

**BUSINESS LAW I**  
**CHAPTER 3**  
**COURT PROCEDURES**

**I. PROCEDURAL RULES**

- A. the framework for every dispute and specify what must be done at each stage of the litigation.
- B. Parties to a lawsuit must comply with the procedural rules of the court.
- C. can have a significant impact on the outcome of a case.
- D. Vary from court-to-court and state-to-state.
- E. different in both civil and criminal cases.
- F. Vary at different stages of the process

**II. THE BASICS**

- A. Litigation
  - 1. Adversarial process
  - 2. Advocate – present facts to trier of fact in the light most favorable to your side
- B. Representation
  - 1. *Pro se* litigants
  - 2. Attorney represented
    - a. Lawyers have advantage because know process
    - b. Lawyers charge
      - i. Fixed fees charged for transactional types of work (wills, power of attorney).
      - ii. Hourly fees charges for matters involving undermined periods of time.
      - iii. Contingency fees charged as a percentage (25% to 40%) of the client’s recovery. If the suit is unsuccessful, the attorney receives no fee, but the client will have to reimburse the attorney for all of their out-of-pocket expenses.
- C. Adjudication
  - 1. Trier of fact
  - 2. Trier of law

**III. STAGES OF LITIGATION**

- A. Pretrial
  - 1. One party believes harmed by another
  - 2. Consultation with attorney
  - 3. Info compiled to determine best way forward
  - 4. Settlement attempts
  - 5. Plaintiff files Complaint/Petition
    - a. Pleadings are the complaint, answer and all other legal documents. These documents tell each party what are their claims and specify the issues involved in the case.
  - 6. Court issues Summons
    - a. notice requiring defendant’s presence in court and answer the complaint
  - 7. Plaintiff serves Summons and Complaint/Petition on Defendant
    - a. **Service of Process** – Proof that the defendant was notified of the lawsuit. Plaintiff must deliver or serve a copy of the complaint and summons. Service can be affected via regular or certified mail, personal service or if a corporation to its registered agent. In some instances, federal courts will allow a ‘waiver of process’ if the defendant is willing to give up their right to be served.

8. Defendant Answers or files Motion to Dismiss or Motion for Judgment on the Pleadings
  - a. **Answer** – Defendant can deny or admit Plaintiff’s assertions, if they admit then a judgment will be entered, if they deny they the case will proceed to court.
  - b. **Affirmative Defense** – a showing of new facts that assists a defendant’s claim that they may not be liable to plaintiff.
  - c. **Counterclaim** – a denial of a claim against you and assertion your own claim therein causing the Plaintiff to have to submit an answer to the counterclaim.
  - d. **Default Judgment** – If defendant fails to appear or answer the complaint, a default judgment will be entered by the court.
  - e. **Motions** - There are numerous procedural avenues for disposing of a case without a trial. A motion is a procedural request submitted to the court which informs the opposing party that they want the case dismissed, continued, or some other action – these are called pretrial motions. Types of Motions:
    - i. Motion to Dismiss
    - ii. Motion to Strike
    - iii. Motion to Make More Definite and Certain
    - iv. Motion for Judgment on the Pleadings
    - v. Motion to Compel
    - vi. Motion for Summary Judgment
9. Discovery - The process of obtaining information from the opposing party or from witnesses prior to trial. Discovery include gaining access to witnesses, documents, records, and other types of evidence. Discovery is designed to avoid surprises. It also works to narrow the issues to spend time on the main questions in the case. **Discovery Rules** are allowed regarding any matter that is relevant to the claim or define of any party. If any discovery involves privileged or confidential business information – the court can deny the request and limit the scope.
  - a. Subpoenas
  - b. Interrogatories– written questions requiring written answers prepared and submitted under oath. They are designed to obtain accurate information about specific topics.
  - c. Depositions– a sworn testimony by a party to the lawsuit or by any witness, recorded by an authorized court official (court reporter). Depositions give attorneys the opportunity to ask immediate follow-up questions and to evaluate how their witnesses will conduct themselves in court.
    - i. **Depositions** can be employed in court to impeach (challenge credibility) or a party who changes his or her testimony at the trial, or can be used if a witness is not available.
  - d. **Requests for Admissions** – A written request for admissions of the truth on matters relating to trial.
  - e. **Requests for Documents, Objects, and Entry upon Land** – Access to documents and other items not in their possession to inspect and examine them.
    - i. **Electronic Discovery** – any relevant material including information stored electronically. E-evidence consists of all computer-generated or electronically recorded information, such as e-mail, voice mail, tweets, blogs, social media posts, spreadsheets, documents, and other data stored electronically.
    - ii. **Computer, Smartphones, Cameras**, and other devices automatically record certain information about files, such as who created the file and when, and who accessed, modified, or transmitted it on their hard drives – this information is

called metadata (data about data obtained only from the file in its electronic format not from printed-out versions).

- f. **Requests for Examination** – When the physical or mental condition of one party is in question, the opposing part can ask the court to order a physical or mental examination by an independent examiner.

#### 10. Settlement Attempts

- a. **Pretrial Conference** – Meeting with a judge prior to trial consisting of informal discussion between the judge and opposing attorneys after discovery has taken place. The purpose is to explore the potential of settling without trial.
- b. Mediation

### B. Trial

1. **The Right to a Jury Trial** - The Seventh Amendment to the U.S. Constitution guarantees the right to a jury trial for cases in federal courts when the amount in controversy exceeds \$20.
2. **Rule of Evidence**
  - a. The evidence must be relevant
  - b. Hearsay evidence not admissible
3. **Expert Witness** – a person who, by virtue of education, training, skill, or experience, has scientific, technical or other specialized knowledge in a particular area beyond a regular person.
4. **Process**
  - a. Opening Statement – provides an opportunity for each lawyer to give a brief version of the facts and evidence that will be used during the trial.
  - b. **Direct Examination** – Asking witness questions.
  - c. **Cross-Examination** – After initial questions by first attorney; opposing gets to cross-examine witness.
  - d. **Closing Arguments, Jury Instructions and Verdict** – each attorney summarizes the facts and evidence presented during the trial and indicates why the facts and evidence support his or her client's claim.

### C. POST-TRIAL

#### 1. MOTIONS

- a. **Motion for New Trial** – Can be requested if attorney believes that the jury was in error and that it is not appropriate to grant judgment for the other side.
- b. Motion for Judgment N.O.V. (Not Withstanding Verdict) - a motion to request the court make a new ruling if the jury's verdict was unreasonable and erroneous.

#### 2. THE APPEAL

- a. **Appellate Review** – an appellate court has the following options after reviewing a case:
  - i. The court can affirm the trial court's decision.
  - ii. The Court can reverse the trial court's judgment if it concludes that the trial court erred or that the jury did not receive proper instructions.
  - iii. The appellate court can remand (send back) the case to the trial for further proceedings consistent with its opinion on the matter.
  - iv. The court might also affirm or reverse a decision in part.
  - v. An appellate court can also modify a lower court's decision. If the appellate court decides that the jury awarded an excessive amount in damages, for

example, the court might reduce the award to a more appropriate, or fairer, amount.

### **3. ENFORCING THE JUDGMENT**

#### **a. Requesting Court Assistance in Collecting the Judgment**

- i. A writ of execution is an order directing the sheriff to seize and sell the defendant's nonexempt assets, or property.