**Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Business Law - Ch. 6 - Trial Procedures**

1. Civil Trial Procedure
2. Pleadings
3. Def. – Papers filed with the Court by the plaintiff and the defendant at the beginning of a lawsuit.

2. Plaintiff’s Complaint – 1st Pleading to be filed.

a. Complaint – Legal document containing a short &

plain statement of the plaintiff’s claim against the

defendant.

b. Must contain sufficient facts to allow plaintiff to win

the case if the allegations prove to be true & there are

no defenses to them.

c. Sample Complaint on pg. 75

3. Civil Lawsuit begins when a Complaint is filed.

4. A summons is issued by the Court Clerk (Summons: notice

to defendant that a lawsuit has begun).

5. Defendant must Answer the Complaint within the time

period allowed or lose the case by default.

a. Answer – Formal written document that admits or

denies each allegation.

b. Answer states any defenses (defense – excuses an

otherwise wrongful act).

c. Sample Answer on pg. 76

B. Methods of Discovery

1. Aim of Court – “Make all facts of a case known to all

parties involved before a Trial begins.”

2. Issues become clearly recognized.

3. The case takes less time to try and is often settled without

going to Trial.

4. Most Common Methods of Discovery

a. Depositions

b. Interrogations

c. Requests for Documents & other Evidence

d. Physical & Mental Examinations

e. Requests for Admission

5. If a case cannot be settled after the discovery stage, the case

is placed on the Court Docket (Calendar of the Court) for

Trial.

C. Pre-Trial Hearing

1. Informal hearing before a Judge.

a. Attempt to simplify the issues.

b. Discuss matters that may help to dispose of the case

quicker.

D. Steps in a Jury Trial

1. Selecting a Jury

a. Individuals are selected from a pool of citizens.

b. Attorneys ask questions of jurors selected to determine

if they will be biased or prejudiced.

1) Questions asked are based on juror's:

a) background

b) education

c) experience

d) relationships

e) attitudes

f) employment

2) The Judge supervises the attorney's questions of

each juror.

3) The attorney must also consider how the jurors

will relate to one another as a group.

c. Jury's Job - To determine the facts of the case and to

apply the law to those facts.

2. Opening Statements

a. Next step after Jury Selection.

b. Attorneys for each side tell the Judge and Jury about

the case and what they intend to prove.

c. Done by plaintiff's attorney first.

3. Introduction of Evidence

a. Done at conclusion of Opening Statements.

b. Prosecuting attorney (plaintiff) presents to Court and

Jury all of states evidence.

1) Documentary Evidence (papers)

- contracts, sales slips, letters, business papers,

affidavits (sworn statements)

2) Real Evidence (actual objects)

- weapons, articles of clothing, photographs,

items found on scene of crime

3) Testimony of Witnesses

c. Witnesses

1) Individuals that have observed events relevant to

the case on Trial.

2) Subpoenaed to testify (requested by a Court

Order to appear in Court).

d. Expert Witnesses give expert opinions on facts that

apply to the case.

e. Example 1, pg. 77

f. Defense Attorney has opportunity to cross-examine or

question the plaintiff's witnesses.

1) Test truth of witnesses statements.

2) Bring out any related evidence.

g. Plaintiff's attorney has right to cross-examine the

defendant's witnesses too.

h. Specific Rules of Evidence are followed.

i. Attorney's Rest their Cases after all evidence has been

introduced.

4. Closing Arguments

a. Presented after each attorney has "Rested their Case"

b. Plaintiff's attorney first, Defendant's last.

c. Summarize evidence and suggest reasons why the

Judge or Jury should find in favor for his/her

client.

5. Instructions to the Jury

a. Juries are not experts in law, someone must explain

the law to them.

b. Judge - Impartial Referee - delivers legal instruction.

1) Attorney's from each side may offer suggestions

but the Judge chooses how to explain the law in

terms the Jury understands.

2) Judge cannot dilute the law so much that the

instructions become inaccurate.

6. Verdict & Judgment

a. After receiving law instructions, the Jury goes to the

Jury Room for deliberations.

b. Verdict - Decision of the Jury.

c. Jury finds "in favor of" one of the parties influenced

by the evidence that carries the most weight.

d. The Court issues a Judgment and follows the Jury's

Verdict.

e. Judgment - The Courts determination or decision in a

case.

f. It is the act of the Trial Court that finally determines

the Rights of the Parties.

7. Execution & Judgment

a. There is now a winning & losing party.

b. The judgment of the court is executed and carried out.

c. Plaintiff may receive payment from defendant or

defendant may be allowed to retain property claimed

by plaintiff.

d. Issuance of an execution by the Court enforces the

Judgment.

1) Order from Judge to Sheriff to take property and

give to the other (auction it and pay the person

who won the case).

2) Order to the Sheriff to remove a person or

property to another location.

II. Criminal Trial Procedure

A. Arrest of the Defendant

1. Arrest

a. Def.- When a person is deprived of his or her freedom.

b. An arrest usually starts a criminal case.

c. Arrest Warrant - An order issued by a Court saying

that a person is charged with a crime and is to be

arrested.

2. When a Warrant is not necessary:

a. If there is good reason to believe that the person has

committed or is presently committing a felony.

b. If a person has committed a misdemeanor it involves a

breach of the peace and is done in the officers

presence.

B. Rights of the Defendant

1. When arrested people must be informed of their rights.

2. Miranda Rights (Miranda vs. Arizona)

a. Right to know crimes with which they are charged and

names of the police officers making the arrest.

b. Right to use the telephone soon after being brought in

to the station.

1) to call family, friend, lawyer

2) to make bail (money or other property that is left

with the Court to assure the person will return to

stand Trial).

c. Right to remain silent.

d. Right to talk to an attorney beforehand.

e. Right to have an attorney present during the

questioning (if cannot afford one, one will be appointed free of charge).

f. Right to a fair trial.

g. Presumed innocent until proven guilty by a Court of

Law.

C. Search & Seizure

1. Search Warrant - Court Order allowing an officer to

conduct a search of:

a. person

b. motor vehicle

c. house

d. other building

2. Search is limited to the area specifically mentioned in the warrant.

3. Individual has the right to see the search warrant or to have

it read out loud.

4. Officer keeps warrant and returns it to the Court.

5. Frisk (limited search)

a. Used if officer believes person is carrying a hidden

weapon.

b. Patting the outer clothing of a person.

c. Lawful objects found are returned to individual.

d. Persons arrested may be searched without a warrant.

6. Limited search can be done without a warrant.

- Example 2, pg. 80

7. **Plain View Exception** to requirement of obtaining a Search Warrant: "Police may seize suspicious items (drugs & weapons) in plain view without a warrant."

a. 1981 - Supreme Court stated "police can search the

entire passenger area of a car without a search warrant once the occupants are placed under arrest."

b. A year later - "Officers who have legitimately stopped

an automobile with probable cause to believe that

*contraband* (illegal goods or substances) is concealed somewhere within may conduct a warrantless search of the vehicle."

c. Example 3, pg. 80

d. 1991 - Supreme Court stated "Once police have

probable cause to believe a crime is being

committed, they do not have to obtain a warrant in

order to seize a vehicle and search it as well as any

closed container inside it."

e. Once a motorist gives police permission to search the

car, officers may open bags or containers within the

car.

8. School officials have the right to search students without a

search warrant.

a. They must have ***reasonable grounds*** to believe that

the search will turn up evidence that the student has

*violated either the law or rules of the school.*

b. Search must be done in a *reasonable manner.*

D. The Arraignment

1. Suspect is brought before the Court.

a. Informed of the nature of the Complaint.

b. Made aware of his/her rights.

2. Judge may find cause to dismiss the Complaint or find

*probable cause* that crime was committed and refer the

case to the prosecuting attorney.

a. Prosecuting attorney may prepare an Information

(Def. - Set of formal charges drawn up by the prosecuting attorney.)

b. ***or*** present the Case to the Grand Jury (Jury of Inquiry)

3. Grand Jury vs. Petit (Trial) Jury

a. Grand Jury

1) Conducts a preliminary hearing in secret to

determine if someone must stand Trial.

2) Issues an indictment if they believe the individual

committed the crime.

3) Indictment - Written accusation issued by Grand

Jury charging the individual with a certain crime

(not saying person is guilty).

b. Petit Jury (Trial Jury)

1) Decides on the guilt or innocence of the person

tried.

2) Smaller # of people than Grand Jury.

4. Arraignment

a. Following the Indictment or Information.

b. Procedure where accused:

1) is brought before the Court,

2) read the indictment or information,

3) and asked to plead guilty or not guilty.

c. Accused is read their rights.

d. If plead guilty, Judge may impose the sentence at this

time.

e. If pleads not guilty case proceeds to Trial.

E. The Trial

1. Steps of a Criminal Trial

a. Opens with the Jury Selection

b. Opening Statements

c. Introduction of Evidence

d. Trial ends with Closing Statements and Instructions to

the Jury.

2. After Deliberation, Jury announces its decision and Judge

delivers the Court's Judgment.

3. To convict a defendant in a Criminal Case the Jury must

agree unanimously that defendant is guilty or not guilty

**beyond a reasonable doubt**.

4. If they cannot reach unanimous decision a Mistrial is called

& a new Trial is held at the option of the prosecution.

5. If found guilty the Judge imposes a sentence in the form of

a fine, imprisonment, or both.

F. Disposition of Juvenile Cases

1. Juvenile Courts handle cases involving juvenile offenders.

2. Age limits vary among states (pg. 82 figure 6-3)

3. Juvenile Courts are set up so that the case of each young

lawbreaker can be considered individually.

4. There are often special circumstances the Judge takes into

consideration.

5. Steps of Juvenile Cases

a. Detention Hearing

1) Find out whether there are good reasons for

keeping the accused in custody.

2) Deciding whether or not there are special

circumstances affecting the case.

b. Investigation of background and home life by

Probation Dept. or Child Welfare Agency (charges

may be dismissed).

c. Adjudicatory Hearing

1) If charges are not dismissed.

2) Actual hearing of the Case by the Court.

3) Very Informal - Judge questions youth, parents,

witnesses, & probation officer.

4) Some Courts decide what action to take at this

point.

d. Dispositional Hearing

1) 3rd hearing

2) Decide how to dispose of the case.

e. Judge decides outcome of the case.

1) Allows offender to return home.

a) Sets him/her on probation.

b) Set certain conditions of behavior.

c) Failure to meet these requirements may

result in more severe punishment.

2) Place offender in an Agency or Foster Home

-Natural parents will be required to pay what they

can towards the offender's support.

3) Commit offender to a Training School or

Reformatory.

a) Usually a last resort.

b) Probation and foster care haven't worked or

haven't seemed likely to work.

4) Order juvenile offenders to pay for damages with

money or work or both.

5) Parents may be ordered to pay back the victim.

6. Rehabilitation is the Main Focus.

a. Limited to probation under Court supervision.

b. Confinement for not more than three years in some

type of a reformative institution.

c. Other courses of action are designed to help, not

punish the youthful offender.