



Anatomy of a Civil Lawsuit

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Civil Case vs. Criminal Case

What's the Difference?

A Criminal Case is

- an action against a wrongdoer who has violated a federal or state statute, committed a crime, or done something that threatens or harms public safety and welfare. The government will initiate an action against the wrongdoer, and if the accused is found guilty, the punishment can be incarceration or a fine or both. The Prosecutor or District Attorney brings the case against the wrongdoer who is called the Defendant.

A Civil Case is

- a dispute between private individuals, groups, organizations or entities. The party wronged is called the Plaintiff. The Plaintiff will file a civil case against a Defendant in order to be paid money damages, compel the Defendant to act, or stop the Defendant from doing something that violates the Plaintiff's rights.



Examples of Civil Lawsuits

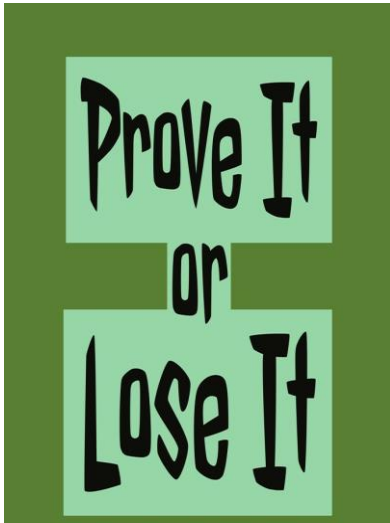


"Standing to Sue" What the heck does that mean?

A plaintiff must be the "real party in interest" with respect to any claim. (Code of Civil Procedure Section 367)

- Has the right to sue under the substantive law
- Suffered a concrete injury that is actual or imminent, not just conjectural or hypothetical
- Injury can be traced to the actions of the defendant
- It is likely, not just speculative, that the court can make things right by a favorable decision





Burden of Proof in a Civil Case “By a Preponderance of the Evidence”

It's *not* how much evidence is offered but rather if there is **convincing evidence that the judge or jury believes is likely true or accurate and tends to prove the Plaintiff's case.**

Jurisdiction The Key To Getting Started

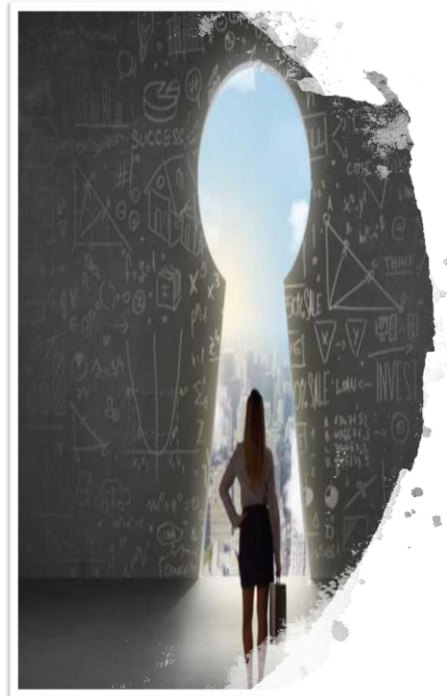
A California court can only hear and decide a case if it has *both* personal and subject matter jurisdiction

Personal Jurisdiction: the state where the person you are suing lives, or where the business or organization you are suing does business or if

- Defendant lives somewhere else and you serve legal papers on the Defendant while the Defendant is in the state where you filed
- Defendant has some minimum contact with the state where you filed
- Defendant owns real property in the state where you filed

Subject Matter Jurisdiction: the law allows the court to have general jurisdiction (a wide range of cases) or limited jurisdiction (only cases involving a claim for damages within a certain range)

- Small claims jurisdiction: \$10,000 or less
- Limited civil jurisdiction: up to \$25,000 or less
- Unlimited civil jurisdiction: damages over \$25,000





Venue

The county where you file your action

(See California Code of Civil Procedure Sections 392 to 403)

- Where the person you are suing lives
- Where the organization or business you are suing does business
- Where the dispute arose
- Where the accident happened
- Where the contract was entered into or broken

THE SUMMONS

- Notifies the defendants that a lawsuit is pending against them
- Warns there is a limited period of time within which to file a response
- Describes consequences if they fail to timely respond
- Plaintiffs must make a reasonable effort to notify defendants of the proceedings against them and of their right to appear and defend the action
- In civil actions, must serve the summons in person and meet certain requirements (Code of Civil Procedure sections 410.10 to 418.11)
- Special rules for “substitute service”, “service by mail and acknowledgment of receipt” and “service by publication (Code of Civil Procedure Sections 415.20, 415.30, 4145.50)

THE ENDING BEFORE THE BEGINNING

- Defendant failed to file a response within the time allowed by law and without a court order excusing the failure to timely file.
- Plaintiff must request the court clerk to make an entry of default judgment within 10 days after expiration of the time to respond and request must be supported by proper documentation.
- Entry of defendant's default instantaneously cuts off right to appear to appear in an action.



Check out the LA Law Library Civil Lawsuit Basics Series: "How to Correct Mistakes and Defaults"



The PLEADING PHASE

In the beginning...

A Plaintiff files a **COMPLAINT** that contains a statement of the facts constituting the cause of action, in ordinary and concise language. For example, the Plaintiff explains how the dispute or injury arose, who is responsible, and how much damages resulted from the defendant's wrongdoing.

(Code of Civil Procedure Section 425.10)



Check out the LA Law Library Civil Lawsuit Basics Series: "How to File and Respond to a Complaint"

The Defendant can respond to the **COMPLAINT** by filing within 30 days of being served an

ANSWER

An **ANSWER** should contain whatever denials or defenses that are necessary to contest the material allegations raised by the Plaintiff in the **COMPLAINT**.



The Defendant can also file a **CROSS-COMPLAINT** with the **ANSWER**

In the **CROSS-COMPLAINT**, the Defendant will claim the Plaintiff, another Defendant, or someone who is not yet a party to the lawsuit, is at fault.

ATTACKING THE PLEADINGS

- **DEMURRER**-“Even if we assume your facts are true, you still cannot sue me because as a matter of law....”
- **MOTION TO STRIKE**-“The court needs to strike irrelevant, false or improper matter that the Plaintiff inserted in the **COMPLAINT** or get rid of allegations that are not in conformity with the laws of this state.”
- **MOTION FOR JUDGMENT ON THE PLEADINGS**-Just like a **DEMURRER** but made after the time to file a **DEMURRER** has expired
- **MOTION TO DISMISS**-“You failed to state a valid cause of action. Goodbye!”



Offensive
Vs
Defensive
Style



Check out the LA Law Library Civil Lawsuit Basics Series: “How to File and Respond to a Complaint”

THE DISCOVERY PHASE

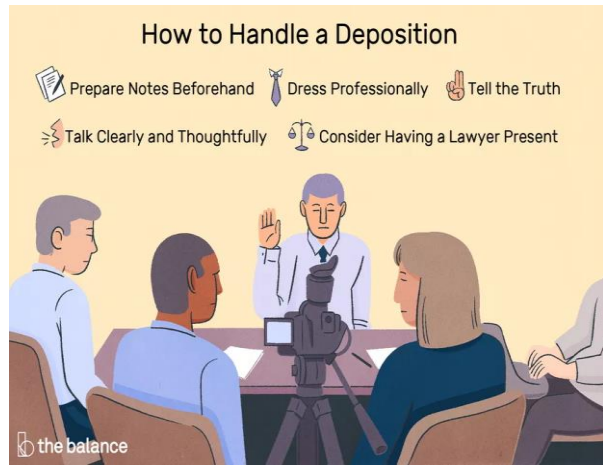


THE PURPOSE OF DISCOVERY IS TO TAKE THE "GAME" ELEMENT OUT OF TRIAL PREPARATION BY ALLOWING THE PARTIES TO GATHER EVIDENCE NECESSARY TO EVALUATE AND POSSIBLY RESOLVE THE CASE EARLY.



Deposition

Testimony taken under oath, subject to cross-examination, and preserved in writing.



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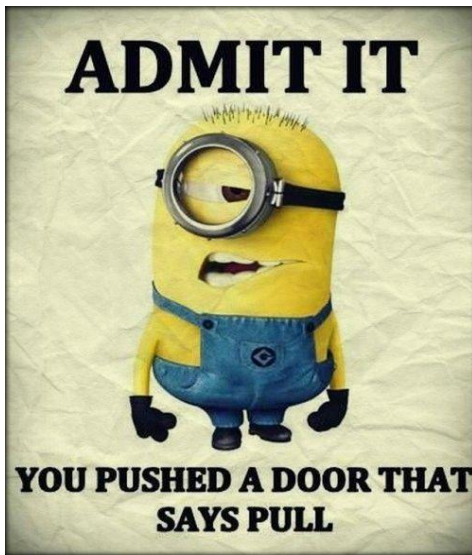


Interrogatories

- Written questions asked by one party to another party
- Answering party must answer under oath and in writing.
- Answering party may object as to the form of the question or on other legal grounds
- Party asking the questions can file a motion to compel an answer.



Check out the LA Law Library Civil Lawsuit Basic Series: "Interrogatories and RFAs: Getting Another Party to Answer Questions in Writing"



...and that is how you injured your forehead!

Request for Admissions (RFA)

One party forces another party to admit or deny the truth of any relevant fact or the genuineness of any document



Check out the LA Law Library Civil Lawsuit Basic Series: "Interrogatories and RFAs: Getting Another Party to Answer Questions in Writing"

SEEING IS BELIEVING



Subpoenas & Requests for Production

A party may be compelled to produce records or allow for the inspection of physical evidence. (Code of Civil Procedure Section 2031.010 et. seq.)



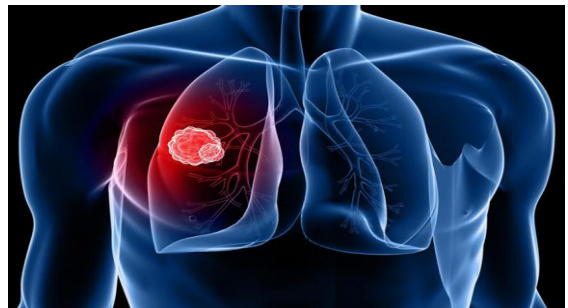
HIT SPEEDBUMP

FIRE EVERYWHERE

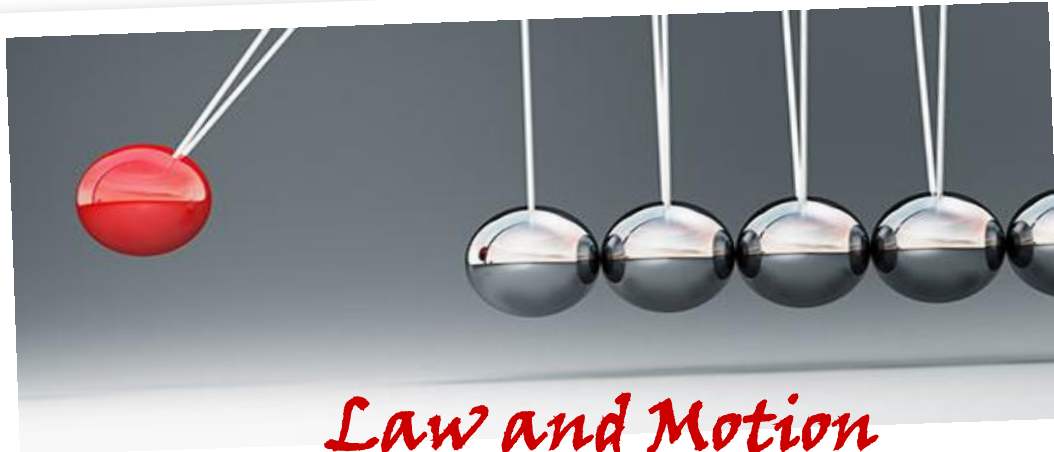
HELP ME

Check out the LA Law Library Civil Lawsuit Basics Series: "Subpoenas and RFPs: Getting Documents to Prove Your Case"

PHYSICAL OR MENTAL EXAMINATIONS



A Party may demand a physical and mental examination of an opposing party to evaluate the claim of injury, illness, or incapacity in a personal injury action. (Code of Civil Procedure Section 2032.010 et. seq.) The choice of the examining physician generally belongs to the defendant although the plaintiff has the right to the presence of counsel during the examination.



Law and Motion Phase



JUST DO IT.
OR ELSE!

Code of Civil Procedure Section 1003

A motion is a request that a court make an order.

Before filing a motion, the court expects opposing parties to meet and confer to try to informally resolve a dispute or limit the issues.

There are specific rules to follow concerning the time for giving notice to parties, the form of the motion and the method of service on the parties.

These can be found in the Code of Civil Procedure sections 1005, 1010, 1011-1015, 1017, 1020, and California Rules of Court.



Check out the LA Law Library Civil Lawsuit Basics Series: "How to Make and Oppose Motions"



A Motion for Summary Judgment

asks the court to determine that the entire action has no merit (or that there is no defense) and to terminate the action without the necessity of a trial.

Code of Civil Procedure Section 437c(a)

Purpose of a Summary Judgment

Provides court with mechanism to look carefully at the pleadings to determine whether trial is necessary to resolve the dispute.

The court will ask, “Even if the material facts are undisputed, is there enough evidence to back up the claim or defense, and does the law justify a trial?”



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Voluntary Dismissal



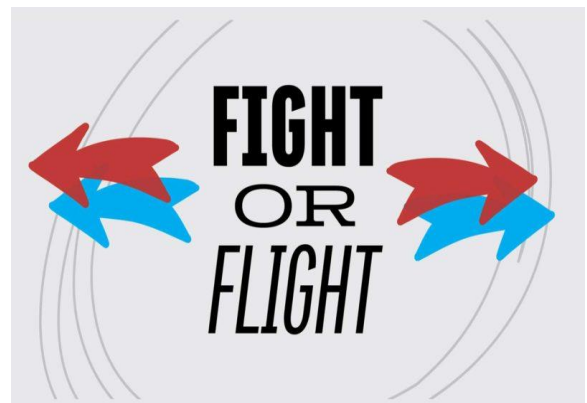
Plaintiff has absolute right to dismiss the action any time before the commencement of trial. If there is no realistic chance to win, the plaintiff may voluntarily dismiss the case "without prejudice" (Plaintiff can file a new lawsuit later) or "with prejudice" (when the case has settled).

Involuntary Dismissal



The Court may decide to dismiss the case for various reasons such as delaying in prosecuting, failing to timely serve a defendant or failing to abide by a court order. The court will decide whether the dismissal is with or without prejudice.

The Pre-Trial Phase



Code of Civil Procedure Sections 1141 & 1775

To reduce court congestion the court may order a case to judicial nonbinding arbitration to facilitate settlement through third party evaluation.



As an alternative, the court may order the case to mediation. Mediation is when a neutral third person with no decisionmaking power intervenes in the dispute to help the parties voluntarily reach their own agreement.

MANDATORY SETTLEMENT CONFERENCE

California Rules of Court 3.1380

The court may set one or more mandatory settlement conferences before a civil trial judge. Each party must file and serve on the other a mandatory settlement conference statement at least 5 days before the scheduled mandatory settlement conference.



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THE TRIAL PHASE



The Pre-Trial Conference

- discuss settlement one last time
- Parties estimate the length of trial
- Parties exchange a list of expected witnesses
- Parties exchange exhibits and other demonstrative evidence
- Parties go over jury instructions with the judge
- Motions in limine may be heard
- Parties exchange trial briefs

The Trial

- **Voir Dire-Jury Selection**
- **Opening Statements**
- **Plaintiff presents case and calls witnesses with direct examination**
- **Cross-examination and re-direct**
- **Plaintiff rests**
- **Motion for directed verdict**
- **Defendant presents case with direction examination**
- **Plaintiff cross-examination**
- **Defendant rests**
- **Plaintiff's rebuttal case**
- **Closing arguments**
- **Jury Instructions**
- **Verdict**



Check out the LA Law Library Civil Lawsuit Basics Series: "Appearing at Trial: Rules and Strategies"

I Just Won!
**Now
What?**

#TimeToPayUp

If you win at trial and the verdict says the other party owes you money or property, you are the judgment creditor and the losing party is the judgment debtor. You must take legal steps to collect your judgment.



Check out the LA Law Library Civil Lawsuit Basics Series: "Enforcing Judgments"



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