



CAJPA
California Association of
Joint Powers Authorities

**LITIGATION, INSURANCE AND
TORT LIABILITY (LITL) PROGRAM**

MARCH 27, 2024 | 10:00 - 11:30 AM | ZOOM

LITIGATION BASICS

Session 1:

Basic Concepts and Definitions

and

Structure of our Legal System

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Basic Concepts and Definitions

What is litigation?

Litigation is the process of carrying on a lawsuit. To **litigate** is to take or defend against a claim or a complaint in a court of law.

Distinct from **advising** or **counseling** where the attorney's role is to explain to the client various strengths and weakness of different legal courses of action.



Basic Concepts and Definitions

Overview of the Civil Justice System

Civil lawsuits aim to compensate injured parties through **monetary awards** or by requiring parties to undertake corrective actions that are not monetary in nature. Unlike the **criminal justice system**, parties are not debating a person's moral guilt or violation of federal or state penal codes.

Civil litigation differs from criminal trials as it is guided by **civil procedure**, a set of formal pretrial and trial rules that courts follow to resolve private disputes between parties.

Types of Civil Cases
Contract
Tort
Probate
Small Claims
Real Property
Family
Juvenile

Basic Concepts and Definitions

Overview of the Civil Justice System

The Parties to Civil Actions

In civil cases, the **plaintiff** initiates the lawsuit, while **defendants** defend against the claims. Usually one private individual against another or a private individual against the government.

Burden of Proof

In civil cases, Plaintiffs typically need to demonstrate a defendant's liability by a **preponderance of the evidence**, meaning it's more likely than not that the plaintiff's claims are true, often represented as at least 51% certainty of the defendant's liability. A much lower standard than **beyond reasonable doubt**.



Basic Concepts and Definitions

Overview of the Civil Justice System

Legal Remedies and Damages

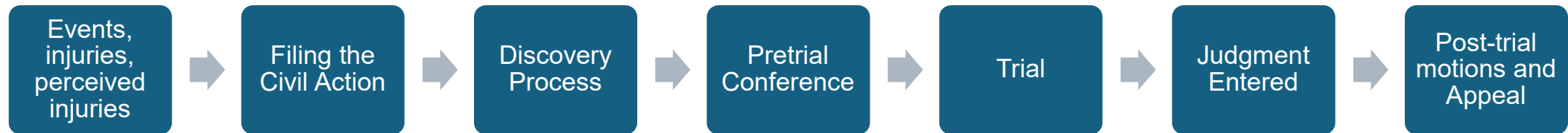
In civil cases, after proving a defendant's liability, courts grant remedies like **monetary damages (compensatory, punitive, or nominal)** to compensate or punish.

Compensatory damages cover economic losses and non-economic loss, such as **pain and suffering**, while **punitive damages** aim to deter and punish. **Nominal damages** are symbolic for cases with no harm. Courts can also issue **injunctions** or **declaratory judgments** for nonmonetary relief, requiring specific actions be taken or clarifying legal rights or duties.



Basic Concepts and Definitions

Overview of the Litigation Process



Basic Concepts and Definitions

Filing Civil Actions: Pleadings and Motion Practice

A **complaint** is the initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim (i.e. the facts), and the demand for relief. The main purpose is to identify the involved parties and outline the legal allegations underlying the dispute.

Jurisdiction is the court's power to decide a case or issue.

Jurisdiction also includes the court's power and authority over an individual - specifically, the defendant. This is called **personal jurisdiction**. **PJ** over a defendant is accomplished by **service of process**.

Two Styles of Complaints in CA

Pleading Paper

1 YOUR NAME
 2 Street Address
 3 City, State Zip
 4 Phone Number (with area code)
 5 Fax Number (if applicable)
 6 Email Address (if applicable)
 7 In Pro Per

8
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 COUNTY OF LOS ANGELES

11 NAME OF PLAINTIFF,) Case No.: No. 12-3-456789-1
 12 Plaintiff,) DOCUMENT NAME (e.g., COMPLAINT FOR
 13 vs.) DAMAGES
 14 NAME OF DEFENDANT(s),)
 15 Defendant(s))

16
 17
 18 **Example**

19
 20
 21
 22
 23 Dated this 2nd day of August, 2010

24
 25
 26
 27
 28

DOCUMENT NAME (e.g., COMPLAINT FOR DAMAGES) - 1

Judicial Council Form

PLD-C-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO:	FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
PLAINTIFF:		
DEFENDANT:		
<input type="checkbox"/> DOES 1 TO _____		
CONTRACT		
<input type="checkbox"/> COMPLAINT	<input type="checkbox"/> AMENDED COMPLAINT (Number):	
<input type="checkbox"/> CROSS-COMPLAINT	<input type="checkbox"/> AMENDED CROSS-COMPLAINT (Number):	
Jurisdiction (check all that apply):		CASE NUMBER:
<input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE		
Amount demanded <input type="checkbox"/> does not exceed \$10,000		
<input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000		
<input type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)		
<input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint		
<input type="checkbox"/> from limited to unlimited		
<input type="checkbox"/> from unlimited to limited		

1. Plaintiff (name or names):

alleges causes of action against defendant* (name or names):

2. This pleading, including attachments and exhibits, consists of the following number of pages:

3. a. Each plaintiff named above is a competent adult

except plaintiff (name):

(1) a corporation qualified to do business in California
 (2) an unincorporated entity (describe):
 (3) other (specify):

b. Plaintiff (name):

a. has complied with the fictitious business name laws and is doing business under the fictitious name (specify):

b. has complied with all licensing requirements as a licensed (specify):

c. Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant named above is a natural person

except defendant (name):

(1) a business organization, form unknown (1) a business organization, form unknown
 (2) a corporation (2) a corporation
 (3) an unincorporated entity (describe): (3) an unincorporated entity (describe):
 (4) a public entity (describe): (4) a public entity (describe):
 (5) other (specify): (5) other (specify):

* If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

COMPLAINT—Contract

Page 1 of 2
Form Approved for Optional Use
 Judicial Council of California
 PLD-C-001 (Rev. January 1, 2007)

Code of Civil Procedure, § 425.12
 www.CalCourtForms.com

Basic Concepts and Definitions

Filing Civil Actions: Pleadings and Motion Practice

Notice v. Fact Pleading

Notice pleading aims to give parties a general understanding of the facts and legal issues in dispute without requiring detailed factual allegations. In contrast, “**fact-based**” **pleading** mandates parties to specify particular facts supporting their legal claims early in the litigation process.

Fact-based pleading increases the likelihood that civil cases end at the pre-trial stage.

Basic Concepts and Definitions

Filing Civil Actions: Pleadings and Motion Practice

Service of process refers to the prescribed statutory method required to provide the defendant with notice/knowledge of the lawsuit.

The most common way to accomplish service of process is by physically delivering a copy of the complaint and a court-issued summons to the defendant.

The Clock is Running:

In state court, the defendant has 30 days from the date of service to respond to the complaint. In federal court, the defendant has 21 days.



Basic Concepts and Definitions

Filing Civil Actions: Pleadings and Motion Practice

Answers and Motions of Dismissal

After filing a complaint, the court clerk issues a summons to the defendant, requiring them to appear in court and respond to the plaintiff's allegations, usually within thirty days.

An **answer** is the defendant's first pleading that addresses the merits of the case by admitting or denying the allegations and setting forth affirmative defenses.

Basic Concepts and Definitions

Filing Civil Actions: Pleadings and Motion Practice

Answers and Motions of Dismissal

Many jurisdictions permit the defendant to respond to the complaint by filing a motion requesting dismissal of the case. Referred to as a **motion to dismiss** or **12(b)(6) motion** in federal court and a **demurrer** in California court.

These motions typically request the court dismiss the case or a claim because, even if all the plaintiff's allegations are true, they would not be legally sufficient to **state a claim upon which relief can be granted**.

Basic Concepts and Definitions

Filing Civil Actions: Pleadings and Motion Practice

Motion to Dismiss Example:

Bob sues Sandy for failing to invite him to her birthday party, Sandy could file a motion to dismiss because there is no legal basis for a claim arising from someone not being invited to a birthday party. There was no **agreement** between Sandy and Bob, and Sandy has no **duty under the law** to invite Bob to her party.



Basic Concepts and Definitions

The Discovery Process and Pretrial Conferences

Overview

The costs and burdens of civil litigation are often linked to the time lawyers spend gathering facts and evidence.

There are five main types of discovery methods:

- Interrogatories (SROGS or FROGS),
- Requests for Production (RPDs),
- Requests for Admissions (RFAs),
- Depositions, and
- Motions for physical or mental examinations.

Basic Concepts and Definitions

The Discovery Process and Pretrial Conferences

Discovery Methods

Common and cost-effective discovery methods include **interrogatories** (questions about basic facts) and **requests for production** (requesting tangible documents or evidence like emails, medical records, or photographs).

Depositions are costly but a valuable discovery method that captures **sworn testimony** from parties or witnesses. They provide insight into potential trial performances and serve as evidence, especially useful if a witness is unavailable or has passed away before trial.

Motions for physical or mental examinations are important discovery tools for establishing damages or liability in injury cases. Typically need court authorization.

Basic Concepts and Definitions

The Discovery Process and Pretrial Conferences

Pretrial and Case Management Conferences

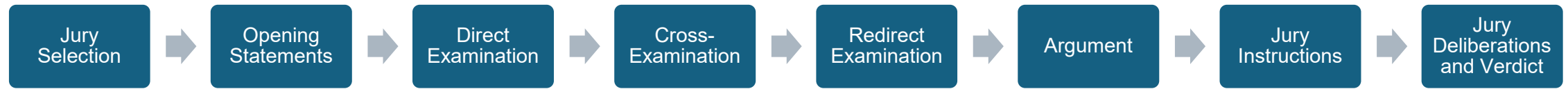
The purpose of pre-trial or case management conferences varies somewhat between courts and judges. However, such conferences are typically used to establish (1) motion filing schedules and trial dates; (2) coordinate hearing dates for anticipated or pending motions; (3) promote/explore settlement post-discovery; and (4) clarify evidence or legal issues for trial.

The judge essentially takes on a managerial role and supervises the parties' discovery and settlement activities.

Basic Concepts and Definitions

Trial, Judgment, and Appeal

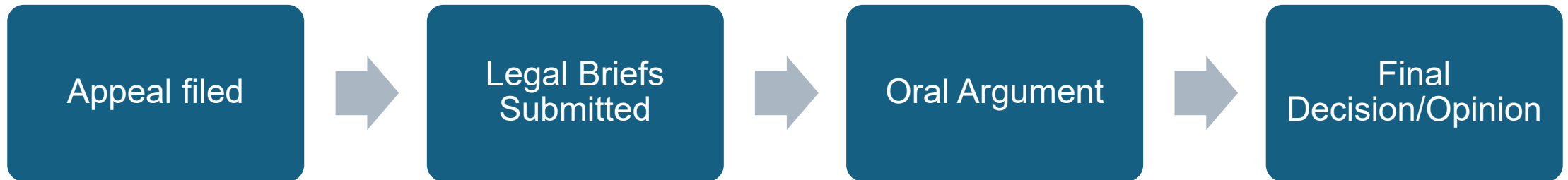
Stages of Trial



Basic Concepts and Definitions

Trial, Judgment, and Appeal

Appellate Process



End of Part 1

Questions?

Structure of the Legal System

Federalism: State and Federal Courts

Overview

The United States has a **dual judicial system** made up of federal and state courts. Both state and federal court systems typically consist of three levels and have general and specialized courts.

Structure of the Legal System

Federalism: State and Federal Courts



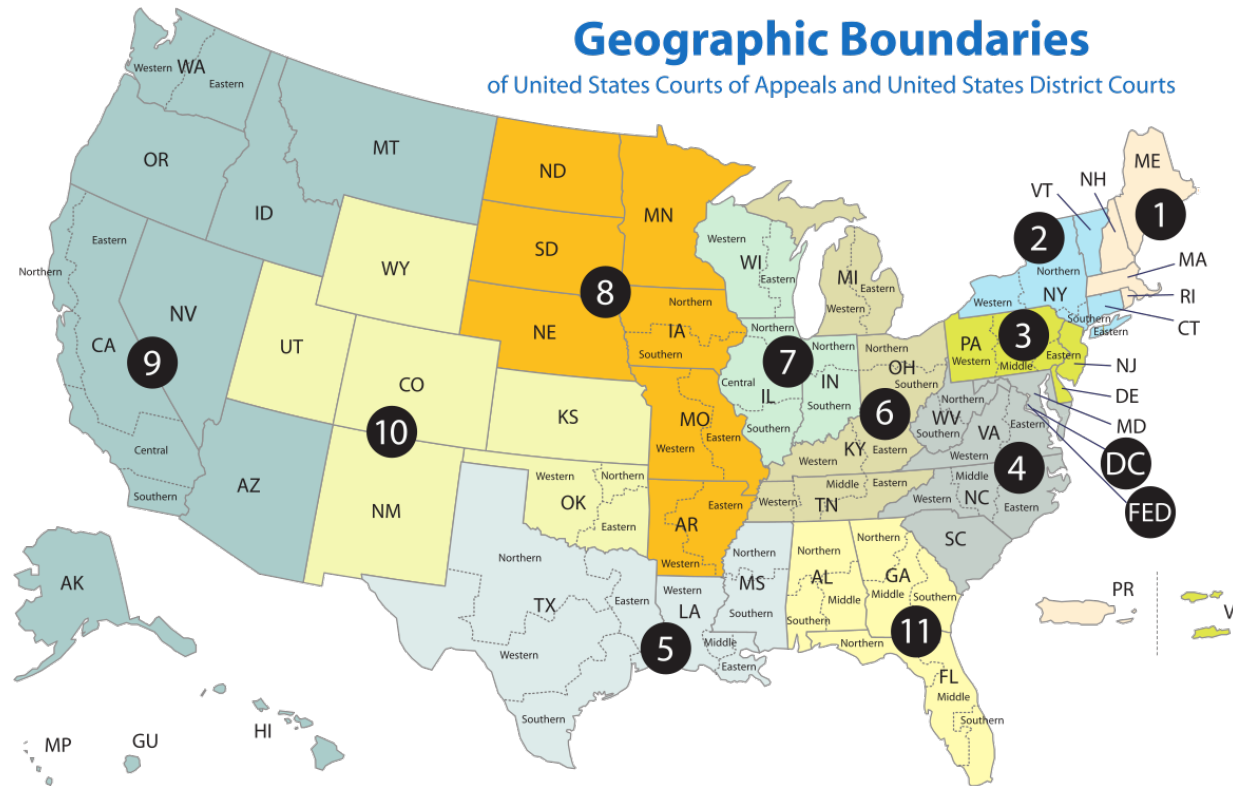
Structure of the Legal System

Federalism: State and Federal Courts

Types of Cases Adjudicated	
Federal Court	State Court
<ul style="list-style-type: none">• Cases interpreting the constitutionality of laws under the U.S. Constitution	<ul style="list-style-type: none">• Most criminal cases
<ul style="list-style-type: none">• Cases interpreting laws and treaties of the United States	<ul style="list-style-type: none">• Tort cases (personal injury)
<ul style="list-style-type: none">• Diversity cases (disputes between two more states)	<ul style="list-style-type: none">• Contract cases
<ul style="list-style-type: none">• Admiralty cases	<ul style="list-style-type: none">• Real property, Probate, Estate Cases
<ul style="list-style-type: none">• Bankruptcy law cases	<ul style="list-style-type: none">• Juvenile law cases
	<ul style="list-style-type: none">• Small claims and traffic

Structure of the Legal System

Federalism: State and Federal Courts



Structure of the Legal System

Federalism: State and Federal Courts

Composition of California's federal district courts



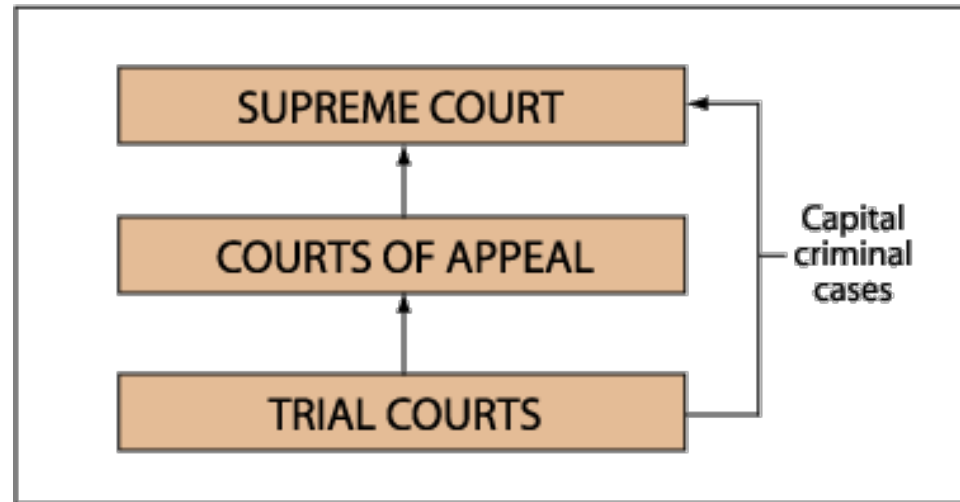
Structure of the Legal System

Federalism: State and Federal Courts

California's Judicial System

Trial courts in California are called **Superior Courts**. There are 58—one in each county.

California has 6 Court of Appeal Districts.



Structure of the Legal System

Federalism: State and Federal Courts

U.S. District Courts

Federal district courts serve as the trial courts in the federal judiciary system. District court judges are appointed by the president and confirmed by the Senate. They have jurisdiction over federal issues, including the interpretation of federal laws, regulations, treaties, and the Constitution, as well as diversity cases involving parties from different states or countries with claims of \$75,000 or more.

Structure of the Legal System

Federalism: State and Federal Courts

U.S. Magistrate Judges

Magistrate judges assist district courts in managing caseloads by overseeing many of the hearings, settlement conferences, and motions in federal court. While not appointed and confirmed like district judges, their decisions are recommended to district judges, who can accept or decline them. Parties can agree to have a magistrate judge serve as the trial judge, with the authority to make final decisions.

Structure of the Legal System

Federalism: State and Federal Courts

Federal Court Administration

Federal Courts utilize an electronic filing and case management system that allows attorneys, litigants, and the public to file and access court documents electronically, rather than through traditional paper filings.

Each federal judge has their own standing orders, which govern the pretrial and trial processes for their courtroom. Federal judges more often than not issue a written decision on motions. However, they take a long time to do so.

Structure of the Legal System

Federalism: State and Federal Courts

State Court Administration

State Courts are relatively new to electronic filing. Most but not all superior courts have it. However, unlike federal court, there is a lack of uniformity among superior courts in what systems are used.

Cases move a lot faster in state court compared to federal court. All superior courts utilize a **tentative ruling system**, which notifies the parties of the court's ruling the day before the hearing. You must request oral argument and notify all parties of your request if you plan to contest the tentative ruling. If no request, ruling becomes final.

Superior court judges typically do not have standing orders. Rather, the Judicial Branch of California publishes **California Rules of Court**, which outline specific pre-trial procedures.

End of Part 2

Questions?

Image Sources

<https://www.vecteezy.com/vector-art/15397750-court-judgment-law-justice-concept-vector-illustration-cartoon-advocate-lawyer-or-prosecutor-character-giving-speech-in-front-of-judge-jury-in-courtroom-criminal-defense-public-process-background>

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