

Business and Its Legal Environment:

The Court System

Types of Law

- Natural Law
 - Principles Inherent in Human Nature
- Positive Law
 - Law of Society at Time (e.g., Statutory)

Four Sources of Law

- Constitutional
- Statutory
- Common Law or Case Law
- Administrative Law

Jurisprudence

- Study of Different Schools of Law
 - Natural
 - Legal Positivist
 - Historical
 - Legal Realist
 - Sociological

Courts in Late 11th Century

- Law
 - Money Damages
- Equity
 - Non-monetary Relief, such as Specific Performance, Rescission, Injunction
- Today Most Courts Merged

Deciding Equity Cases

- According to Equitable Maxims
 - Whoever seeks equity must do equity
 - Whoever seeks equity must pursue the vindication of their rights vigilantly or risk having their claims barred (laches).

Stare Decisis

- Doctrine of Following Legal Precedent
 - Prior Cases
- Know Difference between
 - Binding Authority
 - Persuasive Authority

Hierarchy among Laws

- US Constitution
- Federal Statutory Law
- State Constitution
- State Statutory Law
- Local Ordinance
- Administrative Law
- Common Law

Case Terminology

- Plaintiff
- Defendant
- Appellant/Petitioner
- Appellee/Respondent

Difference between Civil and Criminal Law

- Civil Law
 - Preponderance of Evidence
- Criminal Law
 - Beyond Reasonable Doubt

Difference between Substantive and Procedural Law

- Substantive
 - Concerns Legal Rights and Duties
- Procedural
 - Regulates Procedure
 - e.g., How to File an Appeal

Judicial Review

- Process by which a Court Decides on Constitutionality of a Statute and Actions of Executive Branch
- Part of the System of Checks and Balances
- Supreme Court Final Decider of Law

Judgments and Opinions

- Judgment
 - Court's Disposition
- Opinion
 - Reasons for Court's Judgment
 - Per Curiam: unanimous, no indication of author
 - Majority: opinion by majority
 - Plurality: opinion by largest number less than a majority
 - Concurring: opinion by Judges who agree with judgment but not reasoning
 - Dissenting: opinion by Judges who disagree with Judgment of the majority

Jurisdiction

- Authority of Court to Hear and Decide a Case
- Types
 - Personal
 - Subject Matter
 - Original
 - Appellate

Jurisdiction: Personal

- In Personam
 - Persons residing or doing business within a county, district, state, or US
 - Long-arm Statutes
 - Key is Contacts with Area
 - In Rem

Jurisdiction: Subject Matter

- Amount
- Nature
- Relief Sought
- Misdemeanor or Felony
- Concurrent vs. Exclusive

Specialized Subject Matter Courts

- Bankruptcy
- Juvenile
- Probate

Jurisdiction of Federal Courts

- Federal Question
- Diversity Jurisdiction
 - amount exceeds \$75,000
 - lawsuit between citizens of different states
 - corporation a citizen of state of incorporation and state of principal place of business
- Foreign country and citizen of one or more states
- Citizens of a state and citizens of a foreign country

Cyberspace Jurisdiction

- Sliding Scale
 - More Likely Court will exercise jurisdiction over a defendant the more business he conducts over Internet

Venue and Standing

- Venue
 - Most appropriate location of suit
- Standing to Sue
 - Sufficient Stake in the Lawsuit
 - Must be real judicable controversy
 - real and substantial

Typical State Court System

- Trial Court
- Appellate Courts
 - review questions of law
- Supreme Court
 - most state supreme courts have discretionary review

Federal Court System

- US District Court
 - Trial Court
- US Court of Appeals
 - 13 Circuits
- US Supreme Court
 - Discretionary review in most cases
 - writ of certiorari

Pre-Suit Considerations

- Consult with an Attorney
- Legal Fees
- Settlement Consideration

Pleadings

- Plaintiff's Complaint/Petition
- Defendant's Answer
 - Responds
 - Asserts affirmative defense(s)
 - Counterclaims (plaintiff may reply)
- No answer-default judgment

Service of Process

- Summons
 - Informs of Obligation to Answer within Certain Time
- To Have Jurisdiction Must be Proof of Service
 - Individual defendant (home or business)
 - Corporation (Registered Agent)
 - Partnership (Any General Partner)

Pretrial Motions

- Motion to Change Venue
- Motion to Dismiss (Demurrer)
- Motion for Judgment on Pleadings
- Motion for Summary Judgment

Discovery

- Depositions
- Interrogatories
- Request for Admissions
- Request for Production
- Request for Examination

Pretrial Matters

- Narrow Issues
- Rule on Motions
- Trial
 - Bench (judge finds law and facts)
 - Jury (judge finds law, and jury finds facts)
 - Jury Selection-Voie Dire
 - Challenge for cause

Rules of Evidence

- Relevancy
- Hearsay

Stages of Trial

- Procedural
 - Opening Statements
 - Examination of Witnesses
 - direct, cross, re-direct and re-cross
- Closing Argument
- Jury Instructions
- Verdict

Dispositive Motions

- Motion for Directed Verdict
- Motion for Judgment Notwithstanding Verdict (JNOV)
- Motion for New Trial
- Trial Court will enter Judgment if Motions Unsuccessful

Appellate Procedure/Review

- File Timely Appeal
 - Notice of appeal, record or transcript, briefs outlining legal arguments
- Appellate Courts
 - generally don't rule on questions of fact, unless evidence overwhelming and no reasonable person could disagree
- Oral Arguments
 - Affirm, reverse and remand, reverse and render a new judgment
