

Ch. 21 Sec. 2: Civil Procedure

Civil procedure is the process used to take a case through the civil justice system. The federal and state courts have rules about how a disagreement must be brought to trial. The purpose of these rules is to settle disputes in a _____ way.

Preparing for a Civil Trial

Think back to the accident described at the beginning of this chapter. Tommy's parents thought that one or both of the drivers were ; responsible. The parents hired a lawyer. The lawyer tried to get either of the two drivers to pay the medical bills. When that failed, she advised the parents to go to _____.

Court Filings A civil lawsuit begins with a _____, a legal document that charges someone with having caused harm. The complaint is filed with a court. It describes the problem and suggests a possible solution—damages, equity, or both. By filing a complaint against each driver, Tommy and his parents became the _____.

The defendant's written response to a complaint is called an _____. In the answer, the defendant will either admit or deny _____. For example, the driver whose car hit Tommy may blame Tommy for not using the crosswalk and the ice cream truck driver for parking in a dangerous place. The driver of the ice cream truck, meanwhile, may blame both Tommy and the driver of the car.

The defendant learns about the _____ when he or she receives a copy of the complaint and a _____, an order to appear in court. The summons is usually delivered by a court employee or through certified mail. Next, the defendant is permitted to tell the court his or her side of the story.

Obtaining Evidence The next step is for the _____ — the two sides in the lawsuit—to gather _____. Each party has a right to know any information relevant to the trial, including information held by the other party. The process of gathering evidence before a trial is known as _____.

The purpose of discovery is to make sure that the plaintiff, defendant, and lawyers know of any evidence that might be presented at the trial. Unlike movie or television courtroom dramas, there are no “surprise witnesses” in a real civil or criminal trial.

One method of discovery is a _____ (suh PEE nuh), a court order to produce a witness or document. Suppose a plaintiff was injured when her car's brakes failed. She might ask for a subpoena ordering the carmaker to provide written records of factory brake tests.

Information may also be gathered by asking questions. The record of answers to questions asked of a witness before a trial is called a _____ (dep uh ZISH uhn). A court reporter is present at the _____ and writes down what the witness says. Lawyers use depositions to find out what witnesses will say in court. The lawyer representing Tommy and his parents, for instance, might get depositions from both drivers and from neighbors who saw the accident.

Questions can also be mailed to a person, who must then answer them in writing. Written questions are often used to get detailed or technical information concerning the case. Both depositions and written answers must be _____. They are given under _____, just like testimony during the trial itself.

Juries and Verdicts in Civil Trials

Once the evidence has been gathered, the parties are ready for the trial to begin. As in criminal trials, witnesses are questioned, evidence is presented, and a judge makes sure that the trial proceeds in an orderly manner. However, there are some important differences between _____ and _____ trials.

First of all, there is usually more _____ in a criminal trial. Someone _____ of a crime can be sentenced to jail or prison and may even be sentenced to death. Therefore, the defendant has the right to a _____. The verdict must be based on the _____ vote of a group of citizens.

Parties in a civil case run less risk. They do not always have the right to a jury. Under the Constitution, federal courts must allow juries in civil cases that involve more than \$20. However, most civil cases are heard in state and local courts, where the minimum amount is usually over _____. Juries are used mostly for _____ cases. They are rarely used in equity cases. In most civil trials, both parties may agree to have a judge decide the case without a jury.

A jury in a civil trial is often made up of _____ people. In some states, though, there may be as few as six jurors if both parties agree. The jury does not always have to reach a unanimous decision. Agreement by three fourths of the jury is enough for a _____ in some states.

The Burden of Proof Verdicts in civil cases are based on a less difficult _____ than in criminal cases. In a criminal case, the government must prove the defendant's guilt "_____." In civil cases, the plaintiff must prove the case only "With a preponderance [greater weight] of the evidence." This means that the courts decide which side has presented the more convincing and reasonable evidence.

Problems in the Civil Courts

Tommy and his parents were happy when their trial was over. The jury decided that the ice cream truck driver was at fault because his truck had blocked the view of oncoming traffic. The jury awarded the family enough money to pay Tommy's medical bills. Still, the process had taken two years and had been expensive.

Court Delays _____ often take a long time to settle. There are not enough judges to handle the growing number of cases being filed. Between 1960 and 2002, federal district courts had nearly a _____ increase in cases. More than 400 new judgeships were created during that time, but the courts have not been able to keep up with their

workload. Someone filing a lawsuit may wait weeks or months before a judge has time to hear the case.

Once the trial starts, it can take a while to settle. The average federal lawsuit takes less than a year. However, as of 2005 there were almost 39,000 federal cases that were three or more years old. Delays in state courts are sometimes much longer.

One cause of delay is the time it takes to gather evidence. Also, selecting a jury can take a long time. In addition, court rules make it possible for lawyers to delay trials in ways that will help their side.

High Costs Trials are often expensive. For many civil trials, people need the help of lawyers who understand the law and know how to prepare cases. Lawyers' fees make up much of the cost of most _____.

In some cases, the lawyers are paid by the hour. The fees add up when there is a great deal of evidence to gather and study, as well as many hours to spend in court. In _____ cases, the lawyer's fee is often a large percentage of the money awarded by the judge or jury. Other costs include filing fees for court papers and payments for expert witnesses, such as doctors. There is also the cost in time and inconvenience to the parties themselves.

The Need for Alternatives Most lawsuits _____ make it to trial. Plaintiffs often drop cases if they think they have little chance of winning. Sometimes the high cost of a trial will cause parties to _____ out of court.

The judge and lawyers involved in a case may strongly encourage the parties to find other ways of settling the conflict. In some states, courts will not even hear certain types of cases, such as those involving child custody, unless the parties have already tried to settle the conflict out of court.

In recent years, more and more people have been looking for ways of settling conflicts more quickly and cheaply. In the next section, you will explore some of the methods they have used.