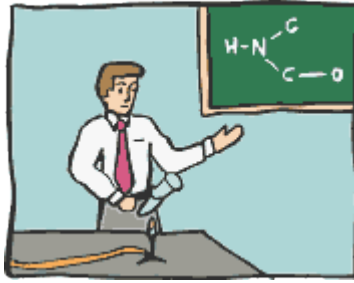


Essential Elements



What You Must Prove to Win

The Right Stuff

Winning requires the "right stuff".

Essential elements win cases in court.

Nothing else does!

Every court case, civil or criminal, is decided by elements.

If one side is missing an element, that side loses.

The molecular formula above is formyl cyanide, the stuff they drop in a bucket of water to release cyanide gas to execute prisoners in a gas chamber. Remove one element of C_2HNO , and it's no longer formyl cyanide. It's something else!

In court "something else" doesn't win.

You need the "right stuff" to win.

Allege and prove ALL ESSENTIAL ELEMENTS of a contested issue in court, and you win!

That's legal education in a nutshell *right there!*

You cannot win without the essential elements.

Elements matter.

Elements make a difference.

Molecules of chlorophyll (the stuff that makes grass green) and hemoglobin (the stuff that makes blood red) are almost identical structures. Chlorophyll has a magnesium atom where hemoglobin has an iron atom. Otherwise the two giant molecules are nearly identical. The life chemistry of plant and animal matter differ by only two elements - iron and magnesium.

One atom decides. The difference is one element.

Court cases are also decided by the elements.

You win by alleging and proving the essential elements of the contested issues!

I've used this simple truth for 36 years, winning cases for my clients by simply alleging and proving essential elements ... while my opponents were off in the weeds trying to *persuade* the court their client should win.

Persuasion has very little to do with winning.

Chemistry does!

Understand ESSENTIAL ELEMENTS and winning is easy.

Allege and prove.

It's that simple!

Introduction

It's almost like the ONLY THING you need to learn is in this class, because this is the GOLDEN KEY to winning in court.

Understand elements and you've won half the battle already, because the elements are what you need to allege and prove ... whether you're defending or on the attack.

And elements are easy to learn with the Jurisdictionary[®] course.

Let's say ESSENTIAL ELEMENTS here, and when I speak of "elements" later on you'll know I mean the ESSENTIAL ELEMENTS.

The right to bring a legal action depends on the existence of facts and law that fits the facts.

LAW + FACTS → PRIMARY QUESTION

Is there a law that creates legal action based on the facts?

No Law = No Legal Action

Insufficient Facts = No Legal Action

Suppose an unlucky fellow is arrested and charged with 1st Degree Murder. The facts alleged by the prosecutor might be as follows:

- a nice old lady is dead
- the accused was found near the body
- the accused was found holding a bloody knife
- the accused had a reputation for violence
- the accused had threatened to kill the deceased person

Sadly, in too many courts, this would be considered a slam-dunk case, and the poor fellow would be convicted on these facts and spend countless years in prison or be executed by lethal injection.

BUT !!!

There are missing *essential elements*.

Do you know what they are?

Can you guess?

What further allegations and proofs are necessary to try and convict the accused of 1st Degree Murder?

#1 ... the accused caused the death

#2 ... the accused intentionally caused the death

#3 ... the accused planned to cause the death

In too many courts today this man would be convicted on "circumstantial evidence" (covered in another class in this course), because the prosecutor is looking to chalk up another conviction so he or she can get a promotion and/or the defense attorney is dumb as a sack of hammers, lazy as a hog in mud, afraid to stand up and fight for the accused ... or all three!

YOU WILL KNOW BETTER when you finish this class.

For justice to be served in *any case* (no matter what or where) essential elements must be alleged and proven by admissible evidence.

Murder, foreclosure, child custody, fraud, ... etceteras. Every case that proceeds properly *should* be decided based on the elements that are particular to the kind of case it is.

Can you guess how many tens of thousands of innocent men, women, and children are suffering in prison at this very hour, unable to enjoy the liberties you and I are blessed with today, because lawyers didn't know (or care about) what you are learning here?

Tell EVERYONE about Jurisdictionary[®] so the last words of our Pledge of Allegiance can be true: "... with Liberty and Justice for all." Not ALL are getting justice these days, because too few know how and too many lawyers aren't keeping to their oath.

Public Legal Education is a moral imperative too long ignored by our public school administrators and too long hidden from you by the Bar.

So, lets learn more about ESSENTIAL ELEMENTS now, so you can get justice, protect yourselves from legal corruption, and tell others how our court system is *supposed to work!*

Finding the Elements

Of course, if one doesn't know what the essential elements are that must be alleged and proven, he or she is going to have an extremely difficult time winning his or her case.

Finding the elements, therefore, is the very first thing you must do when you are involved in any legal proceedings, whether you are accused of a crime, suing someone, or being sued. There is no substitute for this.

You *must* know the elements!

Finding them, thanks to the internet and the Online Legal Research tool in the EXTRAS menu on the right side of this page, is easy.

Criminal Case Elements

Criminal cases turn on essential elements the prosecutor must allege and prove.

As you will learn in the class on Evidence, the prosecutor must allege and prove ALL essential elements of crimes beyond and to the exclusion of any reasonable doubt. (More about that in the class on Criminal proceedings.)

If you are accused of a crime (no matter what) the very first step you must take is to find the LAW that clearly states what the essential elements of the crime might be, i.e., what the prosecutor must allege in the charge and prove beyond any reasonable doubt using *admissible* evidence (not surmises and guesses that too often result in convictions based on nothing more than circumstantial "evidence" that isn't truly evidence at all).

To get a conviction for theft in Texas, for example, the prosecutor must allege and prove with *admissible* evidence beyond any reasonable doubt that the accused "obtained possession of the property of another without legal justification intending to deprive the other of possession".

Let's list those elements:

- possession of property of another
- without lawful justification
- with intent to deprive

Would "But I gave it back!" work as a defense?

Ask yourself, "What are the elements?" Do the elements say anything about whether the accused must continue to possess the property? What if he only took his neighbor's bicycle for a ride around the neighborhood and returned it an hour later? Is he still guilty of theft?

What do the elements say?

If people accused of crimes won't bother to do what this course teaches and do the legal research necessary to find what the law says are the elements, they are likely to be convicted when they might have gone free.

Prosecutor's failure to allege all the elements - no conviction.

Prosecutor's failure to prove all the elements beyond and to the exclusion of any reasonable doubt - no conviction.

Yes, it really *is* that easy!

Civil Case Elements for Plaintiffs

The same "essential elements" principle applies in civil cases when you are bringing an action against others.

To win you must allege and prove ALL essential elements of at least one "cause of action".

For example, here are the essential elements that must be alleged and proven to win a case for breach of contract:

1. Existence of a contract the court can enforce
2. Act or failure to act that breaches the contract
3. Money damages plaintiff suffered as proximate result

If any one of those three does not exist, no court can give the complaining party a favorable judgment.

To win a case for breach of contract or any other proceeding in civil courts, all the essential elements must be alleged and proved using *admissible evidence*.

Moreover, merely alleging the "existence of a contract" is never enough. One must allege "ultimate facts" that establish each essential element.

For example:

1. On 27 February 2022 Plaintiff and Defendant entered into a written contract by which Defendant promised to provide labor and materials to paint plaintiff's house on or before the end of March 2022 in exchange for \$3,500.
2. A copy of the contract is attached as Exhibit A.
3. On the date of said contract Plaintiff paid defendant \$3,500 cash satisfying Plaintiff's obligation under the contract.
4. As of 15 May 2022 Defendant has failed and refused to perform any part of the work promised.
5. As a proximate result Plaintiff has suffered money damages in the amount of \$3,500 plus court costs and other damages including, but not limited to, water damage to portions of Plaintiff's front porch resulting from bare wood being exposed to the rains of April.

WHEREFORE Plaintiff moves this Honorable Court to enter an Order of Judgment against Defendant for Plaintiff's damages and to grant such other and further relief as the Court may deem reasonable and just under the circumstances.

Allegations 1 and 2 satisfy the first essential element.

Allegation 3 satisfies Plaintiff's sole obligation under the contract, leaving Defendant obligated to perform his contracted obligation.

Allegation 4 satisfies the second essential element.

Allegation 5 satisfies the third essential element.

Sufficient ultimate facts are alleged to satisfy all essential elements for the cause of action known as breach of contract to go forward in court.

A Motion to Dismiss for Failure to State a Cause of Action will fail, because a cause of action for breach of contract has been properly stated by alleging sufficient ultimate facts to establish each of the three essential elements.

Too many *pro se* people (and a surprising number of bar lawyers) file lawsuits without properly stating a cause of action, merely listing essential elements without alleging sufficient "ultimate facts" to satisfy the essential elements requirements.

For example:

1. Plaintiff and Defendant entered into a contract.
2. Defendant breached the contract.
3. Plaintiff suffered money damages.

Not enough!

Federal courts (and an increasing number of state courts) are allowing insufficient factual allegations to go forward.

If you are defending in one of these liberal courts, *fight for your right to be told the FACTS supporting your opponent's claim for damages!*

Otherwise you will be unjustly required to fight a phantom.

DON'T PUT UP WITH IT !

This may allege essential elements for a breach of contract case, but it fails to list sufficient ultimate facts to satisfy the essential elements required to legally obligate a court to hear the case.

A Motion to Dismiss for Failure to State a Cause of Action should be granted and plaintiff required to re-write his complaint within a certain number of days or be barred from further proceedings.

Moreover, it isn't fair! It leaves the defendant unable to respond with an effective defense, because it states no ultimate facts defendant can rebut or oppose.

(A list of commonly encountered causes of action and their essential elements is included in the class on Causes of Action in this course.)

Civil Case Elements for Defendants

There are three primary ways to win as a defendant in civil cases.

#1 ... Show plaintiff has not alleged all essential elements of his cause(s) of action.

#2 ... Show plaintiff has not proved all essential elements of his cause(s) of action.

#3 ... Allege and prove all elements of at least one of your Affirmative Defenses (something most lawyers never learned to do).

In the previous section you learned about the plaintiff's burden to allege and prove all essential elements of his cause(s) of action.

In this class you will learn something most lawyers miss.

Affirmative defenses have essential elements, too ... elements you should allege and prove, just as plaintiff must allege and prove the essential elements of his cause(s) of action.

Many lawyers I opposed in my 36 years of winning failed to attack the plaintiff's case with affirmative defenses, and those who did merely listed the names, e.g. assumption of risk, accord and satisfaction, laches, etc. (Affirmative defenses are covered in the Affirmative Defenses class in this course.)

I don't remember *any* who listed the essential elements of their affirmative defenses, but affirmative defenses do have essential elements.

Similar to the plaintiff's case, the defendant should allege and be prepared to prove the essential elements of his affirmative defenses.

For example, here are the elements for the affirmative defense called "Assumption of Risk".

1. Plaintiff elected to participate in an activity inherently dangerous.
2. Plaintiff's injuries were reasonably foreseeable.
3. Defendant did not act negligently.

This defense applied in a case I won for the Sensei of a karate school where a martial arts student claimed to be injured and found a lawyer eager to sue my client for money damages he would share if he won.

Instead of merely alleging the affirmative defense like this:

1. Assumption of Risk

I alleged it like this:

1. Assumption of Risk
 1. Plaintiff decided on his own to be a karate student.
 2. Plaintiff decided on his own to engage in practices that involved striking and being struck by other karate students.
 3. Plaintiff knew or should have known through the exercise of reasonable diligence that karate practice involves striking and being struck by other students.
 4. Plaintiff's alleged injuries were reasonably foreseeable.
 5. No act or failure to act on the part of the defendant caused or contributed to plaintiff's alleged injuries.

The stupid lawyer who merely lists names of affirmative defenses without alleging facts that satisfy the essential elements fails to allege what must be proven for the defense to carry the day.

By alleging not only the name of your affirmative defenses but also the facts that satisfy the essential elements of each defense, you put yourself in a position to use your 5 discovery tools to prove those facts and give legal effect to your affirmative defenses (something no lawyer I encountered in my 36 years ever did).

Allege the facts that satisfy the essential elements of all your affirmative defenses so you can win just by proving those facts using your 5 discovery tools taught elsewhere in this course.

(A list of commonly encountered affirmative defenses and their essential elements can be found in the class on Affirmative Defenses in this course.)

Common Law Case Elements

Common law cases are not what an alarmingly large number of people believe. They are, in fact, cases that stand (or fall) on essential elements set out in published appellate court opinions, instead of statutes or other points of law created by legislatures or executive orders.

Breach of contract cases are historically common law cases, because the laws of contract arise from hundreds of years of published appellate court opinions going back to English judges (and further back to Hammurabi in Mesopotamia, Gao Yao in China, and other ancient judges whose rulings still influence concepts of common law justice today).

Some common law cases stand on *new* principles more recently established by liberal appellate courts that too often stray from traditional principles of American Justice. *For these you must dig deep with rigorous research to read those new cases carefully to see exactly what principles of common law are being created and how they affect you.*

The entire progeny of abortion law, for example, derives from a handful of appellate court opinions that date *before* Roe v Wade. Indeed, to understand Roe you must read the Massachusetts case Eisenstadt v Baird and cases *before* Eisenstadt.

The American People are woefully unaware of how their national morality is affected by the decisions of politically motivated justices in our highest courts, and if *you* are affected by any of these recent decisions the only remedy you have is to *carefully* read not only the recent opinion that affects you directly but also the previous opinions cited in support. From my personal point of view, some (and even "some" is too many in my opinion) of the increasingly liberal opinions of our courts are undermining the sound, common-sense opinions of the past that launched this nation where "the little guy" is supposed to be able to stand "on the level by the square" with every other.

Beware liberal laws and the shifting sands of time.

Common law is not what most of you think it is.

Long ago it was the very strength of our nation.

Today it increasingly is her shame.

Statutory Case Elements

Several years ago I won an interesting case to prevent two children of an elderly lady from blocking her will that left a very expensive beach property to the lady's best friend, instead of to her greedy children. The lady's friend visited this woman frequently. The two friends spent good times together, while her children never visited. When she died, of course, they were instantly interested in getting whatever they could, even if they had to break the law do it.

So, the children used a Xerox[®] machine to create what they claimed was a copy of their mother's will. What they presented was dated years after the genuine will that I submitted to the probate court for administration. They claimed the court should probate their "copy" so they (instead of the woman's long-time friend) could get the woman's expensive properties and financial assets.

So, I did some legal research (as you will learn to do in the Legal Research class in my course) and found a statute that listed several *essential elements* that needed to be alleged and proven before a mere "copy of a will" could be probated as a valid statement of the last wishes of a person deceased. I went a step further and studied some controlling appellate court decisions that refined and clarified what the legislature's statute said.

Guess what?

One essential element was missing, so the made-up copy did not qualify for probate. The original will went through, so the lady's friend got the estate as the lady wished.

But, first the children hired a lawyer to fight for them. They later added a second lawyer, and before the final hearing they were paying three lawyers to work against me ... lawyers who should have known from the beginning that the only way they could win was for me to be as stupid as they were.

At the final hearing they failed to meet their burden of proving all essential elements the statute required.

I moved the court to order a directed verdict and won the case by finding the essential elements set out in the controlling statute and requiring the judge to follow the law.

As I was gathering my papers to leave the courtroom, I heard one of their lawyers say to these greedy ingrate children, "There was no way we could have known this was going to happen."

They should have known they would lose.

By the way, please don't just read statutes. Use statutory citations as search terms to find controlling appellate court opinions that refine and clarify what statutes say and how their essential elements affect the outcome of *your* cases.

Cases in Equity Elements

Cases in equity are a bit different from cases at law, because in most circumstances they do not seek money damages.

Cases in equity seek to change the *status quo*.

An example is a case for rescission, where the petitioner (called petitioner instead of plaintiff in equity cases) seeks to have the court cancel or amend a contract, deed, or other evidence of the relationship between parties.

To win a case for rescission one must allege sufficient ultimate facts to satisfy the requirements of these essential elements:

1. The making of a contract or other legal commitment with evidence attached, if available.

2. Existence of fraud, mutual mistake, false representation, impossibility of performance, or other ground for rescission or cancellation.
3. Plaintiff rescinded and notified the other party that he rescinded.
4. If plaintiff received any benefit, he must offer to restore defendant to the extent of the benefits, if restoration is possible.
5. Plaintiff has no adequate remedy at law (i.e., an award of money damages alone is not sufficient to restore plaintiff to his *status quo ante* (i.e., status before the fact)).

Each of these five essential elements need to be established by alleging ultimate facts that explain the situation.

In many of these cases, the judge has a certain degree of discretion whether to grant favorable judgment.

Fairness is considered.

The interests of justice are considered.

The impact on society is considered.

Otherwise, these cases proceed like every other case.

[More on elements of equitable remedy cases in the class on Causes of Action in this course.]

How to Allege Elements

As stated above, elements are alleged with facts.

Ultimate facts!

- not conjectures
- not guesses
- not opinions

Facts like, "Defendant stole plaintiff's bicycle."

- not "Defendant is not a nice man."
- not "Defendant should be punished."
- not "Defendant made me angry."

Satisfy the elements, then STOP.

Facts are facts you can prove.

If you allege facts that are impossible to prove, you are weakening your case.

If you allege facts that have nothing to do with the essential elements (and will not tend to lead you to the discovery of admissible evidence) you are wasting ink and shooting yourself in the foot!

Like Sergeant Friday on the old black-and-white TV show "Dragnet" used to say, "Just the facts, ma'am."

Elements are alleged by facts.

Do not list the elements!

Allege the facts ... *and only the facts you believe you can prove using your 5 discovery tools explained in the class on Discovery in this course.*

Law and facts win in court.

Nothing else does.

Prove Facts, Not Elements

As stated in the previous section, "You don't prove elements."

You don't even allege elements.

You allege facts and prove facts.

And you prove them using *admissible evidence*.

You get evidence by using your 5 discovery tools to get "facts reasonably calculated to lead to the discovery of admissible evidence".

Yes, the facts you go after with your discovery tools do NOT have to be admissible in court so long as they are "facts reasonably calculated to lead to the discovery of admissible evidence".

Take no prisoners!

Do NOT be shy!

Too many young lives were sacrificed for your right to use your 5 discovery tools to prove the facts you allege in your pleadings.

Your 5 tools are *yours!*

Your 5 tools are incredibly powerful when used properly.

Your 5 tools, coupled with solid pleadings, are *how you win!*

Do NOT try to prove *anything* that is not related to an essential element in your case, because it is both a waste of time and gives your opponent more mud for slinging at the wall to confuse the judge.

If your opponent tries to hide the ball, file a motion for an order commanding him to obey the rules of discovery.

If your opponent is ordered to obey the rules of discovery and continues to hide the ball, file a motion to show cause why he should not be held in contempt of court.

If the judge orders him to show cause why he should not be held in contempt for hiding the ball and he continues to hide the ball, file a motion to have him held in contempt.

If the court finds him in contempt and orders the Sheriff (or federal Marshall) to take him into custody, *you will get your discovery!*

Don't let anyone tell you our legal system is corrupt!

The system is fine.

The corrupt people who are allowed to get away with their crooked games, because you and others are still learning how to hold their feet to the fire, is the *real* problem.

Hold their feet to the fire!

Move for Final Judgment

Once sufficient ultimate facts are alleged and proven by admissible evidence, the last step is to move the court to enter an order declaring whatever you sought.

If you are plaintiff in a case at law, the order is an award of money damages and, hopefully, a writ of execution so the Sheriff (or federal Marshall) can levy on the defendant's assets.

If you are defendant in a case at law, the order dismisses you from the case.

If you are plaintiff or defendant in an equity case, the order changes the *status quo*.

If you are the accused in a criminal case, hopefully the order will allow you to enjoy the rest of your life where there are no steel bars to restrain your liberty.

Move for final judgment only after all the ultimate facts are alleged and proven by admissible evidence.

Then put the fight behind you!

Conclusion

I'll say it again.

Almost everything you need to know you learned in this class.

Almost.

There's a lot more you need to learn, and the other classes in this course will fill in the gaps for you.

But, this class is the foundation for *everything else!*

Winners Allege and Prove Essential Elements.

Keep on with the rest of the classes, working down the list of links in the MAIN MENU and *do not jump ahead ...* but as you work through the other classes, keep what you learned here uppermost in your mind, *because winning depends on knowing this stuff !*

You can do this.

Indeed, any average 8th grader can learn How to Win in Court in a single weekend using this amazing case-winning law course.

Tell everyone you meet.

