

Digital Evidence

Week 2 – Introduction to Legal Concepts and Terminology (Continued)

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Overview

5. The Court System

6. Criminal Law Terms

7. Civil Law Terms

Learning Objectives

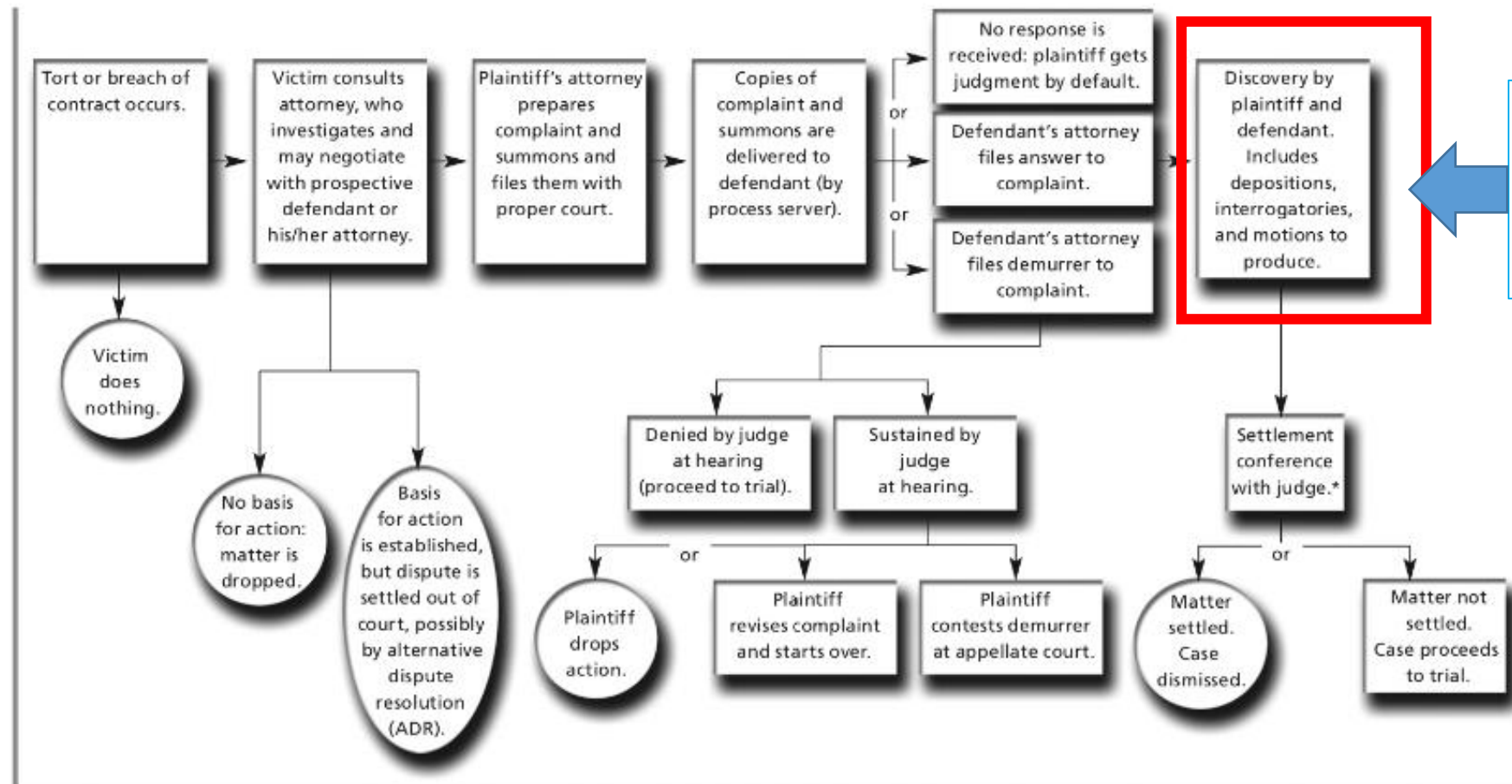
- Distinguish between the different U.S. court systems
- Recognize both criminal and civil law terms
- Discuss examples of civil class action and mass action cases

Part V

The Court System

How is a Civil Case Started?

EXHIBIT 3.4 Steps in a Civil Case—Before Trial



Most important stage for this class

* In many states, nonbinding arbitration may be required in addition to or in lieu of the settlement conference.

Civil Case Discovery

- Exchanging of information by both parties to learn facts about the dispute
 - E-Discovery/Digital Evidence is related to ESI (Electronically Stored Information)
- Parties request information through:
 - Interrogatories
 - Request For Production (RFPs)
 - Depositions

Civil Case Discovery (Cont.)

- Interrogatories
 - Written questions are sent to a party which must reply under oath with answers
- Request For Production (RFPs)
 - Written requests for documentary evidence that is relevant to the case (email, logs, pdfs/doc/docx, databases, spreadsheets, etc.)

Civil Case Discovery (Cont.)

- Depositions
 - Each party can depose witnesses
 - Witness testimony is under oath and is generally recorded by a stenographer and/or audio visual means
 - Transcript of deposition is put into evidence
 - Opposing party can use it to impeach (discredit) a witness

Civil Case Discovery (Cont.)

- Either party can decline to answer an interrogatory, RFP, or deposition question
- Opposing party could ask judge to compel an answer though

Civil Case Subpoenas

- Subpoena Duces Tecum
 - Attorney can issue to compel a person or business to turn over records
- Subpoena Ad Testificandum
 - Attorney can issue to compel a person to appear in court and testify about an issue
- Not complying with a subpoena can result in a contempt of court charge (fines or jail time)

Civil Case Class Actions

- If the case is a class action (many people who have the same factual allegations) then the plaintiff will file a motion for class certification after discovery is over
 - A class action always starts with one or more named plaintiffs
 - If the class is certified by a judge, then the class action represents all affected members of the class and the next step is settlement or trial by judge or jury

Further Notes About Civil Cases

- Anyone can file a suit but may be sanctioned (monetary fine) if the suit lacks merit and is frivolous
- At any point a civil lawsuit could be settled between the two parties and the case dismissed
 - This often happens before trial if the defendant realizes they have a poor chance of winning and that the jury could award more monetary damages than a settlement would cost

How is a Criminal Case Started?

- Starts with either:
 - An accusation by the government (usually a district attorney) which is a formal charge against a person for allegedly committing a specific crime, or
 - A grand jury that hears about crimes committed and issues an indictment if it believes guilt is probable

Steps in a Criminal Case

1. Arraignment

- Charges read against defendant before a judge

2. Preliminary Hearing

- Prosecutor presents evidence there is a strong suspicion the person committed a crime.

- If judge agrees, case is bound over to trial court

- ❖ Can be placed in jail or given opportunity to place bond

- If judge disagrees, case is dismissed

Steps in a Criminal Case

3. 2nd Arraignment

- Same procedure as first arraignment but happens in different trial court

4. Pretrial Hearing & Motions

- Judge hears motions to resolve outstanding issues
- Often an attempt to settle or plea bargain a case

5. Bench or Jury Trial

- Prosecution and Defense present evidence and call witnesses in front of judge and jury which eventually tries to return a verdict

Criminal Case Discovery

- Defendant can plead 5th amendment and can't be compelled to testify and incriminate himself or herself
- Prosecutors are required to turn over all evidence to defense

Jury Selection – Civil/Criminal Trials

- Selected through process called voir dire (pronounced v'wah deer)
- Jury consultants often hired by each side to help select jury
- Both sides can challenge and have potential jurors removed
- Generally 12 jurors are selected but may be as few as 6 in a civil trial

How is a Trial Conducted (Civil & Criminal)

- After jury selected, trial begins
- Opening statements
 - Plaintiff or Prosecutor goes first with a summary of what they expect to prove during the trial
 - Defense goes next or may pass

How is a Trial Conducted (Civil & Criminal)

- Evidence stage
 - Evidence is introduced and witnesses are called to testify by both sides

How is a Trial Conducted (Civil & Criminal)

- Direct Examination: Party calls their own witness and can ask them open ended questions which do not suggest an answer
 - They cannot “lead the witness”
- Cross Examination: Opposing party examines witness and can lead them with closed questions (yes or no) such as:
 - Isn't true you are being paid to testify here today?
 - You were seen at 12:30pm on December 4th at the victim's home, correct?
 - Witness can try to break out with “it depends...,” “Not Necessarily,” etc.

How is a Trial Conducted (Civil & Criminal)

- After evidence, either party may ask judge for a directed verdict (which tries to bypass a jury)
- After evidence is complete and both sides rest, the closing arguments happen, called summation
 - Plaintiff or Prosecutor goes first
 - Defense attorney goes next
 - Plaintiff or Prosecutor gets to go again

Jury Verdicts – Civil/Criminal Trials

- Criminal
 - Government must convince jury beyond a reasonable doubt (which is a higher standard than a civil trial)
 - Jury vote must usually be unanimous to convict defendant
 - Therefore, a single juror could block a conviction
- Civil
 - Plaintiff must convince jury by a preponderance of the evidence (harm happened more likely than not)
 - A 3/4^{ths} majority (9 of 12 jurors) for verdict in state courts
 - Federal courts generally require unanimous verdicts

Judgement

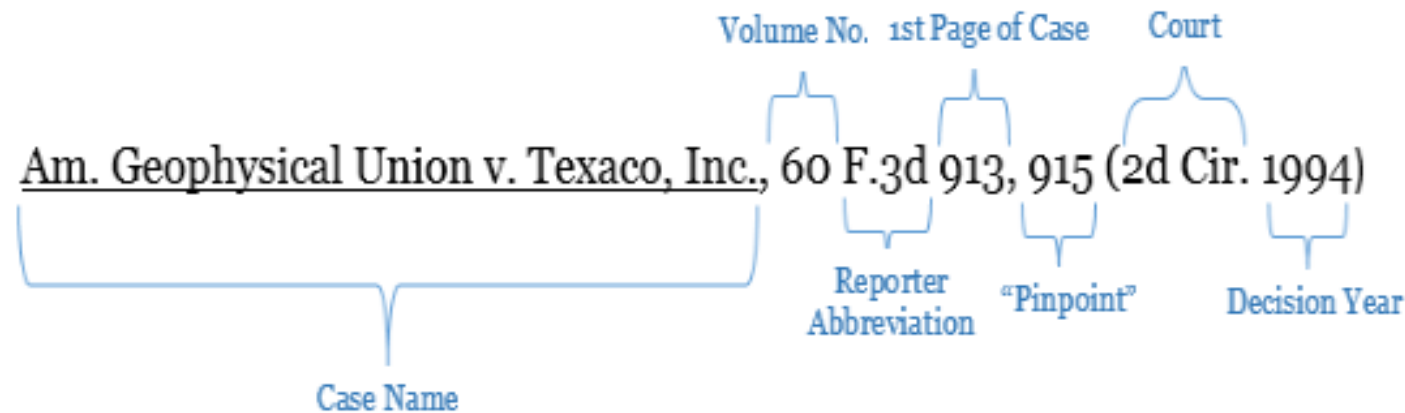
- Once a verdict is returned, the court generally issues a judgement for damages
- Judge can also reduce jury damages and can order a new trial if judge feels that jury's verdict is unreasonable
- Potential appeal by losing side would happen next

State and Federal Court Decisions/Opinions

- Unanimous Opinion
 - All judges agree
- Majority Opinion
 - Majority of judges agree
- Concurring Opinion
 - A judge may agree with unanimous or majority opinion but wants to make a special point for different reasons
- Dissenting Opinion
 - A judge who disagrees with the majority
 - May be used years later to overrule a majority opinion

State and Federal Court Decisions

- Attorneys may reference and cite the decisions of courts in motions and briefs
 - Especially published opinions from appellate courts



Note: In court documents (briefs, motions) and legal memoranda, a full case name is usually italicized or underlined. In academic legal writing (i.e., a law review article), full case names are generally not underlined or italicized.

Part VI

Criminal Law Terms

What is a Crime?

- A wrong against society as defined by a statute in a penal code and punishable by society

Terms

- Criminal Negligence
 - Crime that is careless or reckless
 - Examples:
 - Speeding 40 mi over, DUI, Careless of a health provider, Leaving a child at home alone, etc.
- Criminal intent
 - The state of mind accompanying an intentional criminal act
 - Examples:
 - 1st degree murder, conspiracy, assault, robbery, forgery, etc.

Terms

- Motive
 - Need, desire, or purpose for a person's actions
- Solicitation
 - Lure, strongly urge, entice someone to commit a crime

Terms

- Conspiracy
 - Agreement to commit a crime ahead of time between one or more conspirators
- Principal
 - Person directly involved in committing crime
- Accessory
 - Person who helps or assists in the committing of a crime

Terms

- Corpus Delicti
 - Prosecutor must establish these two points to try a person for a crime
 - Material upon which a crime has been committed (burned building, dead body, etc.)
 - Evidence of a person's criminal conduct (bullet hole, hacking tools on computer, etc.)

Terms

- Felony
 - Crime punishable by imprisonment for over a year or death
- Misdemeanor
 - Punishable by fine or less than a year of imprisonment
- Violation
 - Punishable by fine and carry no moral stigma
 - Fireworks, speeding, possessing alcohol as a minor

Some Crimes Against a Person

- Murder
 - First Degree – Premeditated and deliberate killing
 - Second Degree – Killing based on provocation
- Robbery
 - Taking money or property by fear or use of force
- Terrorism
 - Murder for political gain or revenge

Some Crimes Against Property

- Burglary
 - Unlawful entry with intent to commit theft
- Identity Theft
 - Stealing identification or using it during the commission of a crime

Defenses to Crimes

- Self-Defense
- Duress
 - Forced participation
- Mental Capacity
- Entrapment
 - Government induced the criminal act

Search Warrants

- Search and seizure for evidence issued by a search warrant and signed by a judge
- Raids involving digital evidence common for:
 - Hacking
 - Child exploitation
 - Murder

Part VII

Civil Law Terms

Terms

- Tort law
 - Concerns compensating victims that have been privately wronged
- Negligence
 - Carelessness and failing to act reasonably
- Strict liability
 - Victim needs to prove injury occurred but not that defendant was negligent

Terms

- Torts by Intentional Conduct
 - Assault
 - Create apprehension that victim is going to be harmed
 - Battery
 - Harmful or offensive touching of a victim
 - False Imprisonment/False Arrest
 - Intentional Infliction of Mental Distress

Terms

- Defamation

- Injuring a person's reputation through false or harmful statements to others

- Slander

- False spoken statement about victim

- Libel

- False written or printed statement about victim

Terms

- Invasion of Privacy

- Intrusion upon seclusion of another person
- Violation of right of publicity

- Fraud

- Misrepresentation or deceptive practices relating to the sale of a good or service

Some Types of Damages

- Damages
 - Loss caused by an injury
- Compensatory Damages
 - Actual damages for real loss or injury
- Punitive Damages
 - Used to punish wrongdoers that intentionally caused harm
- Statutory Damages
 - Monetary damages for violating a statute
 - Amount defined in statute

Class Actions vs. Mass Actions

- Class Action
 - Lawsuit filed on behalf of all class members which share the same facts and suffered the same harm
 - Lead plaintiff sues on behalf of class
 - Examples:
 - Facebook & Clearview AI (Biometrics)
 - Marriott (Data Breach)
 - Sequencing (Genetic Privacy)

Class Actions vs. Mass Actions

- Mass Tort Action
 - Each plaintiff treated as an individual and may have individually different facts about how they were harmed
 - Example:
 - Opioid Litigation
 - Oregon Wildfires

Text References

- McKinsey, J., & Burke, D. (2015). Carper's Understanding the Law (7th ed.). Stamford, CT: Cengage Learning.
- Feinman, J. (2018). Law 101 (5th ed.). New York, NY: Oxford University Press.

After Class

- Review and understand this slide deck on Canvas
- Your research paper topics are **due before our next in-person class on 1/26**
 - Read Chapter 1 of the course textbook prior to next class on 1/26

Questions???

