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UNIVERSITY**

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FACULTY OF JURIDICAL SCIENCES

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Lecture-15



Plaintiff

The plaintiff is the person bringing a lawsuit to court by filing a plea or motion. More frequently these days, in civil law cases, a plaintiff is often called a claimant. That is, the plaintiff or claimant is the person bringing a claim against another person. The term claimant is also used in arbitration cases and tort (negligence) cases.

Plaintiffs in Civil Litigation

Most business litigation deals with civil law; that is, one party bringing a lawsuit against another party (a plaintiff bringing a suit against a defendant). A "party" in these cases can be an individual or a business or an organization (like a non-profit organization).

Civil law has mostly to do with the failure of one party to do something or avoid doing something that causes harm to another person. This concept is sometimes called specific performance, meaning that the defendant has failed to perform a specific act.

Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits (as opposed to procedures in criminal law matters). These rules govern how a lawsuit or case may be commenced; what kind of service of process (if any) is required; the types of pleadings or statements of case, motions or applications, and orders allowed in civil cases; the timing and manner of depositions and discovery or disclosure; the conduct of trials; the

process for judgment; the process for post-trial procedures; various available remedies; and how the courts and clerks must function.

Differences between civil and criminal procedure

Some systems, including the English and French, allow governmental persons to bring a criminal prosecution against another person. Prosecutions are nearly always

started by the state in order to punish the accused. Civil actions, on the other hand, are started by private individuals, companies or organizations, for their own benefit. In addition, governments (or their subdivisions or agencies) may also be parties to civil actions. The cases are usually in different courts. However this is distinguished from civil penal actions.

In jurisdictions based on English common-law systems, the party bringing a criminal charge (in most cases, the state) is called the "prosecution", but the party bringing most forms of civil action is the "plaintiff" or "claimant". In both kinds of action the other party is known as the "defendant". A criminal case against a person called Ms. Sanchez would be described as "The People v. (= "versus", "against" or "and") Sanchez," "The State (or Commonwealth) v. Sanchez" or "[The name of the State] v. Sanchez" in the United States and "R. (*Regina*, Latin for "Queen" but spoken as "The Crown") v. Sanchez" in England and Wales, amongst other Commonwealth realms. But a civil action between Ms. Sanchez and a Mr. Smith would be "Sanchez v. Smith" if it were started by Sanchez, and "Smith v.

Sanchez” if it were started by Mr. Smith (though the order of parties' names can change if the case is appealed).

Most countries make a clear distinction between civil and criminal procedure. For example, a criminal court may force a convicted defendant to pay a fine as punishment for his crime, and the legal costs of both the prosecution and defence. But the victim of the crime generally pursues his claim for compensation in a civil, not a criminal, action.^[2] In France and England, however, a victim of a crime may incidentally be awarded compensation by a criminal court judge.

Evidence from a criminal trial is generally admissible as evidence in a civil action about the same matter. For example, the victim of a road accident does not directly benefit if the driver who injured him is found guilty of the crime of careless driving. He still has to prove his case in a civil action, unless the doctrine of collateral estoppel applies, as it does in most American jurisdictions. In fact he

may be able to prove his civil case even when the driver is found not guilty in the criminal trial, because the standard to determine guilt is higher than the standard to determine fault. However, if a driver is found by a civil jury not to have been negligent, a prosecutor may be estopped from charging him criminally.

If the plaintiff has shown that the defendant is liable, the main remedy in a civil court is the amount of money, or "damages", which the defendant should pay to the plaintiff. Alternative civil remedies include restitution or transfer of property, or an injunction to restrain or order certain actions.

The standards of proof are higher in a criminal case than in a civil one, since the state does not wish to risk punishing an innocent person. In English law the prosecution must prove the guilt of a criminal “beyond reasonable doubt”; but the plaintiff in a civil action is required to prove his case “on the balance of probabilities”. Thus, in a criminal case a crime cannot be proven if the person or persons judging it doubt the guilt of the suspect and have a reason (not just a feeling or intuition) for this doubt. But in a civil case, the court will weigh all the evidence and decide what is most probable.

Summons

The summons is the document that officially starts a lawsuit. It must be in a form prescribed by the law governing procedure in the court involved, and it must be properly served on, or delivered to, the defendant. If the prescribed formalities are not observed, the court lacks authority to hear the dispute.

In the federal district courts, the summons is prepared by the attorney for the plaintiff and given to the clerk of the court where the case will be heard. When the plaintiff's complaint, setting out his claim, is filed with the court, the clerk signs the summons and gives it and a copy of the complaint to a U.S. marshal or to someone else appointed to serve the papers. Once the summons and complaint are served on the defendant, she must respond to them within twenty days or whatever other time the court allows.

Some states follow this same procedure, but other states allow service of the summons and complaint by delivery directly to the defendant. In those states, the lawsuit is considered begun as soon as the defendant receives the papers, even though nothing has yet been filed with a court. Actions commenced in this way are sometimes called "hip pocket" suits.

MCQ

1. Which of the following deals with the time for inspection when notice given in the Code of Civil Procedure?

A. Order 16, Rule 12 B. Order 4, Rule 13 C. Order 6, Rule 10 D.
Order 11, Rule 17

Ans. D

2. Which of the following deals with the statement and production of evidence in the Code of Civil Procedure?

A. Order 12, Rule 5 B. Order 14, Rule 20 C. Order 18, Rule 2 D.
Order 11, Rule 7

Ans. C

3. Which of the following deals with the right to challenge non-appealable orders in appeal against decrees in the Code of Civil Procedure?

A. Order 43, Rule 1A B. Order 31, Rule 9 C. Order 22, Rule 18 D.
Order 9, Rule 10

Ans. A

4. In order for that a decision in a former suit may operate as res

judicata, the court which may decide that suit must have been?

I. A civil court of competent jurisdiction

II. A court of exclusive jurisdiction III. A court of concurrent jurisdiction
'competent to try the subsequent suit'

IV A court of limited jurisdiction competent to try the issue raised in the
subsequent suit

A. Either I or III B. Either II or III C. Either III or IV D. All of
these

Ans. D

5. In transaction for transfer or delivery of the property attached, where the contract is executed and registered before attachment, the mischief of sub-s (1) shall not apply. However in which of the following situation it applies?

A. Where the property is transferred and registered after attachment

B. Where the property is transferred before attachment but registration takes place after the attachment

C. Both (A) and (B) D. None of these