Easy Guide to Procedures

Get the Big Picture

A Brief Tour

See the BIG picture here before getting into the details.

Spend a few minutes with this EasyGuide *before jumping ahead to the more advanced tutorials*, and the mind-numbing fog of legal mystery will disappear more quickly for you.

NOTICE:
Most teachings in this course apply in both civil and criminal court and both state and federal court.
Some do not.
Refer to *official* rules in your jurisdiction. For example, Google "Florida Rules of Evidence" or "California Rules of Civil Procedure" or "Indiana Rules of Criminal Procedure", etc.
Civil Procedure is not the same as Criminal, but the Rules of Evidence are the same in both.

This is the simplest, shortest, most straightforward overview of litigation you will find *anywhere*.

This is *not* a substitute for completing the course, however. It's only a brief overview here at the beginning of the course to give you a glimpse of the "Big Picture". By starting out with a clear idea of how all the parts fit together, you will learn more quickly and get more out of the course materials that follow.

In just a few minutes you'll know a bit about the basic rules that control our courts and begin to see how important it is to learn how to use the rules tactically and strategically to win *your* case.

The rest of the course will be much easier if you spend a bit of time here *before moving on*.

The MAIN MENU at left is your study outline. Begin at the top and work your way down. Skip nothing. Each class builds on those above it in the MAIN MENU.

If you jump ahead, instead of following the layout of the MAIN MENU from top to bottom, your lawsuit knowledge will be a chain with missing links giving your opponent unnecessary opportunities to defeat you!

The Rules

Lawsuits are contests.

Like all contests, lawsuits have rules!

Winners know the rules and how to use them.

Learn the rules and how to use them ... or lose!

To imagine one can win any contest without knowing the rules and how to use the rules tactically and strategically is silly.

To believe one can defeat deceitful, underhanded, sneaky opponents in court without knowing the rules makes as much sense as believing a dozen amateur players can win a game of baseball against the New York Yankees without knowing anything about balls, strikes, fouls, bunts, or double-plays.

It can't be done!

Yet, hundreds of thousands of *pro se* litigants go to court each year without a lawyer, knowing nothing about the rules of court or how to use them tactically and strategically.

Pro se litigants are people who fight in court
without a lawyer.

Many other hundreds of thousands pay millions of dollars each year for lawyers to fight for them, while they themselves know nothing about what their expensive lawyers *should* be doing! Sad stories about lawyers who didn't do what needed to be done are all too commonplace! Lives are destroyed. Businesses go bankrupt. Fortunes are squandered. All because the public has been denied the simple step-by-step knowledge *you* will gain from this easy self-help course.

I began winning as a licensed attorney in 1986, applying the same rules, tactics, and strategies you learn in this course. I won again-and-again against lawyers who never took time to learn the rules and how to apply them. They stormed into court in thousand-dollar suits spouting long-winded, high-sounding arguments without having the slightest clue how to apply the rules that *always* decide who wins.

The Rules Rule!

No. Not rulers!

Rules!

The rules rule!

Winners know how to use the rules tactically and strategically to gain advantage and defeat opponents in parlor games, sporting events ... even military campaigns.

Really!

Is there any *other* way to win?

Litigation is something like a "game" in that it has rules - strict rules.

It is a word-war, with heated battles and dreadful casualties, all decided by rules *you* are going to learn how to use *tactically and strategically* as you work your way through this online course.

The rules of court control legal word-wars. The rules control your opponent and his lawyer. The rules control witnesses. The rules even control the black-robed referee sitting high on his bench where he calls players' fouls and out-of-bounds ... *all according to the court's rules.*

And, lucky for you, the rules are easy to learn and use tactically and strategically.

Winners know the rules *and how to use them tactically and strategically*.

Winners

Winners fight fair ... but fight with all they've got going.

Winners are polite ... but demand justice when it's due.

Winners seek what's right ... and never play dirty tricks.

Winners find it easy to win.

Winning is only difficult for two kinds of people:

- Those who have no just cause deserving a favorable judgment and
- Those who don't know the rules or how to use them tactically and strategically.

Those with a just cause, who know the rules and how to use them tactically and strategically *win pretty much every time*.

Those who tell you otherwise aren't winners.

Think about it.

Those who say, "The courts are all corrupt. You can't get justice," are people who either didn't have a winnable case or were too lazy to take time to learn how to use the rules tactically and strategically.

Most cases have at least two parties.

Most cases end up with one side winning.

So, it is always possible to win, since about half the people who go to court get what they're after ... justice!

Be a winner.

When you go to court, go for a good cause.

And, before you go, *learn the rules of court in your local jurisdiction and how to use them tactically and strategically by what is taught in this course.*

Can You Spell "CAT"?

C-A-T spells the three stages of every lawsuit.

1. Complaint
2. Answer
3. Trial

Every lawsuit starts with a **Complaint** (or petition).

If the defendant cannot avoid the complaint with a successful motion (explained later) he must file an **Answer**.

If the parties cannot resolve the case by settlement, summary judgment, or some other pre-trial method, the issues are submitted to **Trial** for the court to decide who has the greater weight of admissible evidence in favor of his allegations.

That's it!

That's how every lawsuit proceeds.

It's no more complicated than that.

If you can spell "CAT" you already have a good start.

Can You Count to "5"?

If you can also count to 5 you know more of the basics.

There are only 5 principal processes in every lawsuit.

- Complaint
- Flurry of Motions
- Answer (and Affirmative Defenses)
- Discovery
- Trial

The Complaint is a pleading filed by the plaintiff (person bringing the lawsuit). Plaintiff alleges facts in his Complaint that he must prove to win. He alleges facts telling why the court has jurisdiction. He demands judgment. And, if he wants a jury trial, he demands jury trial in his Complaint.

A Flurry of Motions may be filed by the defendant to avoid filing an answer to the plaintiff's Complaint. If the defendant succeeds, plaintiff's case disappears. There are only three (3) of these simple motions (explained in detail later in this course).

The Answer is a pleading filed by defendant (if his Flurry of Motions fails). Answers should *always* be filed with Affirmative Defenses (explained in detail later in this course). Answers respond to each

allegation of the Complaint. Affirmative Defenses allege facts telling the court why plaintiff should lose and defendant should win. The Answer should also demand a jury trial (if one is desired) and include counter-claims, cross-claims, and third party claims, if appropriate (also fully described with forms elsewhere in the course).

Discovery is a tooth-and-nail fact-finding battle engaged in by both parties prior to trial. The goal of discovery is to find "admissible evidence" that may tend to prove facts alleged by the parties' pleadings. There are only five (5) discovery methods (fully explained in detail with sample forms later in this course).

Trial determines the outcome, if the issues have not already been resolved by summary judgment, motion for directed verdict, settlement, or some other pre-trial resolution. Trial requires nothing more than presenting the "admissible evidence" (obtained by pre-trial discovery). The court then decides who has the most, i.e., who has the greater weight of admissible evidence.

There may be a jury to weigh the facts, but it's not required.

C - A - T

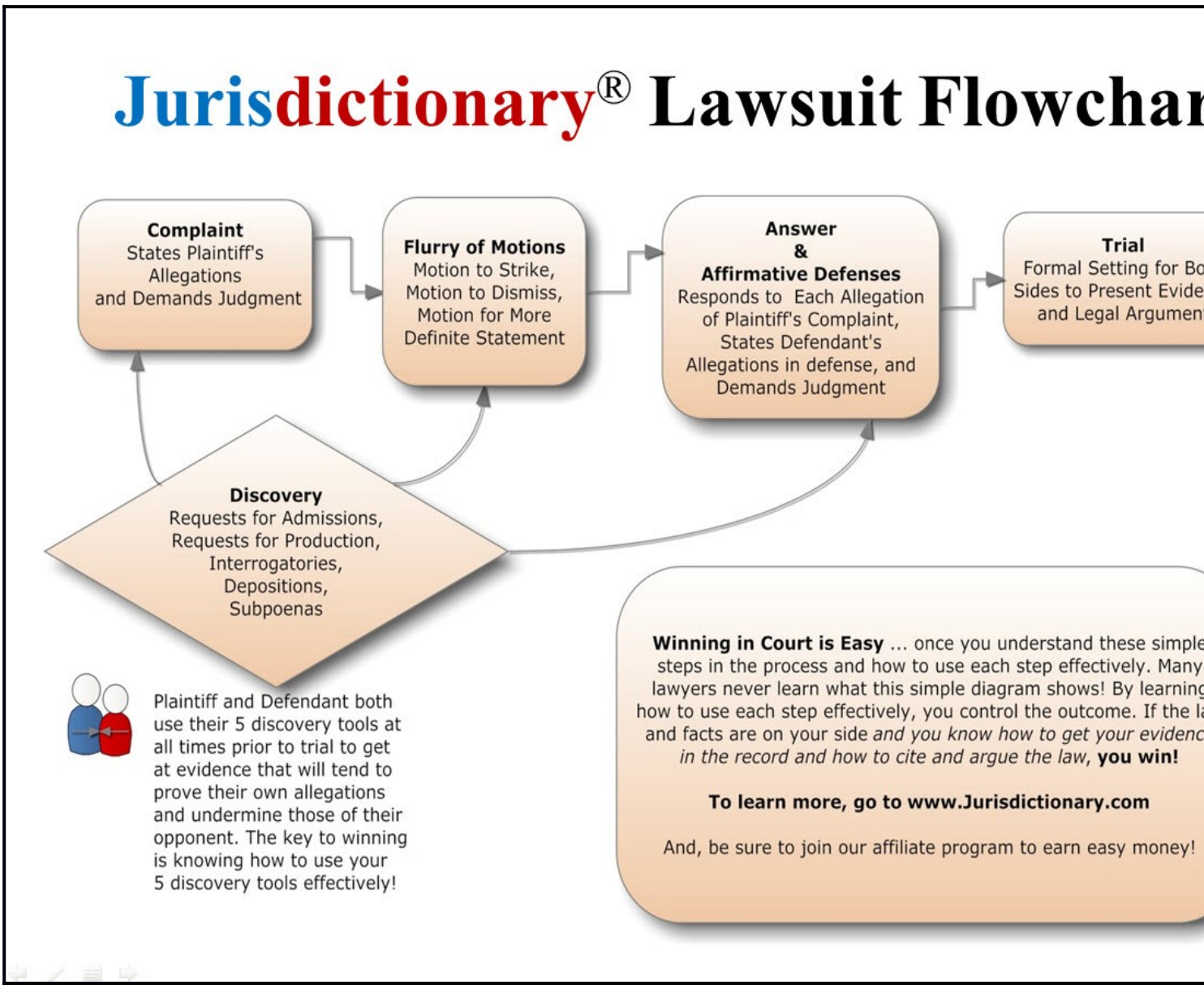
Yes! It really *is* that simple!

The Lawsuit Flowchart

The Lawsuit Flowchart shows how every legal battle proceeds.

Please memorize the flowchart shown below.

Later in this course you'll learn more about the individual steps in the flowchart and how they all fit together to help you win your case.



Everything follows this simple process.

- Complaint
- Flurry of Motions
- Answer and Affirmative Defenses
- Discovery
- Trial

Always the same. Every case. No matter what the issues are.

Preparing to Win!

The first step to winning is *preparation*.

Before filing the first paper make a detailed list of:

1. All essential facts *you must prove to win* (only essential facts).
2. All people who know any essential facts *you must prove to win*.
3. All documents that may be evidence of facts *you must prove to win*.
4. All things (not documents) that may be evidence of facts *you must prove to win*.

Now you have a list of what *you must prove to win!*

Until you've made your lists, you aren't prepared to win!

Next, do legal research to find, make copies of, and be prepared to cite:

1. Statutes that promise a favorable verdict if you prove your facts.
2. Rules of evidence that promise a favorable verdict if you prove your facts.
3. Rules of procedure that promise a favorable verdict if you prove your facts.
4. Constitutional provisions that promise a favorable verdict if you prove your facts.
5. Appellate court decisions that promise a favorable verdict if you prove your facts.

Whether you're a plaintiff or defendant, be sure to make a rock-solid plan before you make your first move.

Identify weaknesses in your opponents' case. If he's in trouble for unpaid taxes, get his IRS records. If he owns the property where you slipped and fell, get a certified copy of his deed. If he's been convicted of a crime of dishonesty, get the official conviction papers from the clerk's office.

Everything depends on making a winning record of the facts and law in your favor and knowing *in advance* what you need to get into that record as *admissible evidence.*

Louis Pasteur said, *"Chance favors the prepared mind."*

And, the Scout Motto is, "Be prepared."

Lawsuits are an "axe fight".

Sharpen your axes and be prepared to swing your axe effectively!

The Burden of Proof!

The burden to prove a fact is on the person offering the fact.

There is no burden on the person opposing the fact.

The burden to prove a right is on the person claiming the right.

There is no burden on the person against whom the right is claimed.

Know who has the burden of proof!

You can win sometimes by simply showing that your opponent cannot carry his burden.

It's never your word against his. If he makes a claim, he has the burden to prove that the court should grant his claim. If he alleges a fact, he has the burden to prove the fact he alleged is true.

Burdens are carried "by the greater weight of admissible evidence" in civil cases, "beyond and to the exclusion of any reasonable doubt" in criminal cases.

Knowing who has the burden is essential to winning in courts!

Don't get backed into a corner by some crooked lawyer's tactics or a bullying judge.

You don't need to disprove your opponent's claims.

You don't need to disprove the facts your opponent alleges.

Your opponent has the burden to prove what he alleges, and you have the burden to prove what you allege.

Each has his own burden.

Unless your opponent can carry his burden with the evidence necessary to prove what he alleges, *you win!*

The Right to Sue: Causes of Action

This is the most important thing to know about lawsuits.

- Does plaintiff have a legal "right to sue"?
- If he does, what facts must he *prove* to win?

The "right to sue" is called a "cause of action".

Each cause of action requires plaintiff to (1) allege and (2) prove certain essential fact elements (explained fully later in this course with many examples that are easy to understand).

If plaintiff fails to allege in his complaint sufficient facts to establish the essential fact elements of at least one cause of action the court recognizes, his case will be dismissed if defendant acts promptly with a motion to dismiss for failure to state a cause of action.

The right to sue is called a "cause of action"
or, in some courts, a
"claim on which the court can grant relief".

If you're being sued, look carefully at what the plaintiff's complaint alleges.

Has plaintiff alleged sufficient facts to establish of the essential elements of the cause of action he is suing for?

Or, is he just whistling in the wind, wasting everybody's valuable time?

Every cause of action arises when:

1. Defendant owed plaintiff a duty the court recognizes,
2. Defendant breached his duty by some action or failure to act, and
3. Plaintiff suffered damages as a proximate result.

Contract

For example, a valid contract creates a duty on both parties to perform what they promised in the contract. To be an enforceable contract, each party must have made, understood, and agreed to honor respective promises.

One promises to perform a service, for example, and the other promises to pay money.

One promises to deliver a longhorn steer, and the other promises to butcher the steer and give back 100 pounds of steaks ready for the grill.

The mutual promises can be nearly anything.

Every contract is a promise for a promise.

If one side breaches the contract by failing or refusing to perform his part of the bargain, i.e., what he promised, the other has a cause of action called "breach of contract".

1. Duty
2. Breach
3. Damages

Negligence

Everyone has a duty to be careful around others so not to cause them harm. A breach of this duty is called negligence. If you hit a pedestrian with your bicycle, because you weren't watching where you were going, the pedestrian has a right to sue (i.e., a cause of action) to recover money for his damages. You had a duty to watch where you were going. You breached that duty. The pedestrian suffered damages as a proximate result.

1. Duty
2. Breach
3. Damages

Winning as Plaintiff

To win as plaintiff, you must:

1. allege sufficient facts to establish the essential elements of at least one cause of action the court recognizes,
2. prove the facts you alleged by getting "admissible evidence" into the court's record, tipping the scales of justice in your favor.
3. Move the court for a favorable judgment based on the evidence.

Winning as Defendant

To win as defendant, you must:

1. Try to avoid filing an Answer to the Complaint by using the Flurry of Motions, then, if you don't succeed with your Flurry of Motions,

2. File an Answer with Affirmative Defenses that allege sufficient facts to establish the essential elements of each defense,
3. Prove the facts you alleged by getting "admissible evidence" into the court's record, tipping the scales of justice in your favor.
4. Move the court for a favorable judgment.

Making the Record

To prove the facts you alleged (by the greater weight of admissible evidence), you must:

1. get the evidence you need using discovery (explained in detail later in this course with many examples and sample forms),
2. keep your opponent on the straight-and-narrow using timely objections (also explained in great detail with examples later in this course),
3. keep the judge on the straight-and-narrow using timely objections,
4. if you cannot settle or resolve the issues by summary judgment or other pre-trial tactic, present your evidence at trial in a cogent, well-reasoned sequence, and
5. make absolutely *certain* everything said or done gets into the official written record by arranging *in advance* for the proceedings to be recorded and for you to have access to a certified copy of a written transcript of that recording.

Anything that does not make it into the record is a waste of time, because by law it cannot be considered by the court to reach its judgment of the matter unless it is in the record.

And, moreover, unless it is in the record of the trial court an appellate court will not even take time to look at it if you lose and need to appeal.

If you *should* win, you *will* win ... **IF** you do things the way this course teaches!

The Complaint: Where it Begins

To win a breach of contract case, plaintiff must (1) allege and (2) prove sufficient facts to establish three essential elements:

1. there was an enforceable contract resulting from a mutual exchange of enforceable promises,
2. the defendant breached the contract by some act or failure to act, and
3. plaintiff suffered money damages as a direct and proximate result.

To win a negligence case the plaintiff needs only to (1) allege and (2) prove by the greater weight of admissible evidence three essential elements:

1. defendant owed plaintiff a duty of care recognized by the court as enforceable,
2. defendant breached his duty of care by some act or failure to act, and
3. plaintiff suffered money damages as a direct and proximate result.

The plaintiff should begin with a complete case-stating complaint that alleges all the facts and law necessary to establish that he has at least one cause of action for which the court can grant relief.

He should use separate numbered paragraphs; one sentence per numbered paragraph; one subject and one verb per sentence. He should avoid unnecessary adjectives and adverbs.

He should keep all allegations simple and to the point.

This is not the time to try to "prove" one's case. That comes later. This is the time to state on the record (1) that the court has jurisdiction, (2) that the plaintiff has at least one cause of action for which the court can grant relief, and (3) that the plaintiff demands the relief to which he is entitled by law.

The plaintiff must omit nothing he must prove to win, for if he fails to allege everything needed to prove his case, he'll be fighting with one hand tied behind his back.

He should state his case in concise, numbered sentences. He should say what *must* be said. He should say *only* what he needs to prove to win (unless he knows the defendant will admit in defendant's answer some fact that will help the plaintiff get at some evidence he needs).

He should add nothing that will not help him win.

He should leave the defendant no "wiggle room" at all.

The same rules apply to defendants. If a defendant cannot avoid filing an Answer to the plaintiff's complaint by filing one or more of his Flurry of Motions [explained later] he must respond with an Answer to each numbered paragraph of the Complaint either

- denying,
- admitting, or
- claiming he has insufficient knowledge to admit or deny.

He should then add his Affirmative Defenses, alleging all ultimate, essential facts that must be proven to show that the plaintiff cannot meet the plaintiff's burden of proof.

The plaintiff's Complaint is his initial pleading.

The defendant's Answer and Affirmative Defenses are the defendant's initial pleadings (together with any counter-claims, cross-claims, or third party complaints the circumstances require, as explained later in full detail).

Once the pleadings are filed by both sides (when the pleadings are "closed") the respective parties fight to see who can most cleverly and strategically use the five (5) discovery tools to prove the facts alleged in their pleadings ... and hopefully do so *before* trial.

That's right. *Before* trial.

In almost every case I've seen since 1986 as a licensed member of the Bar, the winner could win *before* trial by clever use of his discovery tools, either forcing the other side to settle or prevailing on a motion, such as a motion for summary judgment. [More on summary judgment with forms and explanations later in the course.]

Both parties should carefully stick to the facts and law.

Personal opinions are like noses. Every person has one. The only opinions that count in a lawsuit are opinions of expert witnesses and published official opinions of appellate court justices who have power to overturn or remand decisions of the trial judge.

Make your record by stating *all* you must prove to win, stating the facts as they are.

State the facts and law that trigger the court's jurisdiction and those that should control its final decision.

The plaintiff's Complaint and the defendant's Answer and Affirmative Defenses (i.e., the "pleadings") set the stage for the battle. Both sides must be clear and concise in stating their positions powerfully. The pleadings set the stage for everything else that happens in the case. Do the best job possible. Courts rely on well-written pleadings to see what the cases before them are all about. Failure to state your case well in your pleadings weakens your ability to prove and win your case.

State your case *clearly* in your pleadings.

Tell precisely what you want, why you want it, and why the court should give it to you.

Use words ordinary people understand.

Be direct.

Come to the point.

Do not ramble.

Do not "tell a story".

Do not write "a letter to the judge".

Being straightforward in the allegations of your pleadings is a badge of honesty. Liars embellish and beat around the bush. Don't do it! Show the court you have nothing to hide. State your case in simple language an average 8th grader would understand.

Trust me.

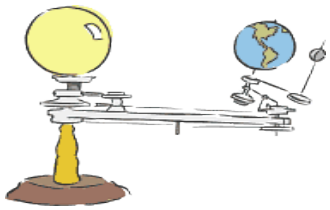
Your case will go much more smoothly and effectively if you do as I teach, instead of making the mistake of trying to impress the judge with fancy language. It doesn't impress anyone but the person doing the writing.

Keep your pleadings simple and to the point!

Stick to the essential fact elements and law that controls the court.

Simplicity = Power to Win!

Flurry of Motions: Avoiding the Answer



Once the plaintiff's Complaint is served on the defendant along with the court's summons, the defendant must act. He cannot merely ignore the complaint, because the complaint was served with the court's summons, a document issued by the court that *commands* him to respond or suffer adverse consequences not to his liking!

He can file an Answer or one or more motions in a defensive tactic we call the Flurry of Motions. These motions can possibly avoid the necessity of filing an Answer. If he succeeds with just one of those motions, he may win the case then and there!

The flurry of motions may include one or all of the following motions:

1. Motion for an Order striking the Complaint or some part of it,
2. Motion for an Order dismissing the Complaint or some part of it, or
3. Motion for an Order requiring the plaintiff to re-write his complaint so ordinary humans can understand it.

That's the flurry of motions.

These motions can and should be used (whenever the facts allow) to avoid the necessity of filing an Answer and Affirmative Defenses.

They are commonly used to win cases without going to the trouble of getting involved in long, drawn-out, expensive, time-wasting, health-depleting fights that many lawsuits become because either (1) the case is very complex or (2) the lawyers choose to drag it out as long as possible so they can make more money from their respective clients.

Motion to Strike

Motions to strike ask the Court to delete part or all of a complaint for being scandalous, impertinent, insolent, immaterial, irrelevant, or utterly false and known to the pleader to be false. Motions to strike can be very effective ways to draw the court's attention to the character of your opponent.

One very effective motion to strike is the Motion to Strike Sham which alleges that the other side included allegations in his pleading that were false, were known to be false at the time of filing the pleading, and created genuine issues of material fact, i.e., that would affect the outcome of the case if allowed to remain on the record. I have won these and put an end to my client's miseries by stopping lying plaintiffs and their lawyers in their crooked tracks. Lying in one's pleadings is a serious no-no and can expose the liar to criminal contempt and possible jail time.

Motion to Dismiss

Motions to dismiss move the court to enter orders denying the plaintiff relief because his complaint is defective on its face.

A complaint may be defective in many possible ways. The most common problems that result in dismissal are listed here:

- the court lacks jurisdiction over the subject matter of the case,
- the court lacks jurisdiction over the defendant's person,
- the court's summons was defective,
- the service of the summons and complaint was defective,
- the complaint fails to state a cause of action,
- the case was filed in the wrong court (wrong venue),
- the complaint fails to name a defendant essential to resolve all the issues.

All this is explained later.

Using motions to dismiss can also clarify your record by getting at facts early, facts that must be proven sooner or later.

There are some motions that *must* be filed before filing the Answer and Affirmative Defenses. If these are not filed the issues they raise may be deemed to have been abandoned. Go on line or visit the law library at your courthouse or local college or university to find the official rules of procedure governing your local court as to what these essential motions are and when they must be filed.

Motion for More Definite Statement

Motions for a more definite statement can be fun!

Some people (even experienced lawyers) are such sloppy writers that they omit verbs from sentences, write sentences that have no nouns, or otherwise state their case in such confusing or ambiguous terms that it would be unjust to require a defendant to answer. Justice should not require a defendant to admit or deny allegations so confusing that no reasonable person could understand what is being alleged.

For example, consider the following: "Defendant's oncoming automobile at the intersection of Fourth Street and Maple Avenue on the 8th of May 2011".

What does *that* mean?

Can you admit or deny? Of course not.

And, believe me, this kind of writing does show up in pleadings.

In such cases the defendant should move the court to enter an Order directing the pleader to re-write his pleading so it can be reasonably understood by people of average intelligence.

If a party cannot understand what the other party is saying in his pleading, his opponent should not be required to respond and should file a Motion for More Definite Statement.

The Answer & Defenses

If the flurry of motions fails, the defendant must then file an Answer to the complaint ... responding to each numbered paragraph line by line. The

defendant will likely admit some of the plaintiff's numbered allegations. He will deny others. And, for some he may state that he lacks sufficient knowledge to admit or deny.

That's all there is to an Answer.

However! The wise defendant will **always file Affirmative Defenses** with his Answer. He will list the name of each defense (e.g., Estoppel, Accord and Satisfaction, etc.) and under each heading he will allege the ultimate essential facts that, if proven, will overcome the allegations of the plaintiff's complaint. [Affirmative Defenses are covered in depth later in this course.]

Once this is done, the plaintiff may file a Reply to the defendant's Affirmative Defenses, admitting or denying each of the defenses.

Sometimes the reply may be as simple as, "The plaintiff denies each and every affirmative defense and demands strict proof."

By the time this process is complete (Complaint, Answer & Affirmative Defenses, and Reply to Affirmative Defenses) we say the pleadings are "closed". Anyone reading the record at this point should know what the fight is about. The record should now show what the plaintiff is alleging, what the defendant is alleging, and what facts each must prove by the greater weight of admissible evidence to win.

Anything admitted in the pleadings is admitted for all purposes and need not be proven.

Anything denied in the pleadings becomes an issue of fact to be resolved through discovery (explained in detail later in this course).

If a plaintiff believes a defendant is lying when defendant denies or says he has insufficient knowledge, the plaintiff should use discovery to dig for evidence that proves defendant is lying and puts the defendant's lie in the public record with admissible evidence.

If a defendant believes a plaintiff is lying, he also uses discovery to prove the lie and puts it in the record with admissible evidence.

The simple goal of the parties to every lawsuit is to

- present the law with citations to official authorities
- present *admissible* fact evidence
    - documents
    - things
    - testimony
- move the court to enter a favorable judgment.

Parties use pleadings to map out their case, then use their five pre-trial discovery tools to get facts into the record with admissible evidence that tends to prove the allegations of their pleadings, then move the court for a favorable judgment.

Allege. Prove. Move.

Discovery: The Key to Success

Once you are in a lawsuit, either side may use any or all of five (5) separate evidence "discovery" tools to obtain facts "reasonably calculated to lead to the discovery of admissible evidence".

Note that the facts sought *and obtainable* through the use of any of these five discovery tools need not in themselves be admissible or relevant! The discovery of facts sought during the discovery phase of court proceedings need only be "reasonably calculated to lead to the discovery of admissible evidence"!

Do not let lying lawyers tell you or the judge otherwise.

Read your local rules and be prepared to demand that they be obeyed by judge and opposing parties!

This is *very, very, very powerful!*

If a party refuses to respond in good faith to a discovery request, the court may dismiss his case and award judgment to the other side (or send the party to jail until he does respond in good faith). If a non-party refuses to respond in good faith to a discovery request, that person may be jailed until wiling to answer *in good faith!* The procedures for this are fully outlined with sample forms elsewhere in this course.

As you will learn in depth as you continue in the course, discovery is the "key to success", second only to laying a solid foundation with powerful initial pleadings.

Here are the five discovery tools parties can use to get at any fact "reasonably calculated to lead to the discovery of admissible evidence":

1. Request for Admissions,
2. Request for Production,
3. Interrogatories (written questions),
4. Depositions (pre-trial interviews under oath), and
5. Court Process (subpoenas, order to enter on private property, etc.).

Each has advantages over the others.

Each gets at certain facts better than the others.

You may not be able to get all the "facts" you discover into the court's record, since some of the facts may not be "admissible evidence", but you can get at *any* fact using these tools so long as the fact you seek to discover is "reasonably calculated to lead to the discovery of admissible evidence".

Again, do not let lying lawyers argue otherwise. Read your rules!

Use *all five* of your discovery tools if you can ... but use them wisely and sparingly!

Much more about your five discovery tools is covered in later sections of this course with forms and examples. For now, here are a few very brief descriptions of your five tools for getting at evidence.

Request for Admissions

By far the most powerful discovery tool is the request for admissions.

Requests for admissions are in the form of leading questions.

A leading question is *the most powerful tool to get at truth!* They state a fact and require the responding party to admit the truth of the fact or deny it.

Request for Admission: "You were operating your vehicle on Midland Road in Bay City, Michigan, on the 18th of June 2020."

The respondent must either admit or deny. There's no wiggle room.

Powerful!

A request for admission, like a leading question, states what the fact is then demands that the responding party admit or deny the fact.

Requests for admissions are *written*, while leading questions are asked of witnesses in court or at a deposition.

A properly-written request for admission, therefore, states one or more facts, either individually or in reference to documents or things, and requires the responding party to admit or deny what it states.

The party responding to a request for admissions cannot object. He must admit or deny the facts set forth or claim he lacks sufficient knowledge *after the exercise of reasonable diligence* to admit or deny such facts.

For example, you can require your opponent to admit he was driving his automobile when his vehicle slammed into yours, killing the parakeet in your back seat. If you say it this way, however, you may not learn much, because he may say he has no knowledge if he doesn't know your parakeet was killed or if he believes his negligent driving was not the proximate cause of the parakeet's death. He doesn't have to admit if any part of your statement is false or beyond his knowledge.

Break the admissions into single sentences, like this:

1. You were driving your car 13 March 2011 between the hours of 10:00 and 11:00 a.m.
2. Your car collided with plaintiff's car during that period.
3. Plaintiff's car was damaged as a result.
4. A parakeet in the back seat of plaintiff's car was killed as a result.

The responding party will now be required to admit the first three statements, even if he doesn't know the last.

Requests for admissions lock the record for all facts that are admitted.

If the other side responds with lies, you have an opportunity to prove he is a liar by using one or more of your other discovery tools.

Request for Production

Once you are in a lawsuit, either side may require the other to produce nearly any document or thing "reasonably calculated to lead to the discovery of admissible evidence".

If a particular document will assist you to get at facts "reasonably calculated to lead to discovery of admissible evidence", then you can force the other side to produce that document, *even though the document itself may not be admissible as evidence!*

If your opponent's toothbrush or a chain saw your opponent keeps in his garage will assist you to get at facts "reasonably calculated to lead to the discovery of admissible evidence", you can force the other side to produce these things for your inspection.

The other side *must* produce (or go to jail).

Later in the course you'll learn the process to obtain a court order directing the sheriff (or United States Marshal, in federal cases) to arrest your opponent and hold him indefinitely until he complies with your request for production. The same holds true for all discovery tools. The other side responds according to the rules or risks facing jail time until he does!

This is powerful stuff!

Parties can request production of documents, photographs, books, toothbrushes, chain saws ... anything reasonably calculated to lead to the discovery of admissible evidence, i.e., a genuine effort to assist the Court in its search for truth.

Request to examine original documents instead of copies. If you accept copies (a common practice) you run the risk of the other side doctoring the papers. Don't do it. You may have to go to your opponent's offices (or the offices of his attorney) to see and copy the originals, but it is far better than to accept a bunch of copies in most cases.

If the copies say what you need them to say, then accept copies.

If there is any doubt, demand the originals *as the rules allow!*

Interrogatories

Interrogatories are written questions. That's all that big word means.

Interrogatories are written questions your opponent must answer in writing and under oath (or go to jail).

Some jurisdictions limit the total number of interrogatories you can use to get at facts, so use them sparingly.

Make each question count.

Save some to use just before trial (if you cannot avoid going to trial) so you can clean up the loose ends before being required to put on your dog-and-pony show in the courtroom.

Don't use interrogatories if you can get information with other discovery tools that are not limited by the rules in your jurisdiction.

Save your interrogatories.

You can learn a lot by deposing the other side, but remember you usually get to depose a party only once. After that, if you need to ask a question to get ready for trial (but cannot get the information you need with a request for admission or production) you'll wish you had a few interrogatories left over.

Don't use them all up front.

This same principle applies to any discovery tool that is limited in your local jurisdiction. Consult your local official rules to see which discovery tools are limited and which are not.

Depositions

Depositions are expensive and overrated, yet they do afford advantages you cannot have before trial with any other discovery tool.

You get to meet your opponent and/or his witnesses in person.

You get to hear their voice and watch their face.

In some jurisdictions you can even videotape them so you can show the jury how they squirmed when you asked about their gun collection or where they got all that money for their European vacation.

Use depositions only if you need to, and *never until you know as much as you can find out about the case by using your other discovery tools*.

Know what you're going to ask at deposition *before* you begin.

Plan your questions.

As much as possible, know in advance what a witness knows. Be prepared to make him tell what he knows by asking the right questions. Ask your questions in proper sequence, starting with easy ones and working up to the ones that will pin your opponent to the wall.

Know all you can possibly know *before* deposing anyone!

You usually get to depose a witness only once. The next time you get to ask that witness questions, he will be on the witness stand, and your opponent will be doing all he can to confuse you and the judge with interruptions and objections.

And, at trial, you cannot seek facts "reasonably calculated to lead to the discovery of admissible evidence". You can only seek facts that *are admissible!*

Do your fishing with written discovery tools and depositions, *never at a hearing or trial!*

If you don't know what a witness is going to say *before* trial, you will regret not doing a better job of preparing your case by using your five discovery tools more effectively. Always use interrogatories, requests for admissions, requests for production, and subpoenas to learn what a witness knows *before*

you depose him if at all possible. Know what he's going to say (and how to catch him in a lie) if he must be called again at trial. (More on this later in the course, of course.)

By the way, this is how clever lawyers encourage opponents to settle rather than face the embarrassment of being dragged into court where they will be discovered for the scoundrels they truly are.

Court Process: Subpoenas, Writs, etc.

If you've done a good job with initial discovery tools and still don't have all facts you need to win your case, you may apply to the court for assistance in the form of subpoenas, writs, and special orders.

For example, if a neighbor says you stuck him with a pitchfork while he was visiting in your barn, you may get a court ordered medical examination to determine if he was stuck in any way or just making it up because he's jealous of your prize pig.

If you need to inspect the inside of your bank's vault to discover some fact relevant to the outcome of your case, the court may order the bank to permit you to do your inspection (with reasonable controls, of course).

Things ordinarily denied can be ordered by the court if you convince a judge the facts sought are relevant to the outcome of your case. How well you've stated your case on the record, of course, will tell the court how far it should go to allow you to gather facts by discovery to prove what you say is true.

Remember: There's not a thing anyone can say or do at trial that you cannot discover *before* trial and put in the record. There's no question you can ask witnesses at trial that you cannot ask *before* trial. There's not one shred of evidence you can require to be produced at trial that you cannot obtain *before* trial.

You can't look under your neighbor's mattress unless you first satisfy the Court there's something there that has a significant bearing on the outcome of your case, i.e., facts "reasonably calculated to lead to the discovery of admissible evidence".

And NEVER FORGET: using your five pre-trial discovery tools, you can get at facts that *are not admissible at trial, so long as they are reasonably calculated to lead to admissible evidence!* (Lawyers *will* lie about this and try to intimidate you or even bamboozle the judge. Have a copy of the rules handy if your opponent wants to take his stupid argument to a hearing for the judge to rule.)

Learn how to use your five discovery tools to make your winning record *before* trial.

Trial: Playing Your Cards

If you haven't won by the time the case is ready to go before the judge and jury, you either haven't done your best or you're not the person who *should* win.

Some dishonest people who should not win go to court and lose because they *should* lose.

Some plaintiffs bring lawsuits against people who owe them nothing.

Some defendants put up a big fight when sued, knowing they owe the plaintiff for damages they caused.

Honest people who have the facts and law on their side *should* be able to win *before* trial by doing what this course teaches, but if the other side puts on a dishonest fight, you may have to go to trial to win.

Remember: You will obtain no evidence at trial that you could not have obtained *before* trial. Trial is where you tell the court *what you should already have in the record.*

If you didn't get your evidence into the record *before* trial using your five discovery tools as taught in this course, don't expect evidence to suddenly appear just by taking on your adversary in the courtroom. That is not the time to discover evidence or get it in the record!

Get all the evidence you need *before* trial.

Either you have a winning hand, or you do not. If you wisely used your five discovery tools *before* trial, you'll be prepared to fight and win if you must take the battle all the way to trial.

The whole point of trial is to present what you *already* have! Many lawyers haven't yet figured this out. Some are as dumb as fence posts in silk suits and $800 shoes.

If you don't *already* know what you have, you're sunk!

Trial is no time to start digging for evidence you don't yet have!

If you can't settle or force resolution *before* trial (e.g., summary judgment, directed verdict, etc.) you must lay your cards on the trial table and let the court decide who has the greater weight of admissible evidence, i.e., which way the scales of justice are going to tip.

It's always risky!

But!

Trial is the last chance you get to play your cards ... *if you have any*.

Try to avoid trial. It's a hectic arena of unwanted surprises, rude interruptions, and demands of impatient judges eager to get on to the next case on their docket.

Judges get up on the wrong side of the bed.

Jurors lie when questioned during *voir dire* (explained later in this course), and jury decisions are *always an uncertain crap shoot no matter how well you play your cards!*

Witnesses "forget" what they told you at deposition.

Legal arguments never raised by your opponent before trial suddenly spring on you without warning, trapping you in untenable positions for which you are not prepared.

Before trial everything takes place slowly, one step at-a-time.

During trial things happen quickly, spontaneously, and sometimes *disastrously!*

That being said, trial will go more smoothly if you keep a few things in mind.

Stick to the Pleadings

It's improper for either side to raise issues at trial not first raised by the pleadings.

It's reversible appealable error for a judge to allow it, *if you object*.

"Objection! Outside the pleadings."

I've won cases by objecting to such tactics. The judges all agreed with me and stopped my opponents dead in their tracks!

Begin with the pleadings.

Tell the court what you alleged in the pleadings, then *prove* what you alleged using admissible evidence presented logically and plainly enough for persons of average intelligence to easily understand.

You can only hope your jurors have at least average intelligence. Many do not.

Present your Evidence

Evidence should be presented in a convincing sequence, not haphazardly.

You know your case. The court does not.

Build your case as you would build a house. Foundation first, then the walls, and finally the roof.

All your evidence should be connected, fitting together like a chain of links, nothing missing.

Don't expect the judge or jury to unravel a jumbled ramble of questions and answers from various witnesses or examine a disorganized pile of documents or things and reach the conclusion you want.

Present your presentation logically!

Decide on a straightforward pattern and stick to it.

Make your evidence flow toward the conclusion you wish the court to reach.

Tell your story with *evidence*, not rhetoric or empty allegations.

If you do your pre-trial work the way this course teaches, you'll be prepared to do just that. You'll have a "feel" for the order in which your evidence should be presented.

Never assume the court is paying attention. Be interesting! Make the court laugh, if you can do it tactfully and with purpose that furthers your cause. I once had to say at a hearing where my court stenographer was typing away to make a record of everything she could hear, "Let the record reflect that the judge is reading a newspaper!" That got the judge's attention, and it got in the record, and the judge gave me the victory in that case because he did *not* want the appellate court to read the transcript where I accused him of blatant negligence!

The best trial warriors use evidence *they already have* to tell a story that's clearly believable, strongly convincing, and emotionally appealing.

Anger is your enemy.

A chip on your shoulder will severely undermine your chance for a favorable outcome. Judges are people. Jurors are people. If they don't like the "cut of your jib", tone of voice, body language, or rebellious, bitter "attitude", you will lose points that can cost you a victory that *should* have been yours. Treat the court with the same respect and polite regard you wish others to treat you.

Don't curry favor. That's just as unappealing to the court as an ugly scowl or sarcastic tone of voice.

But, by all means, do what you can to win the court to your way of seeing things. Make the court listen to what you have to say. Force the court to carefully consider the evidence you present. Persuade the court to give you a favorable verdict after hearing both sides.

Do at trial what you should have done *before* trial: Get all facts and controlling law into the court's record. That's what winners do.

All your *pre-trial* preparation may be lost if not handled properly at trial.

There may be a jury to pick, subpoenas to be served on witnesses, tricky evidence rules regarding hearsay or other complex issues that didn't apply during discovery, but the story you tell at trial is simple and always the same:

- Duty
- Breach
- Damages

Even experienced trial lawyers lose their heads in the heat of courtroom battle.

Don't lose yours.

Stick to what you know.

Be polite.

Be persistent.

Be persuasive.

Be prepared.

Have facts and law *ready* for trial, in case you must go to trial.

Jurisdiction: The Power to Rule

Any time a court lacks power to rule in your case, move to dismiss at once.

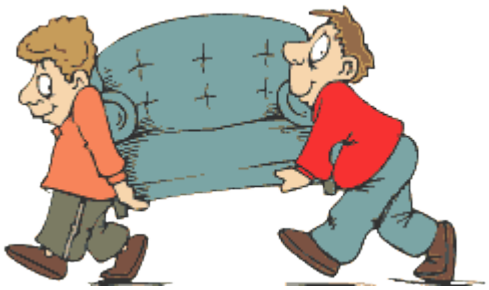
Even on the last day of trial, if you discover that the court lacks official power to rule on the case, move for dismissal at once *and make certain your motion gets into the record!*

For example, a case may depend on statutory authority, as when a receiver needs to be appointed to take control of a company in trouble. The statute may set out conditions when the Court may act to appoint receivers. If those specifically enumerated conditions do not exist, the court has no power to

appoint receivers. A motion to dismiss for lack of jurisdiction would carry. I won a case on this very point.

Any time a court acts outside its legal authority, move for an order dismissing the case and be prepared to appeal if the court refuses.

Move the Court: Get Your Way!



If you want something, *move the court to enter an Order on the record!*

Say, "I move the Court for an Order directing the bailiff to open a window or turn on the air conditioner. It's unbearably stuffy in here."

You can move the court to enter an Order for anything reasonably required to assure that justice prevails.

If the courtroom is too stuffy, move the court for an Order directing the bailiff to open a window or turn on the air conditioner. Don't be timid!

You can also say, "I move the Court for an Order taking notice that my opponent's attorney is making threatening gestures at my witness and looking over his shoulder at me with threatening looks when you aren't watching."

The judge may say, "The Court so notes," and your record will be made.

If you do not move the court, the court is not obligated to do *anything!*

You have been paying attention, haven't you?

This *is* all about making the record clear.

That's how you win!

Move the Court.

If your opponent doesn't do what he is supposed to do, move the Court.

If your opponent refuses to respond to your discovery requests in a timely manner in good faith according to the rules, move the Court to compel him to respond, pay a fine, have his case dismissed, or any other relief that's reasonable under the circumstances.

Move the Court.

Don't be shy.

Be bold.

This is *your* life.

These are rights far too many heroic young men and women gave their lives for you to enjoy.

The judge is going home to his wife and kids when your case is over.

You're not quite sure what you're going home to.

Move the Court.

Get your way.

Everything you need to get justice is a reason to speak up.

Be heard.

Make your record.

If you need a doctor to produce more records, move the Court for an Order requiring those records to be produced.

If you need clarification of the meaning of a word your opponent used in one of his papers, move the Court to enter an Order requiring clarification.

Courts give orders. That's what courts do.

Move the court to do so!

Judges seldom grant orders unless someone moves them to do so.

For example, you may wish the court to enter an order that you won't have to pay the other side's lawyers.

Or, you may wish the court to enter an order finding as a matter of fact that your opponent intentionally falsified his response to one of your interrogatories.

If so, there's only one way to get such orders.

Move the court.

Writing Effectively

Litigation is a chance to prove you're a good writer.

But! Good litigation writing is *nothing* like "creative writing" such as used by novelists, poets, or newspaper reporters.

Good litigation writing is all about being

- Simple,
- To the point,
- Clear, and
- Brief.

Do you express yourself well when speaking? If so, then write the way you speak.

Write as you would write to a friend.

Do not use flowery phrases.

Do not use complex words.

Keep it simple, to the point, clear, and brief.

That's what good litigation writing is.

Make your record clear.

If you don't make a clear record, you cannot hope to win (unless the other side does an even worse job of expressing its position on the record).

Use simple sentences with easy words any average 8th grader would understand and use. Do not use arrogant verbosity to obfuscate some inane irrelevance with verbal tintinnabulations preening your pride about some gargantuan effulgence of pedantic posturing to extrapolate garrulous minutiae.

See my point?

It might impress your girlfriend or boyfriend, but it won't win you points with the judge!

Stupid litigants try to impress others with a florid writing "style" that tends to transcend the evanescence of pertinacious proclivities.

Don't do it in a lawsuit.

Keep sentences simple.

One subject.

One verb.

Minimum adjectives and adverbs.

Use numbered paragraphs containing only a single sentence, so each thought expressed by your sentences can be easily referred to in future papers by paragraph number. Follow this practice with pleadings, motions, notices, and all other formal papers filed with the Court.

Simple sentences.

One verb.

One noun.

As few adjectives and adverbs as possible.

The secret to winning in court is making an effective written record of the facts and law ... clearly stated ... not impressing others with your writing skills or mastery of vocabulary!

There are two books on writing that are highly recommended: *Elements of Style* by Strunk & White and *Art of Readable Writing* by Rudolph Flesch. Buy and read these books over and over. They are worth their weight in gold!

By writing effectively, you overcome your adversary by making a better written record of the facts and law. If the balance of evidence were otherwise perfectly equal, the party with the clearest and simplest writing style will win, not the party who tried to impress the court with fancy language.

Think of litigation writing like assembling the parts of a simple machine. Each part fits in its place. Each is connected to the others in a particular way. The assembly should be done in a simple, straightforward manner. One does not assemble a machine by throwing all the parts in a pile and hoping they will somehow come together and function as a unit.

Why all the fuss about record-making?

Because it is IMPORTANT!

Judges don't like to be embarrassed by appeals that over-rule them. They wish to be approved, not disapproved. A written record makes it clear to the appellate court (if one must appeal a judge's error). Good writing and spoken language making a concise record for appeal encourages judges to be prudent, knowing they are "watched" from above.

If you fail to make a clear and effective record and must appeal, you'll have little to show the higher court.

You won't get a second chance.

You get appellate review only if you have an effective written record of the judge's material error(s).

If a biased judge sees that your record is incomplete or has major flaws, he may decide he can rule against you without fear of being overturned on appeal. Not good for you.

If the judge sees your record is precise, well-written, and to-the-point, he is more likely to rule in your favor so he need not fear being appealed.

Without a proper record to review there can be no appeal.

Learn to write and speak simply and concisely to make an effective record for appeal!

Finding the Law

Congratulate yourself.

You live in the information age.

Even homeless people can go to the public library and surf the internet for information these days.

Never in the history of mankind has it been so easy to find law.

Anyone with a computer can find constitutions, statutes, and rules of court for any state.

It's all out there.

For example, you can find the law about dog bites in your jurisdiction after just a few minutes on the web.

You can find local law for state and federal courts and even laws of foreign nations ... all just a mouse-click away.

Just remember the law you find must control your trial court's jurisdiction.

It's of no importance, generally, what Montana might have to say about child support if you live in California, or the number of signatures required for a valid will in Ohio if you live in Pittsburgh.

Find the law in *your* jurisdiction.

Use your local law library if you need more than you can find online. Most courthouses have complete law libraries, as do many colleges and universities.

Lawyers are generally willing to allow you to read a book in their office, if you don't ask to take it home.

Some libraries have digests or annotated statutes that lead directly to cases applicable to issues that will determine the outcome in your own case. Search for automobile negligence in one of these sets of books, for example, and you'll find references to cases or statutes that explain what the law is on those issues in your jurisdiction.

Use of the internet is far more convenient, however.

Google has a treasure trove of legal authorities you can cite to win your case.

Most state bar associations and state supreme courts have websites jammed with useful information, including official legal resources.

Above all, keep up with local rules of procedure and evidence codes that control your trial court. They change from time to time. Don't get caught behind the proverbial 8-ball!

Remember, obeying rules of procedure and evidence codes is what gives victory to the good guys.

Play by the rules.

Make *everyone* play by the rules.

Dealing with Liars

Usually, when two people disagree about a fact, one is either lying or mistaken.

Truth can never be two different things at the same time!

One of my favorite maxims of common law says, "A thing similar is never exactly the same."

If a plaintiff says she didn't run the stop sign, and the defendant says she did, one is either lying or mistaken. It cannot be otherwise.

If a party can be proven in a lie, the other party gains points that sooner or later by themselves add up to victory.

Fortunately, the rules of court offer you several tools to deal with liars.

First, of course, is the oath. Pretty much every word spoken in court can be under oath and false statements subject liars to criminal penalties.

Some states will not punish a perjurer unless the oath is taken before the perjury and not unless the perjured statement refers to a fact that is material to the case. (Materiality and relevance are discussed in detail in the materials in this course on evidence.)

Witnesses, therefore, should always be sworn before they give testimony.

Insist on it.

If a lawyer for the other side begins to "testify" (speaking as if he had first-hand knowledge), object immediately. If the court overrules your objection, *immediately* move the court to order the lawyer to be sworn in. Nobody should be permitted to testify about *anything* about which they have no first-hand knowledge *ever!*

If a lawyer does not know of his own first-hand knowledge that facts he is stating to the court are true, call him on it. Move the court to strike his testimony or, better still, jump to your feet and shout your objection *before* the lawyer can get started testifying about things he only knows from his client or others who are not on the stand to testify. Either he stops testifying or he submits to the oath and possible perjury penalties.

Take no prisoners!

You have a legal right to require all testimony to be presented under oath *by people who have first-hand knowledge*.

Insist on it.

The other tool for showing your opponent is a liar is cross-examination.

Cross-examination is said to be the most powerful tool in the world for getting at the truth. Try it on a friend. Ask leading questions and see where it takes you. You can probably get your friend to confess things he'd never volunteer. Of course, in your test case, the friend will stop talking before revealing embarrassing private information. In court, you'll be able to pry information out of witnesses, embarrassing or otherwise.

Witnesses on the stand subject to cross-examination are in a tight spot. They can either answer cross-examination or be held in contempt of court and jailed for failure to do so.

The truth will come out once you know how to get at it!

Prove your opponent lied about one thing, and the Court is likely to suspect other things your opponent said may also be false.

Lawsuits can be an amusing game of wits.

To win, of course, *you* must tell the truth.

Change the World!

One form of lawsuit you need to know more about, before we move on, is the injunction. (Also covered in detail later in the course.)

Also called "the power of the people", a successful action for an injunction can be used to get court orders that command officials to answer *your* questions and concerns about what they're doing with your children, your tax dollars, and the future of your country.

There are no limitations on injunctions.

You can file a lawsuit seeking an injunction to require a local school board to tell why kids are being taught non-traditional values, to stop chemical dumping in the river, or to fill dangerous potholes in the highway.

You can even bring an action to enjoin leaders to explain why government doesn't teach its public even the most basic principles of justice and how to win in court.

Exercise your legal rights.

Make the world a better place through law and order.

Force government and large businesses to answer you on the public record.

It's your right!

You don't have to take abuse from anyone.

Not now. Not ever.

Learn your right to be heard by the Court.

Learn how to move the Court.

Make everyone obey the rules - the American way - no exceptions.

Put truth on the public record!

Evidence: What Gets In?

Evidence is what proves facts.

Without evidence you cannot win.

If one side says it was 9:00 a.m., and the other side says it was late afternoon, evidence is the "stuff" courts consider to determine who, if anyone, is telling the truth.

Evidence can be testimony of witnesses, documents, photographs, almost anything you can think of - provided it's relevant to the outcome by having some tendency to prove or disprove a fact material to the case.

This is the first rule of evidence: Relevance.

If it's relevant, it's admissible ... unless it falls under one of the exceptions or privileges. (All covered in detail later in the course.)

Evidence has rules. Indeed, in every state and federal court, judges and all parties are regulated by the official "Rules of Evidence" for that court.

Some of the rules have to do with hearsay, for example. Hearsay is a fact presented in court by a person who heard the fact from someone who is not in court, i.e., from someone who is not present in court to be cross-examined on the truth or falsehood of the alleged fact.

It is not allowed (except in certain limited circumstances explained later in the course).

If Henny Penny says Chicken Licken said, "Gawk! The sky is falling," that's hearsay, because Chicken Licken isn't in court to be examined as to what she may or may not have seen of a falling sky.

Hearsay is inadmissible (unless it falls into one of the hearsay exceptions), because the person "testifying" does not have first-hand knowledge of the fact or facts they are offering as evidence.

There are, however, some exceptions to the hearsay rule. For example, statements made to a witness by a man who is dying and in imminent peril of expiring may be admitted in evidence as an exception to the hearsay rule, since the law considers that a man about to meet his Maker is not likely to shuck off his mortal coil while telling a lie.

Evidence rules are spattered with exceptions and privileges.

Privileges include the husband-wife privilege, attorney-client privilege, and others that will be fully explained later in this course.

Exceptions and privileges vary from one jurisdiction to another. Be certain to study the official rules for your local jurisdiction for details. [The Federal Rules of Evidence take up only 13 pages in official rule books at the time of this writing.]

The rules of evidence are all common-sense and easy to learn.

If a statement, document, photo, or other "evidence" for or against an asserted fact tends to prove the fact is true or false, it is admissible as evidence if it does not fall into one of the exceptions or privileges.

Generally speaking, if something offered for the record is "evident", i.e., it can be plainly seen to be true *and is relevant*, it's admissible.

The rules exclude "evidence" that is not plainly evident to reasonable persons (e.g., what Chicken Licken may or may not have excitedly said to Henny Penny about the sky falling).

The primary purpose of evidence rules is to prevent the record from being polluted with misleading or unreliable information that might unjustly distort the outcome and pervert the administration of justice.

Only if evidence is reliable and relevant should it come in.

All rules about exceptions stand on this simple premise.

If evidence is reliable and relevant it comes in, unless there is an exception or privilege explained later in the course.

If it is unreliable or has no relationship to the issues before the court, it is excluded as "inadmissible".

Privileged communications are excluded to protect privacy rights. Though cross-examination and liberal discovery should be allowed to pry into facts that tend to show the court who *should* win, there must be limits to protect those rights. Therefore, most jurisdictions exclude questions about privileged communications between spouses, attorneys and clients, priests and penitents, etc.

As always, rely on your local official rules for details.

Evidence rules protect both parties from conjecture, wild far-fetched assumptions, and convoluted statements that cannot be relied on as true.

Truth is always the goal.

The rules of evidence in most jurisdictions obey common sense principles that help the court and parties before the court to find truth.

Judicial Notice: Getting a Judge's Help!

Some facts don't need to be proved.

A judge can be required to enter an order making a record of such facts without proof.

This is done by moving the court for an Order taking judicial notice of the fact.

For example, 17 June 2001 fell on Sunday. This fact needs no proof. If either party moves for an order, the court *must* take judicial notice of this fact. Neither party needs to expend any time, energy, or expense to prove facts that are beyond dispute or reasonable doubt.

Another example is law. If a law where you live doubles speeding fines in school zones, you can move the court to take judicial notice of that fact, and the court *must* do so.

Any fact you can get the court to take judicial notice of need not be proved. It is admitted as evidence with no further effort on anyone's part.

Early on in your case you might move the court to take judicial notice of particular laws that control the outcome of your battle. If there's a statute that says you're entitled to win on the facts presented, move the court to take judicial notice of the law by entering an order on the record.

You might even move the court for an Order taking judicial notice that mosquito bites itch. But, not all mosquito bites itch. Some people are immune to itch. So, the court has discretion and *may* or *may not* take judicial notice that mosquito bites itch.

Read the local rules in your jurisdiction to learn more as well as studying the section in the REFERENCE menu subheading "Sample Forms" in this course for Motion for Judicial Notice.

Making Arguments: Stringing Pearls

Making an effective argument is like stringing pearls.

You can only add one pearl on a string at-a-time.

You can try to put more than one on the string, but anyone who's tried knows what happens. Pearls get scattered on the floor.

You can only slide one pearl over the end of a string at any one time.

You may try to put two or more on the string together, but only one goes on at-a-time.

Making effective arguments is much the same.

Start with the most basic argument you need to establish. Then, once you make your first argument secure, move to the next ... but not until the first is securely established.

Argue in an orderly fashion - one pearl at-a-time.

Don't rush arguments and, by all means, don't skip essential pearls!

Good people lose by failure to make orderly legal and factual arguments more than by any other cause. Effective arguments proceed in a logical path from valid first premises. They don't jump from one thing to the next with no rhyme or reason.

Make arguments like you were building a house: foundation first, then the floor, then the walls, then the roof, then the shingles, etc. Don't put in doors and windows until the walls are up. Don't try to put on the roof until the foundation is firmly laid.

And, never appeal to emotion if you can avoid it.

In court the rules are supposed to rule, not feelings. If feelings have something to do with the degree of damages, then by all means explain to the court what is felt about the injuries complained of. However, don't get so carried away with emotion that you forget to make a logical, systematic argument that proceeds from an unshakable foundation and builds logically to the conclusion you wish the court to reach.

Like stringing pearls, make each point one at-a-time.

Make your record count. Put it together with a plan that makes clear to anyone who reads it that you are the person who *should* win.

The Power of Being Right!

Many people lose because they *should* lose.

Too many good people lose, it is true.

However, many good people lose because they don't know how to win. That's why I created this course for you!

The promise in this is that the rules you're learning in this course really are written so good guys can win (if they play their cards right).

Honesty is always the best policy.

If you're a person who *should* win and if you apply the official rules to require every participant (including the judge and opposing lawyers) to obey the rules, you *will* win.

That's what justice is all about.

Your greatest power comes first from being right and "in the right".

Victory goes to the party whose cause is just (unless that party doesn't know what this course teaches, refusing to avail himself of the advantages that knowledge always brings to those diligent and responsible enough to make a genuine effort to learn).

Being on the winning side begins with decisions made *before* lawsuits are filed. After all, most lawsuits are about something that happened in the past. Many of those regrettable things in the past were *avoidable*.

The question, "Who should win?", is asked over issues that existed at the time of the alleged breach of duty that caused the alleged injury.

It's the good guy in *that* situation who should win.

Being right, therefore, is the surest guarantee of victory in court.

Be honest.

Be fair.

Tell the truth.

Then, if you are sued, take up for yourself!

Use the rules as they are taught in this course.

Make a winning record of the truth.

Show the court what kind of person you are.

Prove the other fellow is lying.

Prove the other fellow was driving too fast.

Prove the other fellow broke his promise.

Most judges favor the cause of good people.

Improve the odds by *being* good.

If you're a person who *should* win, in most cases all you need is to use the rules of court tactically and strategically to make your winning record.

You will learn many things in this course that will clarify what it takes to win in court.

People have a right to know how to exercise their due process rights to get justice from our courts.

Knowing how to exercise your due process rights is the key to liberty.

Live by the Golden Rule.

Then, when injuries come (as injuries do) you'll be able to win by applying principles of justice and tactics and strategies of due process taught by this course so you can require *everyone* in court to *do what's right!*

The Rule of Law protects the Golden Rule.

The Golden Rule, in turn, guides due process and the Rule of Law.

American principles of due process and equal access to justice make life in this nation much better than life where principles are routinely abused by the rich and powerful.

Urge others to learn how to use American Justice to secure Liberty.

Conclusion

This is just the beginning of your adventure!

This introductory class introduced you to the basic principles and tactics you will learn more fully in this course *so you can win in court*.

Now, study *all* the tutorials in the order shown in the Main Menu at the left.

Learn the course step-by-step in the order presented for best results.