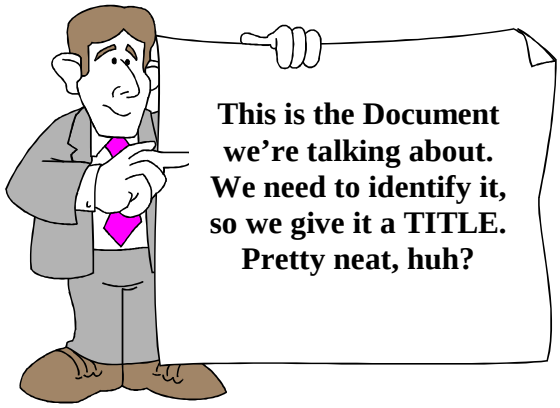
PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

COMPLAINT

PLAINTIFF Peter Plaintiff sues defendant Danny Defendant for money damages arising from breach of contract and states:

From here on the allegations are all numbered (except for "Wherefore" clauses at the close of each count). There is an initial section "Jurisdictional Allegations" and a major section entitled "General Allegations of Fact & Law" followed by individual counts pleading individual causes of action, one cause of action for each count. There must always be at least one cause of action.

Title -- Identifying the Document



Just below the heading and caption is the title.

The title of a complaint, of course, is "COMPLAINT". Bold face capitals are recommended (as for the heading that identifies the court).

If the complaint is sworn to, i.e., if the plaintiff signs an affidavit in the presence of a notary attesting to the truth of the facts alleged in the complaint, the title is "VERIFIED COMPLAINT". Verified complaints are favored, for they carry a bit more weight than an un-verified complaint that may have been prepared by an over-zealous lawyer making more of his client's case than is actually true. Judges watch for such things. If one side is willing to swear to the truth of a particular statement and the other side is not, well ... that tells us something about the other side and improves the chances of the party who is willing to swear or affirm his cause under oath. Remember, however, papers filed under oath are subject to severe penalties for perjury if it is later discovered that any material part of the paper was false and known to be false at the time you sign it under oath or affirmation. If a statement is not precisely true, do not swear to it.

All official papers filed with the court should have a title that appears below the heading and caption to tell the clerks, the judges, the lawyers, the parties, and all interested persons at-a-glance just what the paper contains. If the paper is a motion to dismiss for lack of subject matter jurisdiction, for example, the title is "MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION" and, again, the title is in bold face capital letters. If it is not clear from the context who is filing a particular paper and who it addresses (as where there are multiple parties), identify the party filing the paper and the party it addresses, e.g., "PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS TO DEFENDANT DANNY DEFENDANT".

Let common sense be your guide. The purpose for the title is to assist the court to see at-a-glance what the paper contains.

FORTY-THIRD JUDICIAL CIRCUIT COURT
HOPE COUNTY, FLORIDA
CIVIL DIVISION

Case No. 99-123
Judge Horace Grump

PETER PLAINTIFF,
Plaintiff,

v.

DANNY DEFENDANT,
Defendant.
_____/

COMPLAINT

Jurisdictional Allegations -- Why Are We In This Court?

Just below the preamble that tells us who is suing whom a separate section is recommended to tell why we are suing in the court named in the heading. This section sets forth the facts and law that gives the selected court jurisdiction.

For example, in Florida at the present time the rules require cases to be heard in the circuit court if the amount in controversy exceeds $15,000. If the amount is less than $15,000 the case cannot be brought in Florida's circuit courts. Perhaps county court would have jurisdiction, or even small claims.

The factors that give the selected court jurisdiction should be set out separately under a special heading "JURISDICTIONAL ALLEGATIONS".

The following form shows how this can be done.

FORTY-THIRD JUDICIAL CIRCUIT COURT
HOPE COUNTY, FLORIDA
CIVIL DIVISION

Case No. 99-123
Judge Horace Grump

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

COMPLAINT

PLAINTIFF Peter Plaintiff sues defendant Danny Defendant for money damages arising from breach of contract and states:

JURISDICTIONAL ALLEGATIONS

1. Peter Plaintiff resides and has resided in Hope County at all times material to this litigation.
2. Danny Defendant resides and has resided in Hope County at all times material to this litigation.
3. The acts complained of took place in Hope County.
4. The amount in controversy exceeds $15,000.
5. This court has jurisdiction.

That's really all there is to it. Of course, depending on where you live and the local rules for your local court system, the allegations required to establish jurisdiction may vary. Still, the jurisdictional allegations should be put up front in the complaint, set off with a separate heading as show here.

Unless the court has jurisdiction, everything you accomplish will be a waste of time and money. Any judgment entered by a court that lacks jurisdiction is a nullity.

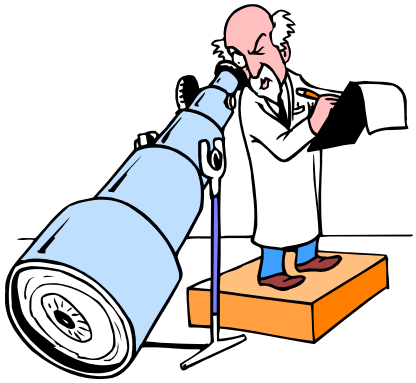
State your jurisdictional allegations in separate numbered sentences, one allegation per numbered sentence. Do not mix allegations in a single sentence. Set them out separately. That way, when the defendant answers, he will be required to admit each and every point that is true ... and deny only those numbered sentences that are actually false.

This is where winning a lawsuit begins, by making the other side admit the truth. Start early. State your jurisdictional allegations (and all other allegations of your complaint) in separate numbered sentences so the other party will be required to admit as much as possible and be permitted to deny nothing that is true. If you mix allegations, e.g., put two allegations in one numbered sentence, and any part of the numbered sentence is untrue, the other side will be able to deny that particular sentence when he files his answer ... even though part of the allegation was true. If any part of a numbered sentence is untrue, the other side can deny it all ... and you miss an opportunity to prove an essential part of your case.

Don't miss anything.

Putting the facts on public record is how you win. If you put your facts singly, i.e., one at-a-time, the defendant will have to respond to each separate allegation, either admitting or denying (or claiming he lacks knowledge and therefore cannot answer). Every allegation the defendant is required to admit will be conclusively established for all purposes in your lawsuit. Allege your jurisdictional allegations in separate numbered sentences, one at-a-time.

General Factual Allegations … Taking a Closer Look



This, of course, is the most important part of the complaint, for here is where we tell the court what's happened and why we need the judge to enter an order that will resolve the dispute we have with the other person. Many experienced lawyers fail to tell a sufficient story in the factual allegations section of their complaint and are later required to go to the expense and delay of filling in the blanks with motions and tedious discovery to clarify the record, when they might have made the record clear from the start by stating *all* the facts they're going to be required to prove in order to get the judgment their clients seek.

Don't make the lazy lawyer's mistake. Tell your story plainly in the complaint.

After the jurisdictional allegations in the complaint it's time to state general factual allegations, i.e., the facts on which your case depends. General allegations of fact, like jurisdictional allegations, are listed in a separate section and stated in separate single numbered sentences. The defendant must then either admit, deny, or claim he has no knowledge of each statement of fact. In this way you establish your record and simplify the process of proving the facts you need to prove in order to win your case. Facts the defendant is required to admit in his answer complaint are admitted for *all* purposes and will control the outcome.

If you can require the defendant to admit enough facts up front, you win by default!

It's critically important, therefore, to carefully allege *all* facts you need to prove *and no more than you absolutely need to prove*. Allege each fact in a separate numbered sentence – one one-at-a-time. (This one-at-a-time method of stating your case applies to all papers filed with the court.)

The following form shows a sample of general factual allegations.

FORTY-THIRD JUDICIAL CIRCUIT COURT
HOPE COUNTY, FLORIDA
CIVIL DIVISION

Case No. 99-123
Judge Horace Grump

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

COMPLAINT

PLAINTIFF Peter Plaintiff sues defendant Danny Defendant for money damages arising from breach of contract and states:

JURISDICTIONAL ALLEGATIONS

1. Peter Plaintiff resides and has resided in Hope County at all times material to this litigation.
2. Danny Defendant resides and has resided in Hope County at all times material to this litigation.
3. The acts complained of took place in Hope County.
4. The amount in controversy exceeds $15,000.
5. This court has jurisdiction.

GENERAL FACTUAL ALLEGATIONS

6. Danny Defendant and Peter Plaintiff entered a written contract on 10 December 1998 whereby Plaintiff agreed to paint Defendant's warehouse before Christmas for $20,000.
7. Plaintiff completed painting Defendant's warehouse on Christmas eve.
8. Defendant failed and refused to pay Plaintiff as promised.
9. A copy of the written contract is appended as Exhibit "A".

By alleging facts in a separate section with separate numbered sentences, the plaintiff puts his defendant in the position of being required to admit at least some, if not all, of the facts the plaintiff needs to prove so he can win his case.

Facts alleged here provide the foundation upon which each separate cause of action (basis for bringing suit) is asserted in the counts that follow.

Be certain to allege *every* fact upon which your case depends and *no more!*

Do *not* rely on form books.

That's worthy of repeating, for far too many people lose their lawsuits by following the cookbook method used by lazy lawyers. Many unsuspecting folks order forms from *pro se* publishers that promise anyone can win a lawsuit by simply filling in their blanks. Nothing could be farther from the truth. Every complaint is different, because every case is different. The overall format of pleadings and motions may be taken from formbooks and recipe guides purchased from formbook publishers, but the content is *everything!*

Make certain *every* fact necessary to prove your case has been separately alleged in your complaint ... using single numbered sentences … in everyday language people in the jury box will understand. Don't try to impress the judge with your legal writing skill. It will only come back to haunt you. Tell a story. Stick to the facts you *need to prove*. State them one-at-a-time in separate numbered sentences.

Don't leave out anything that matters … and remove *everything* else.

The Counts – Causes of Action

After stating the facts on which your case depends (i.e., the facts you *must* prove to win), it's time to tell the court what gives you the right to sue on those facts.

You do this in separate numbered counts, each count setting out a separate right to relief.

You cannot simply come to court demanding that the judge enter an order requiring a neighbor to pay you a million dollars. You have to have a legal basis for your complaint.

That legal basis is called a "cause of action", and every complaint must state at least one cause of action. This is extremely important to understand, for if you fail to properly state at least one cause of action, your case will be dismissed for failure to state a cause of action. If you have multiple counts and any fails to state a cause of action, that count can be dismissed on your opponent's motion to dismiss for failure to state a cause of action.

Fortunately, it's fairly easy to state causes of action. You do it by stating essential elements. Each cause of action has elements. Some have three. Others have four or five. They aren't hard to understand, but they *must* be stated to avoid dismissal for failure to state. If a cause of action has four elements, and you only allege three, your count for that cause is subject to dismissal for failure to state.

Causes of action are easy to understand, once you see the similarities between them. In one form or another, each must allege some sort of duty (such as the duty to keep one's commercial promises). Each must also allege that the defendant breached the duty (and provide sufficient factual details to explain to the court how the breach occurred). Finally, every cause of action must allege that the plaintiff suffered damages as a result of the breach, what the damages were, and how the damages were directly (or proximately) caused by the breach and not the result of some unrelated circumstance for which the defendant cannot be held responsible.

Of course, different causes of action allege different duties, different types of breach, and result in every imaginable kind of damage to the plaintiff. Listing all the causes of action recognized by today's courts would be outside the scope of this Jurisdictionary® tutorial. Check the website for my complete work on causes of action.

If you omit a single element of a cause of action, the count for that cause of action is not properly stated, and the count will be dismissed when your opponent moves the court to dismiss it "for failure to state a cause of action".

Causes of action are nothing more than rights to sue. Not all breaches of duty that cause damages are actionable, i.e., the courts recognize only certain ones.

For example, breach of contract is a common cause of action. Negligence is another.

Each separate cause of action should be stated in an individual count -- one count for each cause of action. The following example shows how.

FORTY-THIRD JUDICIAL CIRCUIT COURT
HOPE COUNTY, FLORIDA
CIVIL DIVISION

Case No. 99-123
Judge Horace Grump

PETER PLAINTIFF,
Plaintiff,
v.
DANNY DEFENDANT,
Defendant.
_____/

COMPLAINT

PLAINTIFF Peter Plaintiff sues defendant Danny Defendant for money damages arising from breach of contract and states:

JURISDICTIONAL ALLEGATIONS

1. Peter Plaintiff resides and has resided in Hope County at all times material to this litigation.

2. Danny Defendant resides and has resided in Hope County at all times material to this litigation.

3. The acts complained of took place in Hope County.

4. The amount in controversy exceeds $15,000.

5. This court has jurisdiction.

GENERAL FACTUAL ALLEGATIONS

6. Danny Defendant and Peter Plaintiff entered a written contract on 10 December 1998 whereby Plaintiff agreed to paint Defendant's warehouse before Christmas for $20,000.

7. Plaintiff completed painting Defendant's warehouse on Christmas eve.

8. Defendant failed and refused to pay Plaintiff as promised.

9. A copy of the written contract is appended as Exhibit "A".

COUNT I: BREACH OF CONTRACT

10. Plaintiff restates the foregoing paragraphs 1-9.

11. The parties entered into a written contract.

12. Defendant breached the contract.

13. Plaintiff has performed all acts prerequisite to the bringing of this action.

14. Plaintiff made reasonable demand of Defendant for performance of the contract.

15. Plaintiff suffered money damages as a direct and proximate result.

WHEREFORE the Plaintiff prays this Honorable Court will enter an Order adjudging the Defendant liable to Plaintiff in the amount of $20,000 together with such other and further relief as the Court may deem reasonable and just under the circumstances.

COUNT II: QUANTUM MERUIT

16. Plaintiff restates the foregoing paragraphs 1-9.

17. Plaintiff performed valuable services for Defendant under conditions that would cause a reasonable person to anticipate that Defendant would pay the fair market value of such services.

19. Plaintiff made reasonable demand for payment after performing the valuable services.

18. Defendant failed and refused to pay for the services.

19. Plaintiff suffered money damages as a direct and proximate result.

WHEREFORE the Plaintiff prays this Honorable Court will enter an Order adjudging the Defendant liable to Plaintiff in the amount of $20,000 together with such other and further relief as the Court may deem reasonable and just under the circumstances.

Notice that each count ends with a "wherefore" clause that tells the court what the plaintiff wants as a result of the breach of duty that caused his damages. Every count should have a wherefore clause.

Each count, therefore, alleges the required elements for the particular cause of action set out in that count. If the elements are not all present (and the cause of action one that your court recognizes) the judge has no authority to grant relief by way of judgment or any other order. The court can only grant relief for parties who properly allege facts that support at least one cause of action. The judge cannot grant any relief whatever if even a tiny part of a required element is missing from a count.

For example, the elements of a breach of contract count are

(1) a contract was formed,

(2) the defendant breached the contract, and

(3) the plaintiff suffered damages as a direct result.

It's not enough to say, "A contract was formed." The proper thing to do is tell the court in plain language (kick the flowery stuff to the curb, and you'll do much better) how the contract was formed. Was it in writing? Was it signed by both parties? Was it dated? Is a copy attached to the complaint? (Many jurisdictions will not award judgment for actions on breach of written contracts unless the contract or a copy of it is attached to the pleading.) What did the contract promise? Did the plaintiff do what the plaintiff promised to do?

Nor is it enough to simply say, "The defendant breached our contract." How did he breach it? Did he fail to pay? Did he fail to perform some service? Was he late in making payment or performing the service and, if so, did the contract set out a deadline date for payment or performance? Make it clear how the defendant breached the contract and what part of the contract he breached.

As for damages, it's not enough to say, "He owes me a million dollars." You have to say why he owes you that much money. Did the contract set out that amount as damages? Did you pay a million dollars for him to perform some service he failed or refused to perform? Or, did *you* perform some service he promised to pay *you* a million dollars for, and now he doesn't want to pay? Make it clear.

The elements of the cause of action called quantum meruit (or "for so much as the thing is worth") are similar to those for breach of contract. In brief the elements are along the same lines: (1) plaintiff did something under conditions that would cause a reasonable person to believe the plaintiff would be paid, (2) the defendant did not pay, (3) plaintiff suffered damages as a direct result.

What was the duty? Well, the duty in the first place was not to allow someone to do something anyone in his right mind would know that person expected to be paid for! If you receive a benefit from someone who obviously expects to be paid, and you *could* have stopped that person from doing what he did to confer on you the benefit you received, the court will give that person the “what it’s worth” value of what he did. You had a duty not to allow him to go forward if you didn’t intend to pay for what most of us would know was something the person should be paid for doing.

What is the breach? Simply that the person knowingly receiving the benefit of letting another confer the benefit under circumstances reasonable people would expect to pay for *and not paying for it!*

What are the damages? Most courts simply say they are “the reasonable fair market value of the benefit conferred on the defendant” and leave it at that.

Tell the story.

Leave out nothing necessary.

Include nothing unnecessary.

Allege each and every element of each cause of action in separate counts.

An important point to recognize is that before we allege the elements of each cause of action in your separate counts, we allege the facts that give the court jurisdiction and general facts that support the elements of each cause of action. By drafting the complaint in this manner, everything the court needs to know to render a judgment in your favor is set out in one pleading ... your complete and well-organized complaint.

Be certain, therefore, that in your general allegations of facts you provide *sufficient* facts to support each and every element of the causes of action alleged in your counts, then in each count be sure to allege the elements that are now supported by the facts.

Again, be sure to tell the court how the parties arrived at the agreement that you say comprises the contract, how the defendant breached the contract, and how the damages plaintiff suffered are the direct result of his breach.

If you fail to allege each of these things, your complaint will have loopholes.

Don't give the other side any wiggle room!

Also, please notice that each count refers to the jurisdictional allegations and general allegations of fact by re-stating these with the first numbered sentence of each count, e.g., “Plaintiff restates each of the foregoing paragraphs numbered 1-9,” etc. In this way, the facts necessary to support the separate elements of each cause of action are clearly stated in the appropriate count by reference. When referring back, do not make reference to any numbered paragraphs in other counts. Keep it clear.

Finally, please be careful with each count’s "Wherefore ..." clause that tells the court what you wish. Do not omit your wherefore clauses, or the court won’t know what you wish and will not have authority to later grant what you come up with after weeks or months of litigation when you finally decide. State your wherefore clauses clearly at the end of each count, telling the court every detail of the relief you seek.

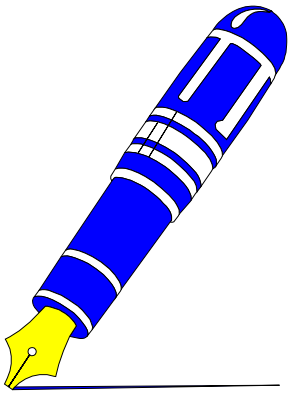
If you are entitled to recover attorneys fees, for example, the wherefore clause is where you ask the court to make the other side pay your lawyer.

Remember: If you don't ask you will not receive.

Whether you or a lawyer drafts your complaint, make certain *every* necessary fact is stated plainly and every necessary element of every cause of action is clearly set forth in language that can have but one meaning.

Closing and Signature

The finishing touch to every complaint is the closing and signature. Like everything else, this is very important and should be done properly.



First, it is good practice to date the complaint. The best date to appear on the complaint is the date it is filed with the court. The complaint may not be served on the other side for several days after filing, so the date of filing should appear on the complaint just above the signature.

Just beneath the signature line the plaintiff's name should be typed and beneath that the plaintiff's name and address. If a lawyer signs the complaint, the lawyer's name and address should be printed beneath the signature line along with the lawyer's bar membership identification. All papers should be signed in this way.

Every paper filed with the court or served on the other side should bear a signature and date.

The following example shows the fundamental structure of a complaint, from heading to signature line. Of course this is just an example. In a real complaint the facts will be different, and there'll no doubt be more facts and possibly more counts. The basic structure, however, should follow this general format.

FORTY-THIRD JUDICIAL CIRCUIT COURT
HOPE COUNTY, FLORIDA
CIVIL DIVISION

Case No. 99-123
Hon. Horace Grump

PETER PLAINTIFF
v.
DANNY DEFENDANT
_____/

COMPLAINT

Peter Plaintiff sues Danny Defendant for breach of contract and quantum meruit, stating in support:

JURISDICTIONAL ALLEGATIONS

1. Peter Plaintiff resides in Hope County.

2. Danny Defendant resides in Hope County.

3. The events giving rise to this lawsuit occurred in Hope County.

4. The amount in controversy is over $15,000.

5. This court has jurisdiction.

GENERAL ALLEGATIONS OF FACT & LAW

6. Danny Defendant and Peter Plaintiff entered a written contract on 10 December 1998 whereby Plaintiff agreed to paint Defendant's warehouse before Christmas for $20,000.

7. Plaintiff completed painting Defendant's warehouse on Christmas eve.

8. Defendant failed and refused to pay Plaintiff as promised.

9. A copy of the written contract is appended as Exhibit "A".

COUNT I: BREACH OF CONTRACT

10. Plaintiff restates the foregoing paragraphs 1-9.

11. The parties entered into a written contract.

12. Defendant breached the contract.

13. Plaintiff has performed all acts prerequisite to the bringing of this action.

14. Plaintiff made reasonable demand of Defendant for performance of the contract.

15. Plaintiff suffered money damages as a direct and proximate result.

WHEREFORE the Plaintiff prays this Honorable Court will enter an Order adjudging the Defendant liable to Plaintiff in the amount of $20,000 together with such other and further relief as the Court may deem reasonable and just under the circumstances.

COUNT II: QUANTUM MERUIT

16. Plaintiff restates the foregoing paragraphs 1-9.

17. Plaintiff performed valuable services for Defendant under conditions that would cause a reasonable person to anticipate that Defendant would pay the fair market value of such services.

19. Plaintiff made reasonable demand for payment after performing the valuable services.

18. Defendant failed and refused to pay for the services.

19. Plaintiff suffered money damages as a direct and proximate result.

WHEREFORE the Plaintiff prays this Honorable Court will enter an Order adjudging the Defendant liable to Plaintiff in the amount of $20,000 together with such other and further relief as the Court may deem reasonable and just under the circumstances.

DATED this 7th day of January 1999.

Peter Plaintiff

123 Main Street
Anytown, U.S.A.

Flurry of Motions

As soon as the complaint is served on the defendant, several questions naturally arise, and a fight begins to see if the complaint must be answered. Depending on the answers to these questions, it may be possible to file motions to dismiss or to strike the complaint instead of answering it.

This time of filing motions to get rid of the complaint instead of answering it is called the flurry of motions.

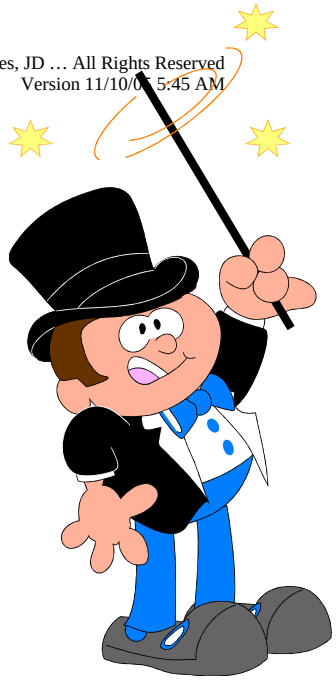
Sometimes this initial fight over whether or not the complaint must be answered disposes of the case even before it has begun. Every effort is made to destroy the complaint rather than answer and be required to present evidence against it.

For example, if a complaint fails to state at least one cause of action the court has jurisdiction to hear, it may be dismissed "for failure to state a cause of action". The motion that brings this issue before the court is called a Motion to Dismiss for Failure to State a Cause of Action. If only one count of a complaint states a cause of action, while other counts do not, the defendant may file a Motion to Dismiss Counts Failing to State a Cause of Action, so he need only defend against those counts that do state causes upon which the courts allow us to sue. This is a very common tool used by defense lawyers to get rid of a complaint for their clients ... or, at least, to increase the legal costs of the other side by making work for the plaintiff's lawyers. Other grounds for dismissal are listed in the materials.

A complaint can be stricken in some cases. For example, if a complaint or any part of it is untrue and was known to the plaintiff to be untrue at the time it was filed, the complaint can be stricken as a sham, i.e., a false pleading. The motion is called, understandably enough, a Motion to Strike Sham. This motion is available in nearly every civilized court in the world today. If a complaint is essentially a self-serving fabrication, the court should not require the defendant to answer. In fact, if at any time the defendant gains knowledge that the complaint in his case is a sham, i.e., known to be false at the time it was filed, he can move to have it stricken as a sham and may be

awarded a final judgment for all his reasonable attorney's fees and costs as a sanction against the dishonest plaintiff.

Other responses to the complaint include affirmative defenses and counterclaims. The responses in this part are motions by which the defendant seeks to avoid the complaint altogether. Some motions must be made at the very beginning of the lawsuit. Other motions can be made at any time, even in the midst of a full-blown trial. Refer to your local rules for details. Study each of the following sections carefully.



Motions to Dismiss

Making a complaint go away takes a bit more than the wave of a magic wand, however if any of the listed conditions exists, you can move the court to dismiss the complaint, and you'll win (if you state your motion clearly and file it in a timely manner).

Motions to dismiss are used to avoid the necessity of answering complaints. If a motion to dismiss is granted, the complaint goes away, and the moving party may recover his attorney's fees and costs. Various grounds exist for moving a court to dismiss the plaintiff's complaint. Some of the more common motions to dismiss are listed here.

Motions to dismiss are common. Many lawyers file them as a matter of routine (whether or not there is any legitimate basis for the motion). You should know the seven principle types of motions to dismiss and be prepared to argue them effectively.

»« ... Lack of Subject Matter Jurisdiction
»« ... Lack of Personal Jurisdiction
»« ... Improper Process
»« ... Improper Service of Process
»« ... Improper Venue
»« ... Failure to Join Indispensable Party
»« ... Failure to State a Cause of Action

Each of these is discussed below. In some jurisdictions all but the first cause for dismissal must be pleaded before filing an answer or the defense is waived. In the case of subject matter jurisdiction, however, where the court lacks jurisdiction over the subject matter of the case, the motion to dismiss may be raised at any time ... even in the midst of a full-blown trial. Generally speaking, however, motions for dismissal must be argued at the beginning of the case or they may be waived.

Lack of Subject Matter Jurisdiction

As common-sense requires, if a court does not have authority to hear a case and decide the outcome, i.e., if the court lacks jurisdiction over the subject matter of the case, the court must dismiss. It has no choice. It doesn't matter when the issue is raised. If the

defendant discovers that the case is over an issue the court does not have jurisdiction to hear, the defendant should succeed in getting the case dismissed by moving the court to dismiss for lack of subject matter jurisdiction.

This comes up quite often, as a matter of fact. For example, in a recent case one director of a corporation was sued by another director, claiming the two could not agree how the company should be run. Since there were only two directors, the company was deadlocked. State law where this case was filed gave the court power to appoint receivers to manage the business until the deadlock could be sorted out or to dissolve the company and distribute its assets. The problem with the plaintiff's case was that the statute giving the court power to appoint receivers or dissolve the corporation required certain facts to exist ... and the necessary facts did not exist. Since the court only had jurisdiction to appoint receivers or dissolve the company by power granted by the statute in certain factual situations, the defendant succeeded in getting the case set aside. The court lacked subject matter jurisdiction.

In another case a plaintiff claimed extensive injuries when her automobile was gently bumped in bumper-to-bumper traffic backed up waiting for a drawbridge in Florida. She filed suit in the local circuit court, where the amount sued for cannot be less than $15,000. Three years into the fray the plaintiff filed a demand for judgment, telling the court she would accept $6,000 to settle the case. Since this amount is less than the minimum amount that could be sued for in circuit court, the defendant moved to dismiss for lack of subject matter jurisdiction. The plaintiff can either re-file her case in county court (lower minimum money amount) or give up. The circuit court lacked subject matter jurisdiction to settle disputes over only $6,000.

If a court does not have jurisdiction, the complaint is an empty gesture, and a motion to dismiss will succeed.

Consult your local rules to determine what issues can be raised in your local courts. If a court lacks jurisdiction to rule on a particular subject matter, move to dismiss the complaint.

Lack of Personal Jurisdiction

If a complaint is filed in Wyoming against a defendant who lives in Nevada, it may be possible to move successfully for dismissal if the Wyoming court cannot acquire

jurisdiction over the person of the defendant in Nevada. Personal jurisdiction, like subject matter jurisdiction, is a question of the court's power to rule. If the Wyoming courts have no power to grant orders against Nevada residents, the case must be dismissed.

Usually, the defendant must move for dismissal before filing an answer. If the defendant files an answer (or otherwise takes any action recognizing the court's jurisdiction over him) he cannot later move to dismiss for lack of personal jurisdiction. Once he admits that the court has jurisdiction by taking any action recognizing that jurisdiction (i.e., power to rule in the case) he waives his right to complain that the court has no jurisdiction. As soon as he takes any action (other than moving for dismissal) he acknowledges the court's power over him, and the court thereby acquires personal jurisdiction.

If a California company with no commercial or other logical connection with Ohio, for example, manufactures a golf club in California, sells the golf club in California to an Ohio resident vacationing in California at the time, the Ohio resident cannot go back to his home state and sue the California company in Ohio's court. The Ohio court lacks personal jurisdiction over the out-of-state California defendant. The case must be dismissed.

The issue must be raised, however, before the defendant files a responsive pleading or otherwise submits to the court's jurisdiction.

Improper Process

If the summons served with the complaint (i.e., the "process") is not correctly worded, is not signed by the clerk, or is otherwise improper, the court must dismiss the case upon the defendant's motion. Jurisdiction over a person arises only if that person is served with proper process, i.e., only if the papers served on him are authentic. If the summons is un-signed, for example, it is a worthless scrap of paper and no process at all. In such cases the defendant can successfully move to have the case against him dismissed.

As with the other motions to dismiss (other than motions for lack of subject matter jurisdiction) this motion must be made before the defendant submits to court jurisdiction by taking some action that acknowledges the court's power over him.

Improper Service of Process

In most jurisdictions, if the summons and complaint (i.e., the initial "process") are not served on the defendant properly, the defendant can get the case dismissed. For example, if the sheriff delivers the papers to the wrong address or otherwise fails to follow the strict rules by which service of process must be delivered to be effective, the complaint must be dropped. The motion is called, of course, a Motion to Dismiss for Improper Service of Process.

Until you are properly served you have not yet been lawfully sued, and the court cannot lawfully take action that will affect you or your property until you are properly served. Upon motion of the defendant, the court must dismiss the complaint.

Improper Venue

In Florida, a case that could be brought in a Miami court might also be filed in a Tampa or Jacksonville court. Either court may have subject matter jurisdiction. Venue, however, may be proper *only* in Miami where the defendant resides or where the injury complained of took place. Settling venue issues is tricky. Even though multiple courts may have jurisdiction, there may be only one best place for the case to be tried, i.e., a more proper venue in the eyes of justice and equity.

Complex cases often involve multiple defendants (and frequently multiple plaintiffs as well). Where the parties reside, where records are kept, and where potential witnesses live are all issues considered by the court when ruling on a motion to dismiss for improper venue. Other issues may also apply.

In many jurisdictions, if a motion to dismiss for improper venue is not brought by the defendant before he takes some action that acknowledges the court's jurisdiction over him, such as filing an answer to the complaint, the venue argument cannot be later raised by a motion to dismiss.

Failure to Join an Indispensable Party

If an action cannot proceed to final resolution without a particular party who has not been named in the lawsuit, any other party may move to dismiss for failure to join an indispensable party. Part of the idea behind this is the need to avoid trying one party in one lawsuit and then trying another party in a different lawsuit that raises the same issues.

The other side of the coin is that persons who will be affected by the outcome of a case should have an opportunity to be heard arguing for their rights.

For example, in a shareholder's derivative action the corporation must be a party. In an action to rescind a contract (i.e., an action seeking exercise of court power to relieve the plaintiff of his obligation under the contract), all parties to the contract (i.e., all persons who will be affected by its rescission) are indispensable. All persons whose rights will be affected substantially by the outcome should be joined in the lawsuit.

In an actual 1996 case, a woman gave birth while married. The birth certificate listed her and her husband as the infant's natural parents. The two later divorced, and the husband was required to pay child support. When the husband was sentenced to 12 years in federal prison, however, child support stopped. The woman brought a paternity action to prove that another man actually fathered the child while she and her husband were temporarily separated. Since the paternity action, if successful, would affect the child's right to inherit from the husband, the court found that the child (represented by a court-appointed guardian) was an indispensable party in the proceedings to determine paternity.

An indispensable party is any person whose presence is necessary to resolve all issues raised by the complaint, i.e., all persons whose interests will be directly affected by the outcome. Such persons must be given an opportunity to appear and be heard, lest their rights be denied in violation of due process principles.

Failure to State a Cause of Action

Last, but certainly not least, is the motion to dismiss for failure to state a cause of action. This is possibly the most used of all motions, too-frequently filed unlawfully just to delay proceedings and give the defendant more time to prepare an answer.

Every lawsuit must state at least one cause of action, i.e., a minimum number of allegations of fact and law giving rise to the plaintiff's "right to sue". That's what a cause of action is, the right to sue. If you don't have a right to bring your lawsuit, i.e., if you don't at least state one cause of action the court can lawfully hear, your case should be dismissed.

If any count in the complaint fails to state a cause of action, i.e., if the count fails to allege all the facts and law necessary to establish a case the court can hear, the count must

be dismissed. If no cause of action whatever is stated in the complaint, the entire lawsuit must be dismissed.

Causes of action are more fully explained in other Jurisdictionary® tutorials.

Motions to Strike

If any part of the plaintiff's complaint is improper, the defendant may move the court to strike the complaint or the improper part. Striking erases the impropriety and relieves the defendant his duty to answer.

If a complaint or any part it is false and known by the plaintiff to be untrue at the time of filing, the court may strike it. Similarly, purely scandalous statements may be stricken by order of the court. If the complaint or any part of it is impertinent, rude, or insolent, the court may strike it. If the complaint contains immaterial or irrelevant statements having nothing to do with genuine legal issues, e.g., allegations added just to "flavor" the complaint and improperly bias the court against the defendant, the court may strike the immaterial or irrelevant parts. The court may also strike parts of the complaint that are repetitive, superfluous, or otherwise redundant or prejudicial.

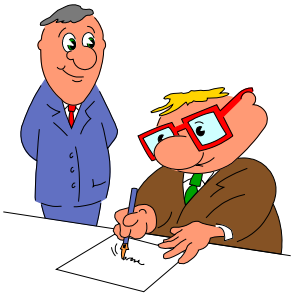
The idea behind motions to strike is to restrain pleadings within the boundaries of what is proper and just. For example, in a breach of contract case it would be improper to allege that the defendant is a child molester. Even if the statement were true, it has no proper place in an action to recover money damages for breach of contract. If the defendant moves the court to strike statements that tend to unjustly bias the court against him, the court should grant the motion and strike the impropriety.

If a complaint or any part of it is untrue and the defendant can prove it was known by the plaintiff to be untrue at the time of filing, the court may strike the entire pleading or eliminate the offensive untrue part as a sham. Sham pleadings contain statements known to be untrue at the time they were filed. Liars should never be given favors from our courts. Truthfulness is imperative. False pleadings should be stricken. Indeed, if it can be proven to the court's satisfaction that a plaintiff lied in his complaint and knew he was lying at the time he filed his lawsuit, the court may enter final judgment for the defendant and put an end to the plaintiff's sham at the very outset ... ending the case before it even begins, instead of requiring the defendant to suffer the expense and delay required to fight back.

State jurisdictions vary on what may or may not be stricken, however the underlying principle of motions to strike is that defendants should not be required to answer complaints containing shamefully inflammatory statements beyond the scope of proper legal issues. Defendants should not be required to answer allegations intended merely to harass the defendant or to bias the court, statements having nothing to do with legal issues of the case. And, of course, defendants should not be required to answer complaints known by plaintiffs to be false. Justice is the goal. Courts administer justice by striking improper pleadings.

In most jurisdictions, courts may strike improper pleadings at any time prior to trial (check your local rules), however it is always best to do so at the very earliest opportunity. Keep the record straight. Act promptly. Move to strike anything that does not belong.

More Definite Statement



If you don't know what the complaint says, you can require the plaintiff to write it again.

The court cannot require you to answer a complaint you cannot understand, so it allows the defendant to file a motion for more definite statement and, if the defendant prevails with this motion, the court will require the plaintiff to re-write the complaint (or, at least, clarify the confusing parts by filing an amended complaint).

This can be a very entertaining way to give your opponent a hard time.

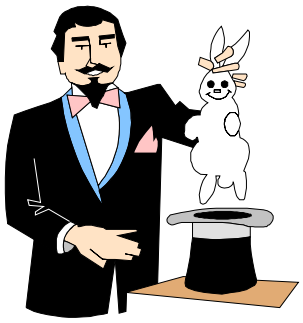
For example, in a recent case where a workman was being sued by a giant insurance company, there was a numbered item in the complaint *that had no verb*. It was truly impossible to know what the insurance company was alleging, since strings of words do not a sentence make. This string of words began with a capital letter and ended with a period, however between those two ends of the string was no verb at all! The working man did not wish to deal with the insurance company at all, since they were trying to get a court order relieving them of their liability under an insurance policy to provide on-the-job liability protection for him. The insurance company was obligated to pay lawyers to defend him in a case brought by an irate homeowner where he had performed services. By filing a motion for a more definite statement, the working man bought more time. Until the complaint was written with complete sentences, the defendant could not be required to answer.

Situations in which this motion may be used are as varied as your imagination. Whenever a complaint is so poorly written that it isn't clear just what is being said, you can move the court to require the plaintiff to re-write it.

In the alternative, you can argue at the hearing on your motion that you don't understand what is meant by a particular term *and require the other side to clarify its meaning*. For example, suppose the other side files a complaint that alleges you were acting peculiarly on a particular day. A motion for a more definite statement can result in a court order requiring them to explain what they mean by "peculiar", i.e., to provide a more definite statement.

NOTE: THIS MOTION CAN BE USED AGAINST ANY PAPER FILED BY THE OTHER SIDE THAT LACKS COMMON SENSE, MEANING, OR SYNTACTICAL INTEGRITY. DON'T PERMIT PAPERS TO CLUTTER THE FILE WITH VERBIAGE HAVING NO CERTAIN MEANING. IF YOU AREN'T SURE WHAT THE OTHER SIDE MEANS BY A PARTICULAR STRING OF WORDS, MOVE THE COURT FOR A MORE DEFINITE STATEMENT.

The Answer



The answer answers the complaint.

That's what the answer is for.

It does not answer interrogatories or any other paper filed with the court. It answers the complaint, and it does so in a methodical way that is easy to understand.

The answer is a pleading. The complaint is a pleading. Pleadings assert the parties' respective cases. If they are well-written the pleadings will state each party's case, i.e., they should state what the parties intend to prove to the court.

The complaint is comprised of many numbered paragraphs which should be SINGLE SUBJECT SINGLE VERB SENTENCES WITH MINIMUM ADVERBS AND ADJECTIVES. Each individual numbered paragraph of the complaint should allege one fact only. Preferably each fact alleged will be one the plaintiff can ultimately prove by the greater weight of evidence. If the complaint is well-written and states only a single thought in each numbered paragraph, the answer will have to respond to each allegation of the complaint by admitting, denying, or claiming insufficient knowledge to permit a truthful response. The whole process after the pleading phase is for each party to prove the facts it asserts by a preponderance of the evidence, i.e., to prove the allegations of its pleading by the greater weight of admissible evidence and thereby prevail to favorable judgment.

The plaintiff uses the complaint to state his case by asserting one or more causes of action in separate counts and alleging facts he believes he can prove and by which he believes he can establish each separate cause of action to the satisfaction of the court. If he states at least one cause of action and proves the facts necessary to prevail on that cause of action, his case is won from the very start.

It really is this easy.

The answer responds to each numbered paragraph of the complaint in one of three ways:

- Admitted
- Denied
- Without Knowledge

Once the defendant admits any particular paragraph in the complaint, he admits all facts alleged by that paragraph. All facts alleged by an admitted paragraph are deemed admitted for all purposes thereafter. Admitted facts are said to be established. The plaintiff is not thereafter required to "prove" those facts. For obvious reasons, the defendant wants to be very careful what he admits in his answer.

If the defendant denies any particular paragraph, he is not denying all the allegations of that paragraph but only the paragraph taken as a whole. If the paragraph contains one untrue part, the defendant may deny it all. Here is where a number of inexperienced lawyers make mistakes when drafting complaints. A carelessly worded complaint (like any carelessly worded paper filed in court proceedings) leaves loopholes for savvy defendants.

For example, if paragraph #13 of the complaint states, "The defendant was wearing a red hat and driving a green convertible on 12 May 1996, the day he ran over the plaintiff's dog," (while in fact the defendant was wearing a blue hat that day) the defendant may lawfully deny the allegations of paragraph #13 altogether. The plaintiff will have gained nothing whatever. The plaintiff or his lawyer foolishly elected not to allege one fact in each numbered paragraph, therefore he missed his very first chance to establish essential facts on the record of the court.

Litigation is something like baseball. You are allowed only a set number of pitches. You are allowed only so many balls. You are allowed only so many strikes. Once you exhaust your right to discover facts and put them upon the record of the court, like the batter with a full count, you are out of turns. You either win at that point, or you lose. You get no more bites at the apple. No more chances to establish the facts you need to prove. Therefore the Jurisdictionary® urges you to start your discovery with the pleadings. Never miss an opportunity to get necessary facts on the record.

Use pleadings as your first discovery tool. This is extremely important. Many people (including seasoned lawyers) waste time, get confused, and lose lawsuits because the pleadings weren’t used in the first place to establish facts – leaving them to be burdened

with expensive discovery proceedings to establish what might have been established in the beginning, using the pleadings.

Any paragraph in the complaint that contains a single false statement may be denied. It is of no consequence that the remainder of that particular paragraph is true. One false fact and the defendant can deny the entire paragraph. State the complaint (and every other paper filed with the court) using SINGLE SUBJECT, SINGLE VERB SENTENCES WITH MINIMUM ADVERBS AND ADJECTIVES.

It is not the defendant's job to help the plaintiff win his case. If the plaintiff fails to state in his complaint a fact he needs to prove his case, the defendant is under no obligation to tell the court (unless he's trying to get the complaint dismissed, as was discussed in the chapter on flurry of motions). Use your opponents' weakness to win.

Lawsuits are an axe fight. Bring your axe.

All the defendant is required to do is answer. The defendant may admit, deny, or claim no knowledge in response to each numbered paragraph of the complaint.

In the previous example, it would have been better to use successive SINGLE SUBJECT SINGLE VERB SENTENCES WITH MINIMUM ADVERBS AND ADJECTIVES for each numbered paragraph of the complaint.

1. Defendant was operating a motor vehicle in the afternoon of 12 May 1996 .
2. The motor vehicle was green.
3. The motor vehicle was a convertible.
4. The motor vehicle struck plaintiff's dog.
5. Defendant was wearing a red hat.

The answer to this complaint will be required to address each of these five separate facts. The defendant will be required to admit, deny, or claim no knowledge in response to each. By stating facts in the complaint as shown, the plaintiff gains information he may use in court. The defendant might be able to deny only paragraph #17. The rest of the facts must be admitted, if they are true. By writing the complaint with successively numbered paragraphs each containing only one SINGLE SUBJECT SINGLE VERB SENTENCE WITH MINIMUM ADVERBS AND ADJECTIVES the plaintiff establishes four facts important to his case at the very outset! He then may exercise all his

discovery options to prove the remaining facts the defendant denies and those about which the defendant claims to have no knowledge.

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied.

It really is this simple!

If you are the defendant being required to file an answer (you may sometimes avoid filing an answer by moving the court to dismiss or strike the complaint on some technicality) you will want to be very careful what you admit and what you deny. Everything you admit will be admitted for all purposes.

If you really don't know if all allegations of a numbered paragraph are true or false, the rules permit you to answer, "Without knowledge." By saying this you tell the court you don't know if the facts are true or not, and therefore you will neither admit nor deny. Not only do the rules allow you to do this, it is very good practice indeed. If you have no idea what the plaintiff is talking about, respond "Without Knowledge" to that particular numbered paragraph. Do not admit anything unless it is in your best interest to do so. It is seldom in the best interest of defendants to admit anything more than their name and address if the rest can be avoided.

Remember, the defendant didn't ask to be sued. The defendant owes nothing to anyone. If the plaintiff can prove his case, let him do so. It is not the defendant's job to help.

If the complaint is substantially false and you are pretty sure the plaintiff knew it was false at the time he filed it, you may move the court to strike the complaint as a sham.

If a complaint fails to state a cause of action (i.e., if the complaint fails to allege all the essential elements of a cause of action), you may move the court to dismiss the complaint for failure to state a cause of action.

If the complaint is so poorly written that you truly have no idea what it is saying, you may move the court to require the plaintiff to file a more definite statement of his complaint.

If you cannot get the court to dismiss the complaint, strike the complaint, or require the plaintiff to re-write his complaint so you can understand what it says, you must answer within a certain set time that varies between jurisdictions. In many states the time to answer the complaint is 20 days after you receive it. Check your local rules for exact times. The filing of motions to strike or motions to dismiss may or may not toll the time requirements. Look to your local rules.

Failure to file an answer when the answer is due may result in entry of a default against the defendant.

Finally, whenever an answer is required, the defendant may file affirmative defenses along with his answer (and always should file affirmative defenses if he has any). The defendant may also file counterclaims (to bring a reverse action against the plaintiff for the defendant's damages), interpleaders (to deposit contested money or other property with the court), and third party actions (to bring in additional parties). Consult your local rules.

Discovery

Discovery is the most important part of any lawsuit. This is where you get facts into the court record. Know your options.

Discovery is how you get evidence into the record before trial. Using discovery procedures permitted by the rules of all civil courts, you can find out what the other side has in the way of evidence. You can force the other side to admit facts helpful to your cause. You can require the other side to produce documents and things, e.g., a birth certificate or a private jet, if what you seek is relevant to the outcome of your case. Not only can you get discovery from the opposing party, you can also get discovery from non-parties. It's all in the rules of most jurisdictions in America ... and even in a few other courts here and there around the world. Check local rules for specific details.

The five fundamental discovery tools available in civil courts are:

- Admissions
- Production
- Interrogatories (straight questions)
- Depositions
- Subpoena and Other Court Process

Discovery is called discovery because you use it to discover facts. You use discovery to fill in blanks on the record so the court can see what your case is all about. If you do a good job, the court will not be able to rule against you. If you do your best, the facts will be clear to everyone.

This is where you absolutely must do your homework. You can win your case during the discovery phase of litigation if you use your discovery options wisely. The rules of court give you powerful tools to get at the facts so you can win your case. Though the Jurisdictionary cannot tell you how to use these tools in your particular case, we can tell you what some of your discovery options are.

Discovery can be expensive and get you absolutely nowhere, or it can be inexpensive and virtually ensure a judgment in your favor. An example of expensive discovery is the deposition. If you are using a lawyer, the lawyer will charge $150/hour or more to attend the deposition and ask questions. The court reporter who transcribes every word said

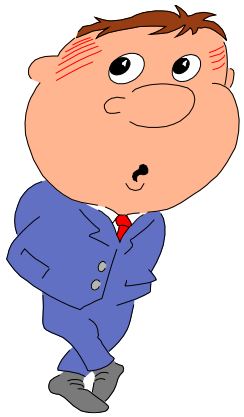
during the deposition will charge upwards of $40/hour. When the deposition is over you cannot put the court reporter into the clerk's file. You need an original printed transcript of the deposition. Some court reporters charge as much as $4/page or more for double-spaced 12-point type! A 100 page deposition transcript will cost around $400 plus fees for the attorney and court reporter! That's a lot of money just to chat with someone for an hour or two. At times the deposition is essential. Very often, however, there are less expensive ways of getting the truth on the court's record ... and always there are better ways to begin. Some lawyers insist on taking depositions soon after the lawsuit is filed. This is almost always a mistake for reasons explained below.

Written discovery requests can be served on the other party at any time and require the opposing party to answer in writing under oath ... typically within a set number of days. The beautiful part of written discovery requests (requests for admissions, requests for production, and interrogatories) is that they can be very carefully written to get at precisely the information you need. At depositions the rabbit trails are many, while truly useful questions and answers are few. By asking carefully-worded questions in writing, demanding admissions, and requesting that the other side produce documents and tangible things in support of your case, you put your opponent in a position from which the rules require him to respond faithfully, honestly, and completely. Once the other party answers in writing he cannot easily retract. He might complain he didn't understand a question asked at deposition, but that complaint won't get him far if the question was carefully written and he had a week or more to answer faithfully. Many lawsuits are won through clever use of written discovery requests alone.

The best time to take depositions is after you know what your case is all about and what your opponents' position is on the issues. You get this preliminary information by written discovery tools. Once you find out what the case is truly all about by clever use of written discovery tools, then you can ask the right questions and get valuable information by deposition. In most jurisdictions, you are permitted to depose people once only. It makes good sense, therefore, to know as much as you can about the case before you schedule depositions.

Use each of your five discovery tools wisely.

Admissions -- Your Most Powerful Tool



Embarrass your opponents.

Make them admit things that will help your case.

You can do it with our American rules of justice.

Requests for admissions are an effective tool to force the other side to tell the truth … so you can win. Request the other party to admit each element of your case ... facts and law.

You have every right to do so.

Get tough. Dig deep. Make him show what he's got!

If he does not respond in good faith, compel him to do so. If he will not respond as the rules require, move the court to deem your requests admitted by default or to have his pleadings stricken and his case dismissed!

This, too, is your right.

Do you see how effectively this discovery tool can get at the truth?

Review what was taught about the complaint and getting a responsive answer as your first discovery tool. Then, using requests for admissions force the other side to poke holes in their own case. Get to details. Force the admission of facts and law you must prove to win. If you're the good guy who's supposed to win according to principles of justice and fair play, there's nothing the bad guy can do but comply with the rules and thereby help you win.

Each item for which an admission is requested should appear in separately numbered paragraphs (like in the complaint). Each paragraph should be a SINGLE SUBJECT, SINGLE VERB SENTENCE WITH MINIMUM ADVERBS AND ADJECTIVES (like in the complaint). Each numbered item is a separate statement, not a question or request. The request comes in the preamble, where you begin by asking, "Admit each of the following numbered statements:" Good practice will include quotes from the rule itself, so the other side is on notice what the law requires of him (and what will happen if he does not comply with each and every numbered item specifically in accordance with the rules).

In some jurisdictions, failure to admit or deny within the time allowed is deemed an admission. For example, if the time allowed to answer a request for admissions is 30 days

in your jurisdiction, but the other side fails to respond within the time allowed by the rule, the court may rule (upon your motion, of course) that all the items are admitted. If any items are objected to without explanation and the court finds the objections objectionable, the court may deem the items admitted. The responding party is required to either admit, deny, or give a good faith explanation why he can neither admit or deny. There are no excuses. The rule applies to both sides in every case.

If you write your admission items carefully, it will be impossible for the other party to object in good faith. All that's needed are simple statements of the facts and law you need to prove so you can win. Put each statement you wish admitted in a separate numbered paragraph. SINGLE SUBJECT, SINGLE VERB SENTENCES WITH MINIMUM ADVERBS AND ADJECTIVES. If the other side refuses to admit all your numbered items, they will surely admit some of them, and you have that much less to prove later. If you know a denial is fraudulently given, get mileage out of the other side's law-breaking practice. Prove your opponent lied in his response to your requests for admissions, and you move your case much closer to a favorable judgment!

Denials must be specific, i.e., they must speak straight to the matter and not beat around the bush. Objections must be explained in detail. If you don't get the response you believe good faith requires, move the court for an order to compel good faith responses or to deem the items admitted. Set your motion for hearing and go to court to tell the judge what's going on and why the court should force the other side to tell the truth. This is very effective.

For example, suppose you’re the defendant. The other side has sued a half-dozen other people recently with the same claims for damages. You aren’t liable, of course. You're one of the good guys. The opponent is looking for some easy money from pulling wool over the judge's eyes in court. The complaint is a collection of fabrications and exaggerations designed to ruin your reputation and extract from you an unfair sum of money. By examining the court file, you find the same plaintiff harassed others in the recent past, making similar claims. You could get the clerk to give you certified copies of parts of the other court files for those cases against the other unfortunate people this out-of-control, unlawfully litigious plaintiff has recently sued, and that’s not a bad idea. If you also get the plaintiff to admit he is plaintiff in the other cases and that the damages he

seeks in each of those cases is nearly identical to the damages he claims in your case, you eliminate the necessity of being required to prove the fact.

The other side can be required to admit facts and law for you. The other side's admission becomes a permanent part of the court file and can be relied upon at trial without any further proof or testimony whatsoever. Use this tool!

For example, in a real case here in Florida the plaintiff claimed she suffered physical injuries when she was touched on the shoulder by a workman installing carpet in her home. The complaint demanded compensation for medical expenses, costs of hospitalization, lost wages, rehabilitation expenses, and similar outrageous damages. The complaint even sought money for her husband's loss of his wife's consortium. That word means, well, ... er, that means … ahem. Seems this same lady and her husband made an almost identical claim two years earlier when they were in a traffic accident. By using requests for admissions, the plaintiff was required to admit she did not in fact suffer any physical injuries at all. There was never any hospital visit. She lost no wages whatever. And, ... well, uhh ... we never did get into the consortium issue because she dropped her case before we could dig further. The case never went to trial. Admissions and other discovery techniques explained in these materials ended the lawsuit long before all that horrible expense and risk of going to trial. The case was bogus from the get-go. By using discovery the plaintiff was forced to admit that facts alleged by her complaint simply were not true. The complaint was known to be false at the time it was filed.

Requests for admissions can put the other side’s case in the light it deserves, right out in the bright sunshine where shadows and dark secrets can be clearly seen.

Production -- Getting Things

Another neat discovery tool allows you to require the other side to produce things for inspection. It could be a notebook, a cancelled check, an automobile … anything relevant to the outcome of your case.

They *must* produce. If they don't produce, you can move the court to strike their pleadings, dismiss their case, or have them held in contempt of court (if you follow the procedures set out in this tutorial.)

Every civil jurisdiction in the United States gives litigants the right to obtain production of documents and other tangible things by serving the other side with a written request for production. Like other discovery tools, the request for production can seek things that might not be admissible at trial ... so long as their discovery before trial is reasonably calculated to lead to the discovery of admissible evidence that could be used at trial. In other words, even though a document or thing might not be admissible later on, you nonetheless have the right to demand its production if it will tend to make it possible for you to discover things that will be admissible. This is a very powerful tool for getting at the truth.

For example, rather than use one of your limited interrogatories to discover a party's date of birth by asking a direct question, you can request production of their birth certificate, their drivers license, or some other document that can provide the necessary information. Rather than using a valuable interrogatory to ask what were the terms of a certain written contract, you can request production of the contract itself. In jurisdictions where interrogatories are limited in number, this is an essential tactic.

If you are involved in a lawsuit arising from an automobile accident, for example, and the other side is claiming physical injuries, hospitalization expenses, lost wages, and such like damages, you can request production of their medical records, invoices of health care providers, cancelled checks paid to health care providers, payroll records, and any other document or thing that might reasonably lead to discovery of evidence of actual losses. If they cannot produce cancelled checks, invoices, or other records of their alleged physical injuries, you win. It's that simple.

Requests for production may be served more than once in many jurisdictions. You're not limited to just one bite at the apple. Often production of one thing leads to the need to

require production of other things you may only learn about after the first production. Most civil jurisdictions permit multiple requests for production so that litigants have a fair and open opportunity to build their case for trial long before the trial date comes around. Indeed, part of the purpose for pre-trial discovery is to narrow the issues and promote settlement. By getting the "goods" on the other side, you usually can encourage a reasonable settlement so both sides are spared the expense and possible surprise that too often results from full-blown trials. Those who refuse to obtain production of all documents and things needed to prove their case are only contributing to their potential for loss at trial. You have the right to obtain discovery of documents and things through requests for production. Use that right to build your case on a solid foundation before you go to trial.

When a requested production is not produced, the proper procedure is to file a motion to compel production. Set your motion for hearing. Explain to the court how the document or thing requested is either admissible as evidence at trial or will assist you to discover evidence that will be admissible at trial. Unless the document or thing requested is so totally unrelated to your case, the court should grant your motion and give the other side a limited amount of time to comply with your request. See the material on compelling discovery for further details on how to get your way when the other side refuses to comply with the rules of discovery.

Requests for production may seek any documents or things that are admissible or likely to lead to the discovery of admissible evidence. Contracts, agreements, death certificates, court papers from another case, receipts, cancelled checks ... any document at all. As for things, again there is no limit other than the necessity that the thing requested is either admissible evidence as it stands or will assist you to discover admissible evidence. Anything within the rule is fair game, and the other side must produce according to the rules.

Just remember when you are writing your requests to be *specific*. Be as precise as possible in your description of the documents and things you wish to be produced. If possible, describe the document or thing in terms of the issues of the lawsuit, i.e., making it clear in your request not only what the document or thing is but also how it relates to

the case. Be exact. Pin the other side down. Don't leave any squirming room. Make certain you ask for what you want. Then make certain you get it.

Use requests for production to build the facts of your case. Make a winning record. It makes no sense to wait until trial to obtain documents and things you can obtain *before* trial. Use requests for production to get the documents and things you need to win the case.

Interrogatories -- Written Questions

A very powerful and economical way to get at the truth is the use of written questions called interrogatories. Don't let the long word mislead you. Interrogatories are nothing more than direct questions written out and served on the other side. Interrogatories are merely questions that must be answered under oath ... usually within a set time period.

To gain the court's approval, questions must be reasonably written to get at facts relevant to the case at hand. You cannot ask in a breach of contract case, for example, "When did you stop beating your wife?" Such questions are outside the scope of lawful discovery. Information sought by interrogatories should be designed to get at facts relevant to the case.

Interrogatories can be in the form of direct questions, e.g., "How long have you lived at your present residence address?", or they may be in the form of commands, e.g., "Identify all persons having any knowledge whatsoever of the facts alleged in your complaint."

In some jurisdictions there's a limit to the number of interrogatories you can use. (Check your local rules.) If that's the case in your jurisdiction, it may be a good idea to discover all you can about the other side's case by requests for admissions and requests for production before using valuable interrogatories. Since you may be allowed to depose witnesses once only, it's good practice to learn all you can before taking depositions by first using written discovery requests so you'll know what questions to ask when you finally depose the other side. Use requests for admissions and requests for production to discover all the facts you can, then use a few interrogatories to fill in the blanks, *before* taking depositions. If your jurisdiction limits use of interrogatories, save a few questions for *after* depositions so you can get last-minute information from the other side before going to trial.

Make interrogatories meaningful. Get to the point. Be direct. Use simple language. Ask questions that will help you win your case. Don't waste your discovery options.

Many young lawyers use interrogatories to get information they could better obtain by requests for admissions or requests for production of documents and other things. If you wish to identify your opponent, for example, you could use an interrogatory or you

could request production of that person's birth certificate, drivers license, or similar documents that will give you the information you need. If you wish to establish that the other party was at a particular place at a particular time, you could request him to admit he was there, instead of using an interrogatory to ask him where he was.

Pin the other side down. Be exact. Make your winning record.

Many inexperienced lawyers use interrogatories to discover information meaningless to the case at hand. For example, an interrogatory commonly-used by beginning lawyers commands the other side to "Identify all persons assisting you to answer these interrogatories." In most lawsuits it really doesn't matter who assisted with the answers. Why waste valuable questions to discover useless information?

Be concise. Give the other side no room to weasel. Pin them down.

Write your interrogatories carefully and use them sparingly if your jurisdiction limits interrogatories to a specific maximum number. Use them sparingly. Save a few interrogatories until just before trial to close the gaps in your discovery and perfect the record.

If requests for admissions and requests for production are not limited in your jurisdiction, use admissions and production to get all the facts you can before using interrogatories. Don't dissipate your discovery powers.

Depositions

Depositions are proceedings where parties examine and cross-examine each other and witnesses under oath in the presence of a notary or stenographer who transcribes each and word of testimony at the deposition into a printed form called a deposition transcript that can be filed with the clerk *before* trial so there'll be no surprise when you take your case to court for final judgment. It's always good to know what the other side and each of the witnesses are going to say when you put them on the stand. If they tell a different tale in court, you'll have the deposition transcript as a prior *sworn* statement to wave in their face and challenge what they have to say.

You can ask, "Were you lying then, or are you lying *now*?"

The most important point to note about depositions is that they are best used after you've learned enough about the case to ask the best questions. In other words, don't take your depositions until you know enough about the case to do a thorough job of questioning the deponent. In most jurisdictions you only get one bite at the deposition apple. You cannot depose someone again and again. You may only get one chance, so if you don't yet know what the case is about, how will you know what to ask at the deposition?

Lazy lawyers (or lawyers whose clients cannot afford to pay them to do the job right) hurry to take depositions (because, frankly, it's easier to sit at a deposition and fire questions at someone than it is to sit alone in your office writing well-crafted requests for admissions, requests for production, and interrogatories … yet, the *effective* lawyer does just this. He gets all the data he can get using *written* discovery methods and only then, after studying all he's learned about the case interviewing witnesses informally and going over the responses to his written discovery requests, sets the witnesses and parties down for a deposition where he can now ask the questions that will most matter at trial – and glue the people to their sworn answers!

Do your homework *before* taking depositions. Gather all the information you can by first using written discovery tools like requests for admissions, written interrogatories, and requests for production explained elsewhere in these materials. Try to know in

advance what the deponent is going to say *before* you begin to ask him questions at the deposition. Some lazy lawyers use depositions as a "fishing expedition", searching for facts they could have discovered *before* the deposition. They ramble and waste precious time ... time for which the attorneys and official court stenographer must be paid. The more they ramble, the longer the transcript becomes. More pages means more money. They have little or no idea what the deponent knows. They try to use the deposition to find out, when they could use the deposition to gather incisive facts by asking questions that get to the heart of what they already know the deponent must say.

Remember: Discovery is aimed at getting facts on the record.

The more facts you get on the record the better are your chances of winning. If you can learn what a deponent knows *before* you depose him, you can ask the right questions and pin him down. Once he testifies at deposition, he'll have a hard time changing his story at trial. Indeed, if you do your discovery well the case may not go to trial -- you may be able to settle or get a summary judgment on the basis that there are no disputed issues of fact relevant to the outcome. Discovery has settled it all.

Also please take note that there is nothing you can ask a witness at trial that you cannot ask the same witness *before* trial. Depositions and written discovery tools give you an opportunity to pre-try the case ... to know what will come out at trial (if the case doesn't sooner settle). There is no testimony you can get out at trial that you cannot get on the record before trial. Pin your witnesses down. Depose them.

Do not, however, depose them until you know what questions to ask.

Be prepared. Good lawyers know what they're going to ask a deponent before they arrive for the deposition. Some write out their questions. Others make an outline of points to be touched upon. Only the most inexperienced or careless lawyers show up for deposition totally unprepared. If you have no idea what to ask a deponent, you aren't ready to depose. It may not be necessary to write out in advance every single question you intend to ask, however it is foolish not to have at least an outline of the points you want to get to.

Don't be pushed around by the other side during the deposition. There are only a few things that are "out of bounds" at depositions. In most jurisdictions, the protocols for examining and cross-examining deponents at depositions are looser than at trial where the

rules of evidence must be strictly enforced. If the other side begins to object to every question you ask, request a conference with the other side outside the room, away from the deponent's hearing. Ask what the point of the objections is. Know the rules. If the other side is abusing the rules by interrupting with objections you believe are improper under the rules of your jurisdiction, you can terminate the deposition and move the court for a ruling before resuming the deposition. If, on the other hand, you continue the deposition deprived of the right to get what you want because of the other side's unruly and unlawful objections, you may not get another chance. Consult your local rules for details. If you are represented by a lawyer, make certain your lawyer does not allow the other side to interrupt without good cause.

Depositions are powerful tools rightly used.

They can also be horrible wastes of time and money. Preparation and determination to get what you have a right to put on the record are essential to success.

Try to be very precise in your questions. Use simple sentences. Keep your questions simple and to the point. Allow no weasel room for your deponent to give half-answers or evasive responses. If the deponent begins to weasel, pin him down. If you can catch him in a lie, you may gain valuable ground in your lawsuit that otherwise would be missed.

Be as polite as you can without being pushed around or otherwise abused. You have a right to ask questions aimed at getting to the relevant facts of your case. The deponent has a duty to answer truthfully, candidly, and in good faith. Do your best to be nice, but don't lose your case because you were afraid to insist on valid answers.

Whatever a witness says at deposition can be used against that witness if he changes his story at trial. This is called impeaching a witness, i.e., demonstrating to the court that the witness has no sense of honesty, that his testimony is not reliable. If the witness is asked a question at trial and gives an answer different from the answer he gave at deposition, you can wave the transcript in his face on the witness stand and ask, "Were you lying at the deposition, or are you lying now?" This has a very decided effect on the judge and jury.

The right to depose witnesses under oath before trial is a very powerful thing. Use it wisely. Be prepared. Get to the point. Don't let the other side evade your questions or push you around with unfounded objections.

Subpoena Power & Court Orders

Power? You bet!

Here's more power you didn't know you had … the power of the court's own orders!

You have more power than most ever imagine, and its free when you know how to win! With subpoenas and court orders you can actually have people jailed for refusing to respond as directed.

Keep in mind that judges are actually 800 pound gorillas in a black robe! Only the most foolish persons willingly disobey court orders.

Once a court acquires jurisdiction over a person (either because he elected to become a plaintiff by filing a lawsuit or was unlucky enough to have a lawsuit filed against him), each participant in the lawsuit has rights and powers they didn't have before ... rights and powers called due process and The Rule of Law … the power of the court. You lose a bit of freedom by coming under the court's jurisdiction in a lawsuit, yet at the same time you acquire amazing rights ... among which is the right to exercise your subpoena power or to obtain court orders directing others to assist you to put truth on public record, bringing in evidence favorable to your cause (so the good guys win, as they always should).

Subpoena power is one of the most formidable weapons truth has against liars.

With subpoena power and specially entered court orders you can obtain bank records, require the President of the United States to appear for questioning, or command the local school board to explain its curriculum policies.

Subpoenas are orders by which you command the world to help you win. Subpoenas can command anyone at all to do pretty much anything you wish them to do, so long as legitimate discovery is your goal, i.e., so long as it's reasonably likely you can thereby obtain knowledge that may lead to evidence admissible at trial.

Court orders are issued by a judge, of course, either upon the motion of a party or upon the court's own instigation. As you may imagine, court orders can command anyone to do anything. So long as getting the truth on public record is the goal, a court can command anyone to do anything necessary to see that the record is complete before trial. Otherwise how would any of us ever find justice?

For example, suppose you wish to examine your neighbor's barn to discover evidence you need to prevail at trial. If your neighbor is an adverse party in the lawsuit, you can bet he's not going to let you go snooping around his barn. Even if your neighbor is not a party to the lawsuit, it isn't likely he will permit you to climb around his expensive equipment or put yourself in danger for which he may be uninsured. You'll need a court order. Fortunately in the United States if you can show the court you genuinely need to look around the neighbor's barn for evidence relevant to your case, you'll get the order. You may have to carry out your inspection under the auspices of an officer of the court, e.g., a sheriff's deputy, however the court will issue an order permitting you to do the inspection. Necessity and reasonableness are the factors considered by the court when called upon to issue discovery orders. So long as your goal is to discover facts that may lead you to admissible evidence, the court should issue whatever orders are reasonably necessary.

Other court orders enforcing your discovery rights include orders directing a medical examination, psychological evaluation, or virtually anything reasonably calculated to lead to discovery of admissible evidence ... i.e., evidence relevant to the process of determining who should win the lawsuit.

Subject to local rules, subpoenas can be issued by attorneys of record or by the clerk of court upon application of any party to the suit.

The force of every subpoena is found in its opening words: "YOU ARE COMMANDED". We're talking about real power here. Subpoena power. Power that is rightfully yours to use. Use it!

Subpoenas can command persons to appear for questioning, either at depositions or at hearings or trial before the court. Subpoenas can also command persons to produce documents and other things specified in the subpoena. In most cases subpoenas should be formally served on the person they command, i.e., they should be personally delivered into that person's possession by an authorized process server who can provide the court with a disinterested affidavit attesting that delivery was made on such-and-such a date. Effective service triggers the power.

Don't let your adversaries overcome you by default.

Use *all* your discovery tools. Get truth on the public record.

1. Use admissions to pry into statements of fact, opinions of fact, and the application of law to fact.

2. Use production to require your adversaries to bring in documents and other tangible evidence favorable to your cause.

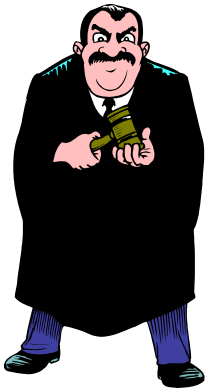
3. Use interrogatories to demand answers to critical questions that must be answered under oath under penalties of perjury.

4. Use depositions to mop-up in your information warfare, digging for those special points you may have missed with your initial written search for discovery of evidence, impeaching your adversary if possible.

5. Use the court's power and your own subpoena power to close every loophole and get ready for trial.

Consult your local rules for how to issue and serve subpoenas in your jurisdiction. In some jurisdictions, attorneys (as officers of the court) may issue subpoenas, however it's usually not possible for non-lawyers to issue subpoenas. The clerk of court, however, can issue subpoenas in most jurisdictions if you present the proper paperwork. Again, consult the local rules for more details.

Court orders, of course, are issued only by judges and usually only after one of the parties files a motion and argues the motion at a hearing with the other party present (or, at least, when the other party had ample notice of the hearing and an opportunity to appear and argue on his own behalf). Once a judge orders a thing to be done, failure to comply with the order's direction comprises contempt of court and may be punished by severe fines and jail terms.



Trial -- Don't Go Alone !

There is an old story about an old lion in an old cell at the Roman Coliseum. He was waiting to go out. The crowds were particularly boisterous this day because a young Christian was challenging the lions, instead of being eaten by them. The old lion thought to himself, "It would be much better not to go into the arena today."

Even old lions avoid confrontation where there is risk of harm.

Think about it.

Trial is the last hurrah. The big chance. The once-in-a-lifetime opportunity to prove what you should have already proved through skillful pleadings and unapologetic discovery. Even if you've planned your case to the letter, there is always the chance at trial you will be bested by an adversary you thought you could defeat. There are always surprises. Frequently disappointments.

And it's costly! Trials well-done include blown-up photographs, charts, expert witnesses, hours and hours of essential court stenographer time, and the "other guy" ... the lawyer for the other side who has been fighting you for months, perhaps even years, to avoid letting you know what he has up his sleeve.

If you can win *before* trial ... do so.

If you must go to trial ... hire a lawyer.

And please don't wait until the last minute to do so. Your trial lawyer needs to know what the case is all about. Before he walks up to that jury box with your tale of woes, he needs to know the facts inside-and-out. He needs to know the law that commands the outcome ... inside-and-out. There is not anything about your case he needs not know, for he must be the master of your case at trial. It cannot be another way. He must *know* the case.

Moreover, he should be assured of victory. He should understand your case so very well before entering the courtroom on your behalf that he enters with a broad smile on his face ... confident of victory.

Juries smell a liar. They look him in the face. They watch his muscles move. They catch each nervous dart of the eye. They know. It makes American justice possible. Some say it's the bottom line. The jury knows.

If your lawyer doesn't know what he's doing ... if he doesn't understand that the windows of the house were not known to be locked when firefighters arrived or that the oil filter was not a stock filter but a replacement, for example, he will not be fully armed. And, of course, you wish your lawyer to be fully armed.

Arm your lawyer with the facts. Type out the story. The whole story. Leave nothing out.

Include nothing unnecessary to the outcome. If sister Suzy was wearing a gingham dress that day, and it really isn't necessary from a legal point of view whether she was wearing gingham or finest silk, leave it out. Spare your lawyer the tedium of wading through unnecessary verbiage.

Spare the oratory also, please. Just tell the story. What happened? Who was injured? Who should pay? Leave out the flowery speeches. Just get to the point. Tell your lawyer what you'd tell the jury if you had one chance, and one chance only, to tell why you're in court.

And *please* not in long-hand. Write your story on a word-processor. Cut-and-paste the parts until the story flows instead of jumping around. Remember: You know the story in-and-out because it's *your* story. Your lawyer needs to know what part of the story gives you a right to demand a judgment. That's all.

Know Your Evidence Rules

That's right. *You*!

Study our materials on evidence. Go to your local law library and study the official rules for your jurisdiction. Do not go to court until you have at least read the rules for your state *twice*. Study our site's explanations. If you need clarification, email us. Perhaps we can get you pointed in the right direction. (There is, of course, never a fee for email responses ... though we cannot give legal advice and must restrict our responses to explanations of the rules and the words that make up the rules.)

Before trial "discovery" is the name of the game.

At trial it's all "evidence". What comes in? What stays out? What questions can be asked? What questions must *never* be asked? How do you preserve your objections for the appellate court? It's all evidence. Know the evidence rules for your jurisdiction before you go to trial.

You might be surprised to learn how many lawyers don't know the evidence rules as they should. No need to blame them. It's just the way things are. Some lawyers just don't know. They wing it. On your dime. The only way to be certain your lawyer properly preserves your record for appeal is to know the evidence rules for yourself. Fortunately, the rules of evidence are all pretty much common sense, and they aren't much different from state to state.

Know your evidence rules before you go to court.

Make certain your lawyer knows them as well.

File Motions in Limine and Set them for Hearing

Here's an interesting word. Limine (pronounced lim'-i-nee). What does it mean?

It sounds like limiting, but that's only what it does. The meaning comes from the word for threshold, "at the door". Here we've dragged our opponent kicking and screaming all the way to the courthouse door. Now we have a duty to the court.

Make the case clear.

Limit introduction of non-essentials. Use motions in limine to prevent the other side from arguing points of law or presenting facts that have no bearing on the case. Often the other side will wish to present things that really do nothing more than cloud the issues and confuse the jury. Some insurance defense lawyers, for example, are sheer geniuses in the art of making one thing look like another. Don't let them get away with it. If you suspect they're going to try to introduce evidence you threw a spitball at your teacher in 7th grade, file a motion in limine to preclude the evidence as irrelevant. Here again, you need to know the rules of evidence so you win your motions in limine. If evidence the other side seeks to introduce is inadmissible because it is irrelevant, scandalous, redundant, or likely to unjustly bias or confuse the jury, move to have it excluded by filing a motion in limine.

Other motions in limine set the stage for other things, like the manner of presentation of evidence. If you need to bring a giraffe into the courtroom to prove your point, it's a good idea to file a motion in limine to get permission from the court! Silly as it sounds, if you need to do something or prevent the other side from doing something out of the ordinary, file a motion in limine for an order granting you permission to proceed. If you wish to present a complicated piece of evidence through the use of a videotape or working model, for example, it's a good idea to get the court's permission by filing a motion in limine and setting your motion for hearing.

Hire an Experienced Trial Attorney

Not all lawyers are trial attorneys. Some are highly trained, but lack experience. Some lack experience *and* knowledge. Even board-certified trial lawyers may not be competent to handle *your* case, especially if their board certification was recently acquired or if they lack general education sufficient to let them understand what the facts are all about in your case.

Trial is like nothing else on earth. The drama is intense. The burden of doubt hangs over the room like a questioning cloud, "Who will win?" Every step is important. One false move and you're dead. A good trial lawyer is one who's been through it over and over again ... successfully.

Don't imagine years of experience is the only criterion, either. Winning is the principal criterion. Nothing short of a winning record is good enough. The fact that a man has practiced law in the courtroom for decades doesn't tell us how often his client wins. If the lawyer you seek to represent you at trial, to cross-examine witnesses and address the jury, doesn't have a reputation for winning his cases ... get someone else.

Remember, the greatest expense you face in court is losing. If you participate in the process of getting the case ready for trial, you cut down your expenses and increase the probability of victory. If you must hire a courtroom lawyer to take your case to trial, don't skimp! Get a good lawyer with a good reputation. Get one with a reputation for honesty first and foremost. Pick a winner.

Keep in mind what was said about juries being able to "read" people. Body language. Choice of words. Facial expression. These things tell the jury what sort of lawyer you have. Is he candid? Does he himself believe in the case? Is he trying too hard? Is he telling the truth?

Remember: Trial is a search for truth. The trial lawyer's job is to convince the court what is true and what is not … facts and law … nothing more.

Do your homework before trial.

Make a winning record.

Evidence -- What Comes In and What Stays Out?

The hardest part of winning a lawsuit is proving the facts. The law is written in books. There's no disputing what the law is (in most cases). All that's left is proving the facts.

The word "evident" is avoided by many today. Cult movements revolve around the fundamental lie that "Nothing is evident. All truth is relative. Reality is what you believe it to be." That sort of thinking is too muddy for American courts. Justice cannot be found in uncertainty!

The rules forbid it. The rules require facts to be evident or they cannot even be presented to the court. The facts must be clear to the judge and to any reasonable person ... reliable, credible, and relevant.

Lawsuits are played for real. Lawsuits are not parlor games. Lawsuits are true life disputes fought over facts ... and the only facts that should be admitted for the court's deliberation are facts that are clearly seen, evident facts.

Hence the term "evidence".

Fair-minded justice is established on an unwavering principle which all reasonable men embrace and support: "Some truth is evident." There can be no argument about this in our courts. Those who wish to control governments with philosophies of justice based on the idea that "nothing is evident" or that "truth is whatever a person believes it to be or wishes it to be or imagines it might be" should not be permitted to even be heard! Courts of law in civilized nations are founded on the principle that some things are evident.

Those evident things are called evidence.

Evidence is anything that is evident.

If a thing is not evident it should not be admitted as evidence.

Evidence is only that which is evident, seen, knowable as a certainty, able to survive the test of proof, susceptible of being tried as gold is tried in a fiery furnace to drive the false dross substances to the surface so they can be scooped off and discarded ... leaving only what's pure and true behind.

The dross of lies and wild conjectures has no place in a civil court of law.

The way our courts exclude false substance from true is by enforcing the rules of evidence. Courts try facts to see if they are evident or not. This is the principle purpose of the trial that concludes all courthouse dispute. This is when facts are "tried" to see if they are evident. The trier of fact is the jury or the judge (in non-jury trials) who applies reason to burn away the false so only the true remains.

If facts are not evident, they should not be admitted, i.e., the court should not rely on such "facts" in reaching fair-minded verdicts. Justice should not even see that which is not evident!

If a fact offered as evidence is not evident, i.e., if it is not "clearly seen", it should not be admitted as evidence.

This is why justice is portrayed as a blindfolded woman.

Every person who comes to court is entitled to be protected from the lies of others. The rules of evidence create a standard for testing facts presented to the court as genuine. To fully understand the rules of evidence as they apply in your jurisdiction, you need to study the local rules where you reside. The general points offered here help you see what the rules are aiming for ... and how they can protect you from the avarice and mendacity of dishonest people.

When people testify or present documents purporting to prove the evidence of material facts (i.e., to prove such facts are evident, clearly seen, not the subject of conjecture nor the purely ephemeral creature of learned courthouse rhetoric), the court requires all the alleged facts to be relevant to issues before the court. The alleged facts must be credible in the sense that a reasonable person would believe them to be true. They may not be protected by any privilege such as the privilege a client has to keep his lawyer silent. Evidence that does not satisfy the evidence rules cannot lawfully be admitted. It is said to be inadmissible, and a good judge will exclude it. The alleged facts may find their way into the court file, however the facts cannot be considered by the court to reach a final decision unless they pass muster, i.e., unless they are admissible according to the rules.

Ephemeral dreams of imagineers are generally rejected.

What one person says another person said at another time and place is generally rejected (though there may be exceptions provided by local rules). Such testimony is called hearsay and is permitted only in special circumstances ... if at all.

Pure speculation founded solely on conjecture, hypothesis, or inference is not given the same weight in determining the outcome of a case as facts that are clearly evident. Clearly evident facts are called direct facts, i.e., facts that cannot be disputed, facts any reasonable person would believe to be true without any inference whatever. Evidence derived from direct facts is called direct evidence.

Lest you be misled, the law of evidence is sometimes clear and logical. At other times it is nearly incomprehensible. Judges and lawyers may argue for weeks over whether a particular word spoken by a witness can come in or must stay out. The rules of evidence have been the battleground of many great arguments and even violent dispute. This tutorial intends only to provide fundamental concepts of evidence theory, leaving the rest to your own common sense. We urge you to refer to local rules for variations in your jurisdiction. In Florida the official 1997 rules of evidence comprised only the first 28 pages in a book the size of a metropolitan telephone directory. You can order the official rule book for your state from West Group Publications. 1-800-328-9352.

In unusual cases (e.g., cases where it may be helpful for a witness to say what a dead man said as he scrawled his signature on a will the day he died) you must consult your local rules. Most states adhere fairly closely to the rules of evidence used in all U.S. federal courts. Local state rules may vary. Rely on the local rules that control your court. Use this and other Jurisdictionary® tutorials as guides to show the way to further study. The common sense principles will keep you on track to victory.

All courts agree the best evidence is self-evident.

If a thing is not evident by itself it should at least be credible, i.e., believable.

No court should permit a witness to testify he was in a tube filled with molten lava when he saw the defendant stab the plaintiff's dog with an ice cream cone. It just isn't credible, and it shouldn't come in.

Evidence should be believable. Credible.

Credible evidence is evidence a reasonable man would believe.

Evidence must be relevant. It must offer to prove a material fact, i.e., a fact that is critical to the outcome. If evidence that a man was wearing a yellow hat is offered, and the color of the man's hat has nothing to do with the outcome of the case, an objection for lack of relevance may be sustained by the court. All evidence, to be admissible, must be relevant. Relevant evidence is evidence that tends to prove a material fact, i.e., to resolve an issue about some fact that can control the outcome of your case.

Evidence may be excluded if it is not first-hand, such as the testimony of someone who wishes to tell the court about an elephant someone else said they saw. Second-hand testimony is generally excluded. Such evidence is said to be hearsay and is governed by hearsay rules.

It should be carefully noted that unless you object to inadmissible testimony or other evidence at the time it is first presented to the court, you may be prevented from objecting later when you finally realize it was objectionable for one reason or another. The time to object is promptly. The way to object promptly is to be prepared by understanding the general principles of evidence ... relying on the specific rules of your local jurisdiction to enforce what your common-sense tells you must be so.

Read your local evidence rules. You will find they are not as complicated as you might imagine.

The Philosophy of Justice

Perhaps one of the most pressing needs in today's society is an awakening awareness that justice doesn't grow on trees. It is not a matter of good judges and bad judges, nor is it a question of good lawyers versus bad lawyers (though bad lawyers do make life more difficult for all of us). Justice is a grace that brings peace in a world of confusion because it abides by higher principles it is wise enough to observe. The study of these higher principles of law is called jurisprudence, a branch of ethics that takes its strength from logic and reason.

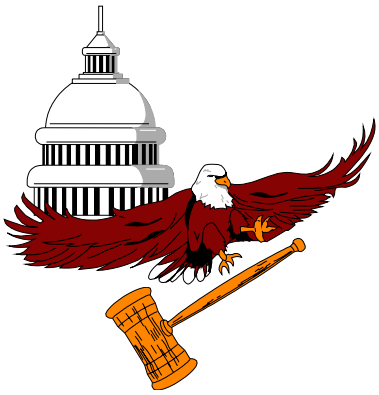
What America needs perhaps more than anything else today is a broader sense of our own jurisprudence, to know and understand our collective philosophy of justice so we can enforce it more often and minimize the unjust pain suffered by far too many today who are abused by the system, people denied justice because they don't understand what it is. Justice should serve us all much better than it does, and it will do just that as soon as we the people make an effort to understand what justice is and what sacrifices we must make as a nation and as individuals to enjoy its blessings.

The Golden Rule, The Rule of Law, The Maxims of Law, and the principles so eloquently set forth by Thomas Jefferson in the Declaration of Independence ... these form our heritage of law in these United States. It is this rich heritage that promises to set us free from bondage and oppression. Just as soon as we attend to learning more about it we'll be able to improve our justice system, making it work for everyone ... the way it should. Much more understanding is needed among our people.

Equality. Everywhere it must be sought, yet nowhere more than in our courts. If a man's philosophy of justice does not see each man equally, i.e., if his lady with the balance and sword isn't blindfolded so she cannot see the litigants beyond admitted evidence, justice is a joke. Only where each litigant is treated equally in the eyes of the law can justice truly speak.

The materials in this section talk about the Rule of Law, the Rule of Rules, and Maxims of Law that make due process and just courtroom decisions possible. Take time. Ponder these thoughts carefully. Discuss them with your friends. Ask if these principles are true or not. Be diligent. Be honest. Stand up for justice, for only then can you demand that justice stand up for you,

The Rule of Law



The Nuremberg trials that followed World War II to prosecute Nazi war criminals emphasized a principle very much in need of being better understood by all of us today.

The Rule of Law.

Never has it been more important for the world to understand this fundamental concept that gives life to liberty and hope to the world's citizens.

We need to understand what the Rule of Law is and how to preserve it for the good of our children and the future of all humanity ... for upon the Rule of Law hang all our hopes for equal access to justice and preservation of human liberty.

U.S. Supreme Court Justice Antonin Scalia said at a conference in Florida a few years ago that our Constitution and the Rule of Law it was designed to secure mean nothing without the Rules of Court by which alone the principles of justice and liberty for all can be enforced!

Think about that fact for just a moment.

Without Courts to enforce the Rule of Law, the U.S. Constitution is a meaningless document having no power of its own whatsoever!

The Rules of Court *alone* enforce the Rule of Law.

There is no other way to look at it!

Nothing is more important to understanding the Rule of Law than knowing the Rules of Court ... the principles of due process without which the Rule of Law is an empty promise ... the Rules of Court by which alone we can preserve and enforce the Rule of Law for future generations! Order our teaching products (click any image at right) and learn how easy it is to understand the Rule of Law and use the Rules of Court that protect it.

You hear the Rule of Law mentioned in editorials or in commentary of newscasters, but who explains what it is? You may have heard it said of America, "Ours is a nation of laws. We are ruled by laws, not men," but what does this mean?

What is the Rule of Law?

Before America was born, men and women were ruled by kings who claimed a divine right to rule, kings who changed laws to suit their own personal whim. This was considered intolerable by our founding fathers who dreamed of a nation established on the rule of duly enacted laws ... not the conceited edicts of arrogant tyrants.

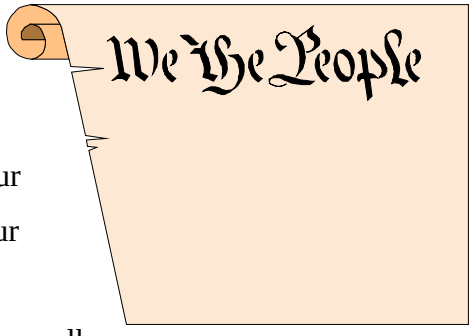
Humanity lived under the iron rule of one form of king or another for thousands of years until that fateful day in Philadelphia, when wise, courageous leaders gathered on the Fourth of July 1776 to institute a new form of government whereby the people would rule themselves under law ... according to the principles of due process embodied in our Rules of Court that protect every person who knows the Rules. The dream of America was that we would live in a land of liberty and justice for all (based on the Rule of Law) however only those who know how to use the Rules of Court to obtain due process at the hands of government are truly protected by the Rule of Law. The ignorant remain enslaved to those who know how to use the Rules.

The promise was that no longer would kings and tyrants rule us. We would rule ourselves, according to the Rule of Law and the principles of due process ... government of the People, by the People, and for the People!

The Rule of Law and due process were married.

America was born.

This is our legal heritage.



Not without many problems was America born. Not without mistakes. Not without errors of the most horrible kind ... because people do not know the Rules of Court or the principles of due process, and our government has not yet seen the need to teach us in our public schools while we are still children. That's why Jurisdictionary® was created to provide people of every walk of life an understanding of America's justice system, to teach the world America's rules so people everywhere can be truly free ... enforcing the Rule of Law by using the rules of court to secure due process for one and all.

By understanding the rules by which we are governed, we can avoid the horrible problems that have plagued our nation these past two centuries and the entire world for at least 6,000 years. Power alone can never bring peace. Only understanding and order can do that, so it is up to all of us to understand the principles by which order is established and peace preserved.

By applying the principles of due process we can stop the seething discontent that continues to plague us with so many dangerous problems today.

America was born with seeds of success in her dedication to the Rule of Law and principles of due process. In 1776 there appeared on the face of this war-worn planet a new hope.

Hope for peace.

Hope for justice.

Hope for a day when right always conquers might.

Hope for a day when truth always overcomes deceit.

Hope for a day when love will truly become the highest law of the land.

The Rule of Law lives in the hearts of free people everywhere. We all know down deep inside that each of us is entitled to be treated equally by our government, that no men or set of men should ever be given special favors or powers to rule us outside the written law ... yet only a few know the Rules of Court so they can be protected by the law that is written ... and nothing is said about it in our public schools!

Why, then, is there so much talk about the Rule of Law and so little effort to teach people the rules of court?

The Rule of Law asserts that men should not be trusted to govern others unless their rule is tempered by fixed laws to prevent tyranny, laws that stop individuals from accumulating wealth by force, laws that keep those in high office from exercising power over the populace without restraint, laws that deny the majority power to act without due regard for the rights and well-being of individuals who are a minority, laws that prevent the powerful from plundering the weak.

The Rule of Law decrees that *Law* shall govern us according to the will of the People and not by the will of individual men in high places.

The Rule of Law is what our heroes died for in past wars for liberty.

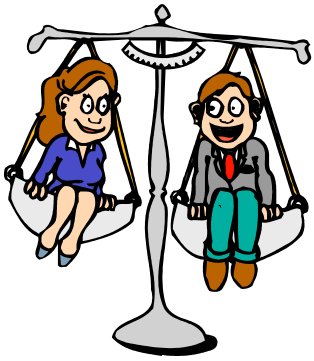
The Rule of Law is worthy of our highest efforts as a people.

Yet without more widespread understanding of the Rules of Court by which alone we can enforce the Rule of Law, these high-sounding ideals are meaningless. The Rule of Law is threatened today by the seemingly innocent schemes of men and women who seek to undermine the principles of due process for the sake of a global economy and its all-powerful government that will decree what law is and enforce its edicts with unbridled force. By learning the Rules of Court and using that knowledge to enforce the Rule of Law, you are making the world safer for future generations.

Remember: you cannot have one without the other.

This principle that laws should govern instead of men -- laws of our own making and not the cruel edicts of tyrant dictators or divine right decrees of kings -- is the bedrock of human justice, the philosophical cornerstone of these United States, and the foundation of hope for all mankind.

The Rule of Rules



In every culture, every land, every tribe, every nation where human faith moves mountains by creating civil codes to govern people in peace, there is a rule of rules that doesn't vary much with language, creed, or color: the so-called Golden Rule.

The Golden Rule may not be known as such in every country. It may be stated many ways. It is, however, always the same in its application: "One should do to others only what one wishes to be done to oneself."

This universal code of ethics or "Rule of Rules" has a corollary rule that finds its mark in the supreme principle of American Justice: "Every soul should be treated equally by government." Every man, woman, child, aged person, sick, healthy, active, or reclusive soul is entitled to fair and equal treatment. Anything else is tyranny. It has always been so. It will always be so.

It is upon this Rule of Rules that the great and complex system of American Justice is built. It is by this simple principle all legal systems are eternally judged. By this rule courts of future generations will be strengthened, tested, and renewed.

Every person is equal to every other person in the sight of the law, regardless of color, age, sex, religion, or origin ... if they know or can afford to hire a lawyer who knows the Rules of Court by which alone our equal rights can be enforced. Equal rights is a phrase that has no meaning in a land where the people cannot afford to use the courts to enforce the law. You can protect yourself by learning the Rules of Court. Order our Teaching Tools by clicking the links at right.

Some persons wish to abrogate the Rule of Rules for one cause or another. They see the Rule of Rules somehow inapplicable to them. The Rule of Rules gets in the way of what they want for themselves. They wish others to serve them. They wish special favors from government. They wish to enjoy benefits others are denied. These persons are enemies of justice. They should never occupy office nor be allowed to exercise power or

authority over others. By using the Rules of Court we can peacefully protect ourselves from such people.

True citizens worthy of office walk peacefully with rich and poor alike, asking no special favors, enjoying government's protections with wisdom, relying on the Rule of Rules and the Rules of Court to guide us to a better tomorrow. Good people work for law and order that treats equally each and every living soul.

In time the truth of this ancient maxim will be fully vindicated. Despotic governments erected on selfish edicts of elitist classes will fail. From their ashes will rise new nations conceived and dedicated to the proposition that all men are truly endowed with inalienable rights including life, liberty, and the pursuit of happiness.

Here is the heartbeat of America.

Here is hope for the world and its unseen future.

Teach the Rule of Rules and the Rules of Court to your children.

Teach your leaders. Insist that local judges, lawyers, and other officers of government apply the Rules evenly at every level. In the Rules you will find success. By the Rules we prosper as individuals and as a nation.

All that we call liberty depends on this alone.

Justice is an empty gesture where Rules are ignored or misunderstood.

Liberty is meaningless where justice does not protect equally.

In God We Trust

The motto of this nation is, "In God we trust."

It is not the expression of a religious order. It does not advance the cause of any subculture or sect. The error many come to when objecting to official mention of “God” is that they don’t yet understand just what is meant by the term when it is used this way. Once we see the meaning of the word and the reality behind that meaning (a reality that cannot be denied by any but fools and those who have their own private agendas to attack all they do not understand) the value of our motto comes clear … and will unify us as a people if we will only stand together in our knowledge of its meaning (instead of fighting silly battles over our right to say the word in public).

God is truth.

God is love.

God makes flowers grow, gives us corn, wheat, sunshine, rain. It is in our definitions that we differ, you see … not in the reality of God. For, who can deny that man does not make watermelons, oil deposits, oceans filled with fish, or any of the countless other things without which none of us could live.

Let me put it a different way, so all may see the meaning of this much misunderstood word as it is used in our motto.

Love is God. Kindness is God. Helpfulness is God. Courage is God. Honor is God.

Truth is God.

And, that which makes the morning light is God.

We trust in that God.

We are wise because we trust.

We trust in love, for example. It is part of our American heritage. Perhaps it is the very most important part. When we are our very best as Americans, we care for others. We give of ourselves. Our heroes here at home and faraway on foreign soil give their lives for love … our God.

This isn't religion talking. This isn't advancing a sect or moral code. It certainly isn't promoting allegiance to any particular spiritual faith.

When we speak of trusting in God, it is our collective faith that puts its energy in hope for all the world that by doing good, being honest, and reaching out to others we, ourselves, will prosper and be blessed … because we trust in God.

It is to say, you see, "We trust in love. We trust in truth. We trust that when we do our very best, great good will come our way."

How foolish we would be to abandon this sacred motto.

Without it, our courts could not function, because due process loves by fighting for the rights of each and every one and has as its most powerful tool the methods by which we can find truth and by its discovery bring justice into the lives of our people.

Could the system work better than it does? It surely could!

Yet, when it is improved it will be through the efforts of men and women who love the truth and trust in love.

We trust in God.

This is what our motto means.

It isn't about angels or life after death. It's about being wise enough as a people to hold fast to what we know is real … and there is nothing more real than the truth that love is the answer to all our ills and will more surely bring about our dreams and the prosperity of our children and our children's children than any other effort we can make.

The God of our law, therefore, is love in truth.

For now, I ask only that you accept this *arguendo*, i.e., for the sake of our further discussions, because (as you will see) unless we agree and work together to secure justice and liberty for ourselves and our posterity, there can be no lasting hope for any of us.

God is found in court by seeking truth through the exercise of human reason.

This loving search for truth (the ideal) is not by mere hypothesis or superstitious speculation. It is not by examining the differing opinions of litigants all grabbing for the golden ring. It is by rules that operate to establish truth and protect the innocent against injustice brought about by falsehood.

Reason guides our courts.

Reason refuses to deny the truth of God.

Reason trusts in God, for God is reason, too!

In court, therefore (more than anywhere else in life) reason can be relied upon and truth established so that peace may be promoted for the good of all.

Settle for nothing less! You have a right to demand that reason guide and control your courts and that truth be put upon the public record in every case before our courts!

Let no authority steal this from you.

If someone says or does something unreasonable in your lawsuit, you have every right to object and to be sustained by the court. If the opposing party takes some action that seems unreasonable, object. If an attorney for the other side does something you feel is unreasonable, object. If your own attorney threatens some action you believe is unreasonable, object (and, if necessary, fire him). If the judge acts unreasonably, demand to be heard objecting on the record.

Never give in!

If you believe you are right, refuse to surrender. Trust your instincts. Rely on reason. Let common sense direct you. Truth is reasonable, and nothing but truth has any place in our courts.

Be informed, however. Don't rush into battle with your mind frozen on one idea. Don't ignore weak spots in your armor. Take time to doubt yourself. Try to poke holes in your ideas. Put your theories to the acid test. Prod every assumption. Dig deep if you want to win in court.

Ask others. Before you take any action in court, ask your very best friend what she thinks. Listen to her! If she thinks your arguments are nonsense, listen to her! If she thinks the other side is wrong and you are right, you have gained common sense and reason is on your side. Listen to others.

Ask another friend, someone who can see both sides of the circumstance. Ask what he thinks about your claims, then listen to him. If he thinks you're reaching for more than your fair share, listen. If he agrees the other side should be ordered by the court to compensate you for your losses, you have gained common sense and reason is on your side. Listen to reason.

Share your case with anyone you believe you can trust. Talk about every matter before the court. Don't hide your weak points. Share it all. See what they think. Learn

how they feel. People with whom you share your case are human beings just like judges. If friendly counselors agree with your reasoning, so will good and wise judges.

Analyze your case before and during court battles. Ask respected people in your community if they think your case is fair. Ask how they think the judge should rule. Tell them the entire story. Tell them all the facts. Ask, "Does this seem reasonable? What do you honestly think?" Then listen.

If wise counselors believe your position is reasonable, it probably is. Fair-minded judges, from the highest federal court to the lowest local magistrate, will rule in favor of the more reasonable party.

Reason rules American courts. This is the highest law of the land. That which is unreasonable has no place in courts of justice. That which is unreasonable opposes natural law and the common law of man. That which is unreasonable denies common sense. To support the unreasonable is unethical. No court should ever permit unreasonable verdicts. Unreasonable rule is tyranny that undermines the very security of civilized life for which purpose alone courts are justly established by governments.

Reasonable men and women should always prevail over unreasonable people.

Strengthen your case. Listen to reason.

Demand that reason rule the court.

Final Words

When you finish reading, we truly would like to hear from you. Please email us or send us snail mail. Our address appears at the bottom of our home page. We enjoy receiving encouragement from people who are making progress as a result of using **Jurisdictionary**®!

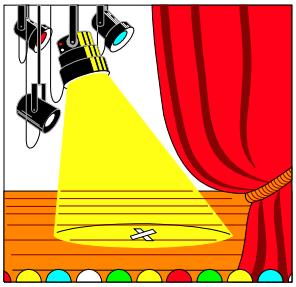
Please tell everyone you meet there is now an alternative to fighting blindly against those who challenge you in court.

There is no greater pleasure than learning our work is helping others get justice in our courts. **Jurisdictionary**® wishes you good judges, wise juries, stupid opponents, and the unbeatable might of right on your side in your fight for truth, justice, and peaceful resolution of conflicts.

Please send your encouragement so we can tell others about your successes.

Thank you.

. . . **Jurisdictionary**®



Closing

Nothing draws attention to a problem quite like being sued. You can make your world a better and safer place. You have learned the anatomy of civil lawsuits. You have learned at least some of the more important words and rules lawyers use. You now know more about how to sue your enemies and how to successfully defend if they sue *you*. You now have a power you will never regret getting.

Of all the good feelings life has, there is little that compares with winning a lawsuit.

You have improved your odds by using **Jurisdictionary**® .

Congratulations. Take a bow!

You have begun to learn the words and rules lawyers use. You are learning how to put your grievances before a local judge and force your enemies to appear and give answer to your charges. You can now invite your friends and neighbors to hearings and the trial. You can bring newspaper reporters. You can bring anyone at all. Every civil lawsuit is open to anyone who wants to attend. You can now go to court to make a public record of your gripes and injuries. You can even demand an official finding that addresses the facts and properly applies the law you put before the court.

You now know there's really not much to it. The anatomy of every civil lawsuit is always the same. You may need a lawyer to help you with particulars, but now you know your rights (at least some of them) in court ... and you know how to insist upon them!

You are understanding the simplicity of this. You are learning how to be in control. You are discovering how to force the local court to settle your problems. You are finding out that the rules are simple. And, perhaps most important of all, you've learned that everyone must obey the rules, including the judge, the lawyers, the other side, and everyone else who is involved in any way.

There is much more to learn, of course. You can delve into theoretical nuances about evidence and its presentation at trial or discuss the economic loss rule for hours on end. However now that you've studied **Jurisdictionary**® from start to finish, you know the gist of filing a lawsuit and putting your grievances on the public record of the court. You now

see that it's a relatively simple procedure most people can understand with just a bit of study.

You are learning the words and rules lawyers use by studying **Jurisdictionary**®.

- You can voice your complaint.
- You can put facts on the public record.
- You can prove facts by discovery and examination.
- You can cite laws that control the outcome.
- You can demand a favorable judgment.

Of course, the judge's ruling may not be favorable if you fail to present sufficient evidence to support your cause or if you fail to recognize some nicety of procedure whereby your opponent gains an advantage and thereby steals your victory. By learning the words and rules as they are taught by **Jurisdictionary**®, however, you know how to at least get your foot in the courthouse door and force the other side to divulge the truth, to produce evidence, to concede facts, to produce documents and things, and to submit to orderly examination and offer reasonable argument presided over by a judge empowered to resolve your conflict on the public record.

If you feel insecure at any time, you should hire a lawyer. If you hire a lawyer, you'll save time and money by knowing what the lawyer should be doing on your behalf. If your cause is just and reasonable, you and your lawyer should be able to use the fundamental principles taught by **Jurisdictionary**® to put your case successfully before the court and get a favorable decision. Follow the rules and see to it the other side follows the rules as well!

Promote **Jurisdictionary**®.

By studying **Jurisdictionary**® tutorials you have learned the essential anatomy of civil lawsuits, the fundamentals of civil cases, and some of the simple tactics winning lawyers use to gain advantage over their opponents. You didn't need to be a lawyer to master this knowledge. Even without a law school degree, *you* were able to understand this knowledge, and you can now protect yourself in court by knowing at least some of your rights you didn't know before you came to **Jurisdictionary**®.

The anatomy of all civil lawsuits is essentially identical. The components are the same. The processes are the same. Every civil lawsuit from simple dog-bite to the most complex medical malpractice action is made of the same building blocks or stages.

By understanding this simplicity and some of the component parts of each state in legal proceedings, you can now protect yourself in Court and assure yourself of victory (if your cause is right and just).

First you must be right.

Next you must be willing to fight.

Whether you are the plaintiff filing an action against someone else or the defendant trying to make the other side fold their tents and go away, the fundamental principles are the same. The procedures are the same. The elements are the same. You have quickly learned these essentials by using **Jurisdictionary**®.

In a lawsuit-oriented society like ours, good people need a survival handbook to keep their enemies at bay. Life is litigious. No one is immune. Courts increasingly control our lives. Victory too often goes to the party rich enough to afford a good lawyer. Protect yourself. Use **Jurisdictionary**®. Learn the fundamentals. Discover your options.

Sooner or later you'll find yourself in court. It happens. Either you'll be a plaintiff suing another to recover damages, or you'll be a defendant fending off the attack of a lawsuit brought by someone else. You will either be sued or find yourself in need of suing someone else. It may be you're late with the rent. Or, perhaps, you're a landlord trying to collect from tenants. Perhaps you're in business and weary of stifling government controls preventing your company's growth. You want to fight back. Perhaps a competitor is using illegal tactics to close you down. Maybe you've been served papers or your property has been seized without warrant or other due process requirements.

A voice inside you may say, "This is not how it's supposed be in America!"

You may be right! The other side may be wrong!

Perhaps you've had enough of someone else says.

Perhaps you wish for *your* day in court.

Knowing the words and rules of court is essential. Success in civil court will always be denied to those who will not learn the words and rules of court.

The civil law (with its rules controlling court procedure and admissibility of evidence) is our most precious American heritage. It is our gift to children of future generations. It is a treasure beyond price. It provides the framework that makes civilized living possible. It secures the peace. It insures our continued prosperity.

You now see that the words and rules lawyers use can be understood by *everyone* willing to make the effort. **Jurisdictionary**® can be studied in just a few hours. By understanding the legal lingo and learning the fundamental rules of court you are no longer vulnerable to your adversaries. You are only as powerful as what you know. You are learning your rights in court. You are learning the words and the rules of court. Until you have some knowledge in this area (regardless how much you may know about the movie industry or complex computer languages) you are defenseless against enemies who either know the words and rules or can afford a lawyer who does. The only way to succeed in court (or stay out of court) is to understand the rules and know how to *insist* the rules be followed by the judge and by your opponents at every stage of the proceedings.

Jurisdictionary® has taught you the essentials.

Encourage others to visit **Jurisdictionary**®. (Please do not copy our pages, *sell* our materials in violation of our copyrights, nor misuse our trademark.) Return to **Jurisdictionary**® often to keep up with changes as we grow. Study carefully. Send your comments and suggestions by e-mail. We want to hear from you. This site is for you!

Remember: The information provided by **Jurisdictionary**® is general. Please refer to the rules of your local courts for specific details and variations between local jurisdictions. The basic principles of civil procedure, however, apply across the board. For the most part, what's true in Miami is also true in Chicago or New York. Names of courts change while the rules stay pretty much the same. Perhaps one jurisdiction allows 20 days to file an answer to the plaintiff's complaint, while another jurisdiction might permit more time or require the answer to be filed sooner than 20 days in certain circumstances. Consult your local rules for particular differences.

What counts when it's your life's hopes on the line is the general principle of fairness, equal access, due process, and The Rule of Law. These principles are fairly uniform throughout the United States. For that matter, the fundamental principles are pretty much the same in courts throughout what we call the civilized world. Because of slight variations between local court and state rules, however, **Jurisdictionary**® urges you to consult the local rules, statutes, and case law in the jurisdiction where you live.

Jurisdictionary® is light-hearted, interesting, and easy-reading. We want you to enjoy learning about the law. We hope by using **Jurisdictionary**® to learn the basics you will be able to exercise every right, every option, every opportunity to put the truth before your court and win !

Teach others to resolve conflicts peacefully.

Political Correctness

Though the social intimidation of "political correctness" motivates many today to try to please all the people all the time, it has no place in the courtroom. Political intimidation is a biased ploy intended to change society by punishing those who don't see as media pundits claim the uncounted majority sees. It is not aimed at truth. It denigrates individual beliefs and frustrates fair and open debate. It contributes nothing to the successful outcome of litigation. Lawsuits are fought and won for the rights of *individuals*, often over and against the so-called rights of society. If **Jurisdictionary**® fails to champion some cause presently in popular vogue, we hope you may applaud us for our efforts to explain a system aimed at securing justice for the unpopular as well as for those whose views conveniently conform to the supposed will of people as reported by economically biased public opinion polls. The rights of people include pleading unpopular causes in court. We all remember cases reported in our own lifetimes that changed the course of history, cases brought by individuals with courage to stand against the exercise of unbridled majority power. It is only by individual initiative that we secure liberty and justice for *all*.

Jurisdictionary® intends no offense by the use of male gender for non-specific pronouns in this book. There is no intention to slight women. Indeed, it is hoped our website will benefit both sexes. In the interest of effective writing, however, the tradition of using male gender for non-specific pronouns is observed.

Jurisdictionary® recognizes that women make good lawyers, judges, and productive citizens in all walks of life. It is only in the interest of keeping the text free of syntactical convulsions that the traditional use is employed. The kind indulgence of those offended by this long-established practice of English usage is warmly appreciated.

Rules and Realities

"Whoever wants to know the heart and mind of America," said Jacques Barzun, "had better learn baseball, the rules and realities of the game."

Rules and realities … to learn the heart and mind of a nation? Baseball? What a peculiar thought!

Why not? Isn't baseball the great American pastime? Why shouldn't we learn more about ourselves, our hearts and our minds? Why shouldn't we look to the game once said to represent America and her people more than any other human activity? Mom. Apple pie.

Baseball … a game of rules.

And realities.

You can't play any game without rules. You can't even get people to try a game if you're going to make up the rules as you go along. You might play a lot of solitaire, but you won't play anything like baseball. Rules are necessary. Not arbitrary rules but fixed rules. Reasonable rules. Fair rules.

Realities. They simply are. Realities reveal what's true about us, what we want, what we are willing to give up to get what we want … that sort of thing. What are the realities of baseball? What do we want when we play? What are we willing to give up? Can we win, for example, if we *don't* play by the rules? What are the realities of baseball? What are the realities of life?

Rules and realities – that is baseball for certain.

One team at bat. The other on the field.

One batter at a time. One pitcher on the mound. One man each on first, second, and third. Three in the outfield, right, left, and center. Short-stop and catcher. Nine players on the field, one at bat.

Realities that cannot change. Rules that don't give in to public pressure … regardless of the bleeding rhetoric. Three strikes you're out. Four balls you walk. The same rules apply to everyone.

Some say that's what America is all about … that baseball and America are alike ... that we need to get back to the rules and realities ... just like baseball.

In baseball there are fixed rules. The realities resulting from those rules are reliable. E*very* person gets a chance at bat. None are favored. Every player gets his turn. Three strikes. Four balls.

The game may be too simple for the highly educated, too commonplace for the political aristocracy, to simplistic for the erudite few who can afford to graduate from New England law schools. Still, we can learn a lot from baseball's simple rules and realities. We can learn who The American People truly are … or ought to be.

We don't have to play baseball to be Americans. We don't even have to like the game. We do, however, have to live our lives according to rules. The rules by which we share our playing field should give *everyone* an equal chance at bat, equal access to justice, equal opportunity to engage in business enterprises for profit, equal hope for a home and reasonable prosperity in later years, equal obligation to share the tax burden.

If the game is going to get us the peace and prosperity we want to share, the rules and realities need to be observed not only by all the players but also by the umpires and referees -- our congressmen, senators, judges, legislators, governors, mayors, and presidents as well.

Good leadership doesn't change the rules. Good leadership doesn't whitewash reality for the sake of getting votes.

Many people are not happy. A growing number are angry about changes forced on them by public leadership. Many of the latest laws were passed in the name of a so-called world order, a global government, and international economy that favors giant corporations … something altogether different from baseball ... something altogether foreign to "The American Way". Outbreaks of public rage and hostility reflect discontent with changes. People are screaming for better government, more responsive services, more protection, more assurances, more assistance for the team that's fallen behind. Referees grant secret favors to supporters, while the rest of us battle the best we can just to stay in the game against unbalanced rules and distorted realities.

None are favored in baseball … that great American sport. Everyone gets to be "up" when the time comes to score the winning run for our team. Everyone gets a chance in baseball. Three strikes and you're out. Four balls and you walk.

There's a pecking order out there on the field, too. It makes no allowances for weakness. It has to do with one's abilities, talents … things we *don't* all of us have equally. Some can catch a fly ball with their eyes closed and their pants falling down. Others couldn't stop a slow grounder if life depended on it. Each of us is different … just like each of the nine baseball players on the field is different. Each has a different job to do.

But every one of us should enjoy our fair turn … no exceptions.

When it's *your* turn to step up, it is your turn and yours alone. You should get just as many pitches, just as many balls, just as many strikes as the next player. The rules of baseball apply equally to all.

The rules of America's courts and the courts of the world should do the same.

For very interesting reasons, we've seen judges and politicians granting tax-supported favors for some while piling unbearable burdens on others. This has been going on for more than 40 years, but there seems to be more of it lately. More favoritism. More criticism of lawyers. More "Big Brother" and the growing threat of a single global government. Less personal liberty. Continuing loss of confidence in our courts and the legal system generally.

The present trend grows worse with each session of Congress, each new president, each new Supreme Court decision ... and the people are dismayed.

The baseball umpire still shouts, "Play ball!" but politicians are shouting, "Don't throw curve balls to blue players. Don't throw fastballs to red players. And, above all, be certain to walk all yellow players because life has been so difficult for them."

We're definitely playing a game in this country … but it isn't baseball.

In baseball, both teams get nine tries at bat, nine innings, three outs per inning. In baseball, each team gets three strikeouts, tags, or caught fly balls ... and that retires the side. In the America George Washington and millions of others fought for, nobody gets an advantage. Nobody!

That's how it should always be in civil court.

It's like baseball. Neither team has any advantage beyond its own players' skills and talents. At the beginning of a baseball game, a coin is flipped to see who starts. That's fair. First team up is never last team up. If your team bats first, the other team gets to bat last. Both sides have an equal shot at winning. Referees rule fairly, because the rules are fair … and fixed.

That's what makes baseball the All-American sport.

Each batter takes his turn in rotation. Equality rules.

God made some folks very tall, some short, some keen-eyed and agile. Others are kind of slow, clumsy on their feet, hard-of-hearing. On the field, we see that some make better shortstops, while a few belong in right field or guarding third base. Only a few are pitchers or really great catchers.

You cannot play baseball if everyone insists on pitching or if some insist on getting more than three unsuccessful swings at the ball.

Stars play better baseball than nerds and couch potatoes. What kind of dumb rule would it be to prevent better players from doing their best on the field?

Shouldn't *everyone* have an equal chance? Isn't that the way it *ought* to be?

A number of our nation's judges, lawyers, bar associations, and private think tanks are urging exceptions to the rules so near-sighted players can catch and ones with weak arms can have their turn on the pitcher's mound. These new world order referees propose a new game … it isn't baseball. It isn't American.

Don't put up with it!

If you must go to court, make certain the rules are American ... like the rules of baseball ... fair to all players ... even-handed ... no favors to either team.

Resolve conflicts peacefully.

Make everyone play by the rules.

Learn the rules for yourself.

Promote **Jurisdictionary**®.

Reducing Legal Fees

Today's legal fees are astronomical. Not many people using **Jurisdictionary**® expect to make $150/hour or more in their lifetime. It is not uncommon for legal fees in a single lawsuit to exceed the cost of a new home! Without insurance or a close relative with very deep pockets to pay lawyers' fees, many people are ruined financially by legal battles. Some unscrupulous lawyers take advantage of this fact to intimidate the opposition into giving up instead of facing the overwhelming costs of continuing litigation.

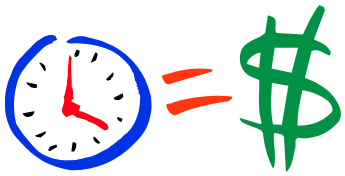
With the help of **Jurisdictionary**®, perhaps *you* will not be one of the thousands who simply have to give up for lack of funds to pay attorneys. Though you may recover your costs and legal fees if you win, it is not always possible to do so. Therefore, the best insurance against being destroyed by legal fees is to be certain your case is handled as efficiently as possible. You can minimize your lawyers' fees in many ways by using **Jurisdictionary**®.

Since lawyers may work dozens of cases at the same time, they can never dedicate full-time to work on *your* case. You need to know if your lawyer is working for you. Though many lawyers are honest, hard-working, and genuinely concerned about getting a favorable outcome for all their client's cases, the reality is as follows:

- **Some lawyers take far more time than necessary to resolve legal disputes.**
- **Some lawyers do not utilize full pre-trial discovery of facts and law like they should.**
- **Some lawyers do not develop a proper theory of their clients' and opponents' cases.**
- **Some lawyers do careless things like failing to hire a court reporter for *every* hearing.**
- **Some lawyers spend too much time talking on the phone instead of making a record.**

Remember: Lawyers have only their knowledge and time to sell. They bill by the hour. Even the least expensive lawyers charge $150/hour and up. That's $2.50 per

minute! It doesn't make sense to turn your life over to a lawyer without at least making an effort to know for yourself what's going on and what your options are. That's where **Jurisdictionary**® comes in. The same knowledge that maximizes your chances for victory also tends to minimize your legal fees.



Lawyers sometimes talk too much. Instead of making a record. They talk, when they should be writing letters, making copies, using certified mail ... making a record. They talk to you, they talk to witnesses, they talk to lawyers for other side, they talk to office staff, and many charge for this out-of-court talking – none of which makes a winning record. When they could write and file papers with the court and set hearings where talk can be recorded by court reporters and bring you closer to the victory you deserve ... they talk, instead.

- **Justice is delayed.**
- **Costs are multiplied.**

A lawyer's time costs money. To bring the legal and factual issues of your case before the court for a prompt judicial determination in your favor, the time you pay for should be used to make a record that advances your cause in court.

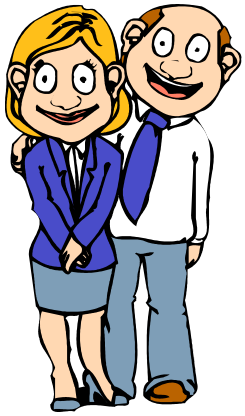
If you *need* a lawyer, it is helpful to know what your lawyer could be doing, should be doing, the rules that control his actions, what the local bar demands, the legal options that allow you to require more from your opponents and from the court ... your right to win.

Learn the fundamental rules. Only by learning the rules can you have any idea what is going on or how to be heard.

Put your case before the court.

Learn how to be heard.

Use **Jurisdictionary**®.



Having a Nice Day

Having a nice day is walking out of the courthouse with a smile on your face. Verdict in your favor.

There is nothing like it. Winning.

How is it done?

Many cases are won on paper, in planning, and in putting the plan into action according to the rules.

The plan for justice in America and many free-world countries is that everyone gets it. Everyone. Absolutely everyone.

America is built on the confidence of her people in the light upheld by our Statue of Liberty, a light of hope for all of us. We all wish for peace and prosperity. We all are committed to the proposition that peace for one is peace for all, that prosperity for all is prosperity for everyone.

Every one.

Guided by that light, the original framers of our nation provided for a judiciary to operate at local courthouse levels throughout the vast expanse of lands and peoples that is America. They offered an agreed plan for managing our controversies -- yours and mine and those of others unnumbered -- the rules. They offered rules of evidence and rules of jurisdiction sometimes called rules of civil procedure. They did not invent them. They already existed in the traditions of civilized men since time forgotten long ago. The rules are ancient. Some say wedded into the very soul of everyman at the moment of creation. Whatever your theory, the rules are simple to understand and can be understood by you, your neighbors, the people round on the next block, those folks that just opened a meat market on 43rd Street, and even the old man who lives on the hill and reads books on his porch day and night. People who have problems at this moment can find help in the courts ... if they know the rules.

Jurisdictionary® is going to stick to the rules and teach them to you.

Jurisdictionary® will also teach you the words lawyers use.

Jurisdictionary® wants you to enjoy your victories in court. If you need an attorney to represent you (and can afford $200 an hour for his or her fee) then do so. But do not omit to learn the words and the rules your lawyers and those of the other side (and even the judge and all in his courtroom) will be required to obey.

Learn the words and the rules for yourself so you can have a nice day in court!

Win the next time you're before a civil court judge. Know your options. Even if you hire an attorney, know what the attorney needs to be doing to win your case for you. Know what can be done and, if it seems reasonable to you, do it or see that someone does it ... either yourself or your attorney.

For example, the lawsuit (every blessed one of them) starts with a complaint. The complaint must state a cause of action, i.e., a definition of the breach of duty in another that obtains the jurisdiction of the court for redress. It's no harder than that. Yet, if your lawyer doesn't see this point ... you might do better with another lawyer ... for every complaint must state at least one cause of action.

Moreover, each cause of action requires a minimum number of essential facts to establish it. It depends on the kind of case how many and what kind of facts must be proven to win. For example, a complaint for breach of contract must first allege (1) the contract, (2) the breach, and (3) the money value of damages suffered by the plaintiff. These three are a bare minimum. And! For each of these three elements a reasonable lawyer will allege specific facts in support of each of the elements, facts that can be proved, e.g., "The printed contract was signed by both parties 17 September 1997." Etcetera.

If your lawyer doesn't grasp this concept, he will not likely grasp the rest of the truths offered by **Jurisdictionary**® and, in all possibility, he will find himself unable to sway the judge to his persuasion when the chips are down ... namely the "worth" of your case and the reasons why you and not the other side should win.

Lawyering is goal-oriented. We all want to win. About half of us won't.

If it's your fortune on the line, your business, your way of life ... doesn't it make sense to at least know some of your options? Isn't it worth a bit of study to learn what your lawyers could be doing? Who knows the facts of your case better than you? When you also know the words and the rules, you should be able to significantly improve your

chance for victory. If your lawyer represents a certain tactic to have value, and you see with your own eyes and understanding of the facts of your case that a different tactic would take you farther, why submit to a lawyer's possible misconception of the facts? On the other hand, if the lawyer can make a reasonable argument why he wants to follow a particular path, and you can see nothing wrong with his plan after learning the words and the rules from **Jurisdictionary**®, then perhaps the lawyer's wisdom should be followed. Two heads are usually better than one. (About that, certainly, reasonable persons will not differ.)

If you find anything in the Jurisdictionary® to be untrue or even the least bit inaccurate, we invite you to write us at the address printed at the bottom of every page of our site. Keep us on our toes.

There's not much to it, really. Whether you do it alone, or your lawyers do it for you, or you both do it, there are certain things that just make sense to do, self-evident good old-fashioned common sense.

Make a written record of everything before the court so that, in the event of the court's wrongly ruling against you, you'll have a record to send to the appeals court. The appellate judges don't want to repeat bungled lower court proceedings by permitting witnesses to re-appear before them to repeat testimony or review tangible evidence already presented to the lower court. The appeals court wants to see who bungled the case in the lower court. Was it your attorney. The other side's attorney? Or the judge? If it was the judge, the higher court may overturn the lower court's decision or remand the case for further proceedings to cure the defect and correct the record. Therefore, make a record. If you learn nothing from this website, make a record. Make a written record in the court's files, to demonstrate that you should win and the other side should lose. Do this above all else. First priority.

Put every element of each cause of action before the court in concise SINGLE NOUN SINGLE VERB SENTENCES WITH MINIMUM ADVERBS AND ADJECTIVES. Do this in your complaint. If you hire a lawyer, do not permit him to file your complaint unless this rule is followed. You are going to be allowed to "discover" facts and points of law from the other side at a later stage in the proceeding. The complaint, i.e., the first paper filed in every lawsuit, should allege all the facts you are

going to be required to prove to establish your cause of action and prevail. Allege every element and every fact you need to prove to establish each element of every cause of action in your complaint. Do not give in to foolishness on this, no matter how experienced or well-educated your counsel claims to be. If you do not allege every necessary fact at the outset, you will find it difficult if not impossible to allege them later on. They will have to come in as evidence, instead of admissions or answers to interrogatories or responses to some other pre-trial discovery request reasonable lawyers use when they are serious about winning. Allege every fact you will need to prove. Allege it clearly in concise SINGLE NOUN SINGLE VERB SENTENCES WITH MINIMUM ADVERBS AND ADJECTIVES so there can be no doubt what you are asserting to the court. Do this in your complaint. This cannot be stressed too strongly. Common sense tells you this is true. Experience will show that pre-trial discovery is much easier to get when it is built upon a properly written complaint. The complaint that alleges each element of every cause of action and also alleges each and every fact that must be proved to prevail on each and every cause of action creates a solid starting framework for your case. The complaint is a concise but factually complete initial statement of your case. The complaint should be easy to read. The complaint (and every other paper you file with the court) should be comprised of SINGLE NOUN SINGLE VERB SENTENCES WITH MINIMUM ADVERBS AND ADJECTIVES.

Get an answer. Get an answer that is responsive to each and every allegation of the complaint. Force the other side to either admit, deny, or claim to have no knowledge in response to each and every allegation of the complaint. Do not fail to do this. Remember each allegation in your well-written complaint was stated in concise SINGLE NOUN SINGLE VERB SENTENCES WITH MINIMUM ADVERBS AND ADJECTIVES. You alleged each and every element of each and every cause of action, and you alleged each and every fact you need to prove in order to establish each and every cause of action. The answer, therefore, must respond to each alleged fact and point of law by either admitting it, denying it, or claiming no knowledge of it whatsoever. The defendant has no choice. The defendant must answer upon the record of the court. By the time you have your answer, you're half-way home. All that's left is using pre-trial discovery rules

to fill in the missing pieces, the facts your opponent denied or said he had no knowledge of. That's what discovery is for.

Use your discovery powers to get at evidence. Use requests for admissions after receiving the answer and having it sworn or affirmed. (No reason not to make everything subject to perjury penalties. It may be an old-fashioned way of getting things done, but it works. People who make statements to the court should be required to swear to those statements. Get the answer sworn.) After the admissions come (or are compelled by the court), you may wish to use interrogatories to pry further into matters the other side may have failed to admit, things you know the other side is lying about, perhaps. Things you can assertively prove. Things you can ask about directly with interrogatories. (Some states limit the total number of allowable interrogatories. For most cases in Florida, for example, we are limited to 30 interrogatories. Check your local rules.) At any time you may request the other side to produce any documents and any things that are necessary to establish facts required for a verdict in your favor. You may gain access to private property, make people submit to physical or mental examinations, and many other things more fully explored by **Jurisdictionary**® and your local court rules. You may reasonably request and demand without compromise full pre-trial discovery of every essential point of law and every essential fact through the methods of discovery taught by **Jurisdictionary**®.

Avoid trial if at all possible. The other side may press you to go to trial. (This is a principal reason not to delay discovery.) Perhaps you haven't yet gotten full discovery of all the facts you need to prove in order to win. Perhaps you didn't follow the rules and avail yourself of every pre-trial discovery procedure the court allows. Perhaps you need to get more facts and admissions of law to win your case fair and square. Be prompt, concise, and complete in your discovery. Prepare for trial as soon as possible. Don't dally. Get to it. Stay on top of it. If you're paying a lawyer, make the lawyer stay on top of it. Keep your case moving. Make the other side answer, admit, produce, and do everything else you need to win. Force the other side to follow the rules. Use the rules to your advantage. That's what the rules are for. Get the facts and the law that applies. Put them on the record. If you cannot do this before trial, how do you suppose you will do so at trial? There are no questions that cannot be asked in pre-trial discovery. There are no

papers that cannot be produced before trial. There is no testimony that cannot be obtained by pre-trial depositions. The only thing you have at trial that you don't have before trial is the judge's watchful eye at trial (and those of the jury if yours is a jury case), eyes looking at you and your lawyer. Eyes that ask, "Ok. What have you got?" If you don't already have it, why are you there?

If your lawsuit begins to make noises like it's all fired up and ready to go to court, don't go unrepresented. Hire an experienced trial lawyer to help you win. If you cannot afford a good trial lawyer, insist upon a lawyer with common sense. Don't wait till the last minute. Hire the lawyer as soon as it appears you are not going to have all your ducks in a row. If you are operating on a faulty complaint, you're going to have a hard time with discovery, and trial is probable. If you are able to work from a good complaint that alleges all necessary facts and points of law necessary to win, you may be able to "get all you need" by using the pre-trial discovery rules discussed in **Jurisdictionary**® and available at your local courthouse. If you can, avoid trial at least until you've used the discovery rules to establish your case on a sound footing. If you must go to trial, hire a lawyer early on to pick up the pieces and do the best he can. Even here the principle speaks: If you do good discovery you'll make your case before trial or, at least, have very good pieces to work with when you get there. Do not go to trial without a lawyer. Do not go to trial at all, if you can avoid it.

That's the meat and potatoes of civil litigation right there. Of course there's more. However the heart and soul of the scheme of suing people and getting the court to rule favorably is presented. By stating the case concisely and systematically; by demanding and obtaining a responsive answer; and by utilizing good communications skills to request and obtain discovery of the facts and admissions of law you need to win ... the rest is made much, much easier.

Jurisdictionary® is not the end all and be all of legal wisdom, yet it is a very excellent. It can provide a distinct advantage if you are presently limited in your knowledge of what good lawyers do to win lawsuits. You may not become a lawyer after studying our website, but you'll have at least some significant advantages over the other side the next time you find yourself in a fight at the courthouse.

Jurisdictionary® offers facts you can check for yourself, facts about the words and the rules that lawyers use. We hope it will help the good guys win more often.

Having a nice day?

Being in a legal battle and having the judge rule in your favor and award you a large chunk of money (or something equally pleasant) is one of the very best days you can have.

Seeing a Court Order awarding you money you can take to the bank ... that is having a nice day for certain!

Resolve conflicts peacefully.

Use **Jurisdictionary**®.

Conclusion

Jurisdictionary® believes you value your freedom ... not just freedom from imprisonment but also freedom from annoyance, intimidation, and unjust seizure of your property.

The system of government established by our forefathers in America is predicated upon the premise that all men are created equal and that each should have equal access to fair-minded justice in our courts. That's not how it is, in actuality, of course. The only people who really have access to the courts are those who know the rules of court ... or those who can afford to hire someone who knows the rules.

This is why we offer **Jurisdictionary**® and its easy-to-understand basic teachings of fundamentals.

You can know the essential rules.

You can have direct access to justice and fair play in our courts.

In many places around the world today, systems of government invidiously circumvent justice and the people's free access to the courts by refusing to teach citizens the rules of court and how to use the rules to win. It's as if the rules were a guarded secret preserved only for a favored few. Indeed, the only ones who know the rules at all are the few fortunate enough to attend law school (and those with access to the internet and the determination to better themselves by learning the rules with **Jurisdictionary**®).

The rest of the world's population can only guess at the rules and hope for the best based on common sense and blind faith in the local judges' sense of justice and fair play.

The complexities of modern global living have burgeoned governments into a force never before known ... a force that does not always follow common sense.

That's why we created **Jurisdictionary**® to teach people throughout the world how to restore common sense to governments by requiring civil servants to follow the law and not to exercise their power according to opinions and personal preferences. Politicians give lip service in every language to the cause of liberty, equality, and brotherly love. However, those who gain power sometimes tip the scales to favor their constituency and retain the status quo. They may do this with money, violence, or

corrupting our courts. Politicians promise liberty and justice to all people. Yet those who are elected often deny the people any semblance of justice and fair play in our courts.

By learning the essential words and rules of lawsuits (whether you live in Ohio or Bangladesh) you can control your leaders and get your way lawfully. You can learn how changes your own world and improve the circumstances of your family and friends. You can learn how to fight back. You can learn how to win without violence.

By learning the rules of court and the rules of evidence, you learn how to protect yourself from the wrongs of others. You learn how to file effective complaints in your local courthouse and how to prosecute your complaints to victories.

If you get tired enough of being taxed unfairly or having property seized from you without due process of law, for example, you can take the taxing authority to court and command the local magistrates to return your property until a proper court order determines who is lawfully entitled to possess it ... until after you've been given an opportunity to discover evidence and present your side of things in open court.

If you see the local city council isn't using its collective head in some local matter that threatens you or your family, you can take them to court. You sue for an injunction to stop them, or you can obtain an order commanding them to act like a proper city council. You can force them to explain themselves on the public record in response to your carefully written complaint and discovery requests.

The power of knowing how to sue will change your life. If you use the power wisely, it will enrich your life in ways you cannot now imagine. The power to sue is the power to make government serve you ... as governments are supposed to do.

Knowing the rules will help you in everything you do.

Although you do not need an attorney to sue in your own name, it is a good idea to hire a lawyer to at least assist you with technicalities and to advise you on the law. You might have so much fun suing people and getting your way as a result that you'll encourage others to use the Jurisdictionary® to learn how to get their way as well.

Getting your way is a grand and glorious feeling.

Winning in court brings a very special joy.

Consider the state of the world right now. Some people say things are OK. They're making good money, have safe homes, enough to eat. Others see a different side. Far too

many see ruthless police to whom everyone is guilty until proven innocent. They see taxes being used to engineer society by giving breaks and incentives to some while adding burdens and barriers to others. Recent proliferation of the corporate mentality is eroding the fundamental guarantees of personal liberty in favor of "the good of all" or the "necessity" of favoring a particular economic segment of society against other economic segments. Students of history see the process that is involved. It is the very nature of governments to grow beyond the people's control. That's when violence breaks out. The process of despotism is slow, the gradual metamorphosis of power observed only by passing generations. Young people ignore the wisdom of their elders. Then suddenly the people discover what they lost when they gave their leaders too much power and ignored their own sacred responsibility to control that power at the local level through the polling booth and the local courthouse.

Knowing the rules of law. Make government work for YOU!

Changing the world through successful civil litigation isn't a new thing. In fact, litigation is probably the most powerful force for change the people have short of their single vote and violent rebellion. Say what you want about lawyers, the world is a better place for most of us today because of courtroom battles that brought human difficulties into the light of public scrutiny where judges could be required to oppose the status quo and make things better for all of us.

If it hadn't been for a lawsuit from Alabama demanding that the U.S. Supreme Court grant equal access to public education, we'd be living in a much different world today.

If it hadn't been for lawsuits fighting for consumers' rights, many manufactured products in your home right now would be downright dangerous!

Most of the cases that changed our world for the better started as one person's complaint against another. It's true. One person *can* make a difference … especially if that person knows how to take his enemies to court and force them to produce evidence and argue common law principles to justify their behavior.

The rules of American justice taught by **Jurisdictionary**® originated in the Declaration of Independence and the wisdom of the common law of mankind. Principles of common law are given control in our government by provisions of the United States Constitution that establish a judiciary to control the other two branches at the behest of

the people themselves. If you ever wondered what makes America work, read that last sentence until the truth is clear to you. The principles of common law are made practical by rules of court and rules of evidence that make all contestants equal (at least in principle, if not in actual practice). We have a long way to go, yet. Our systems of law are not yet perfect. Our goal, of course, is to be equally treated by the governments that control our lives. We want every citizen to be empowered to demand liberty and justice. Our plan is to teach the rules of common law to every citizen who wants to know how to make effective progress toward peace in an ever-changing world.

The rules make America what it is … a land of liberty and justice for *all.*

Knowing the rules makes the difference between just liberty or liberty and justice

If a parent thinks the board of education should include a mandatory course on court procedure as a prerequisite to graduation from high school, that parent can bring a lawsuit to compel the board to adopt the new curriculum or, at least, to make a study and report back on its findings. If a child is being damaged by the state's refusal to teach the rules, and the parent wants the state to give the child a fighting chance in the world by teaching at least a little bit of law in the classrooms, the parent is not confined to merely showing up at school board meetings to complain. The parent can sue. If the state is going to demand that the child receive an education, then parents have the right to say what that education will include or not include. Going to school board meetings may be some help. **Jurisdictionary**® encourages parents to get involved in local government by active participation. Writing letters to the editor of a local newspaper or to the state department of education may have some positive effect. However, if the local school board refuses to consider parents' ideas and none will join the campaign to oust the board, there's only one place else to go.

Sue them in court.

It's your right in nearly every nation on the planet today. You don't need a friend in "high places". You don't need to pass a special bill in the legislature. You don't need a majority of the town's support. You don't need *anyone's* support. All you need is a few sheets of paper, a pen (or word-processor), and a filing fee to pay the clerk (usually waived for indigents).

By opposing bureaucrats on their own turf (i.e., in the courthouse) and by insisting that judges rule against every person who injures you unjustly, you are taking part in the most exciting of human enterprises ... securing the blessings of liberty for yourselves and for your posterity ... without violence.

By learning and teaching others the fundamental principles of justice you are promoting world peace ... one conflict at-a-time!

Together we are making a difference!

How to Win in Court

Jurisdictionary® is *easy* and *effective*.

Winning isn't about fancy presentations, hometown politics, or persuasive speech. Winning is about knowing and using the procedural rules, common law maxims, and effective fact-gathering tools that give honest people power to win consistently. Master the basics with these low-cost, easy-to-understand tutorials. Learn what *should* be done and how to do it effectively ... and economically.

Learn why lazy lawyers lose lawsuits ... and don't let it happen to you!

Learn the anatomy of legal proceedings. Discover how to find evidence and put it on the record. Overcome your opponents with legal arguments that work, using the same words lawyers use. Know what your attorney *could* be doing and make sure it gets done!

No other knowledge is more certain to save you money and secure prosperity. Learn about the rule of law, due process, *pro se* tactics, trial preparation, evidence discovery, when to use depositions, how to make your adversaries do what you want them to, and what can be done to control biased judges and corrupt lawyers.

Now it's *your* turn.

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