Governing Wisconsin
From the Wisconsin Legislative Reference Bureau

Civil Litigation and Procedure

"Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws" (article I, section 9, of the Wisconsin Constitution). An injured or wronged person may obtain a remedy in the justice system through civil litigation. Civil cases, such as torts, contract disputes, divorce and other family issues, and property cases, are noncriminal matters.

Fairness, efficiency, accuracy

As the constitution implies, cornerstones of civil litigation include fairness, efficiency, and accuracy. As a society, we have decided that, to be fair, people who injure or wrong others must pay for the damage they cause; those who are injured or wronged should not endure the costs. The set of rules that govern civil litigation, known as civil procedure, exemplify this notion of fairness and ensure that both parties to civil litigation have an opportunity to tell their stories. To accompany the notion of fairness, civil procedure promotes accuracy and efficiency for the court system and for the parties involved. Accuracy ensures that judges and juries will have the information to make a well-informed decision to resolve the dispute as fairly as they can. Efficiency allows the courts to hear more cases in less time and saves money for the court system and the parties to litigation, thus allowing more people access to the courts.

Initiation of lawsuit

Civil procedure begins when someone has been injured or wronged and wants to sue another party for a remedy for that injury or wrong. The person who brings the lawsuit is the plaintiff; the person or company he or she sues is the defendant. The plaintiff controls many aspects of the lawsuit, such as who is named as a defendant and when the lawsuit is brought, but the plaintiff is constrained by the rules of civil procedure. The plaintiff must start the lawsuit within a certain time frame, as specified in a statute of limitations, after all of the ingredients for the lawsuit are present. The statute of limitations is designed to promote fairness by ensuring that the lawsuit is started while the witnesses can still remember the facts and that the defendant has finality.

The plaintiff initiates the lawsuit by filing a summons and complaint with the appropriate court. The summons tells the defendant he or she is being sued and by whom and gives the deadline for the defendant to respond to the lawsuit with an answer. The plaintiff's complaint describes the basic facts behind the incident for which the defendant is being sued, explains the legal grounds on which the plaintiff is suing, and specifies the type of remedy the plaintiff would like the court to give him or her.

Discovery

After the defendant has answered the complaint, either the plaintiff or the defendant may initiate discovery, which is the request for information from the other parties or witnesses in the lawsuit. While discovery allows the parties to obtain more facts about the incident, the rules and the judge prevent one party from harassing another party with requests for unnecessary information. The discovery process balances the need for accuracy in finding the facts with the need for fair treatment of all parties to the lawsuit. Typically, the judge presiding over the case sets deadlines and guidelines for certain phases of discovery to keep the case progressing efficiently.

Resolution

After the discovery period, the case moves toward resolution. A case may be resolved in various ways, including dismissal, settlement, or judgment following a trial. The plaintiff, after finding out more facts in discovery, may dismiss the lawsuit or may dismiss a certain defendant from the lawsuit. The court may dismiss the case if a party has not followed the timing instructions or if there is a legal basis to dismiss the case. The parties may decide to settle the

case, which means that the plaintiff and the defendant agree to an amount of damages or a remedy. If the parties have not dismissed or settled the case, then it may be resolved following a trial before a judge, or a judge and jury.

Appeal

After resolution of the case, if one side believes the judge made a mistake of law, then that party may file an appeal with the Wisconsin Court of Appeals stating what the mistake was and the legal rationale for why the mistake should be corrected. There is no jury in the Wisconsin Court of Appeals; judges consider the law and each side's position based on briefs that each side submits and decide whether a mistake occurred and what should be done to correct it. If a party does not like the outcome in the court of appeals, the party may appeal to the Wisconsin Supreme Court, which does not take every case that is appealed. The supreme court decides which cases to hear based on factors such as whether the question in the case is important to the people of Wisconsin. If the supreme court elects to hear the case, the parties write their legal arguments in another set of briefs and then orally argue in front of the seven justices, who ultimately decide the case.

Checks and balances

Civil litigation promotes fairness among the branches of government as it may serve as a check on another branch of government, such as the legislative branch. The injury or wrong to a person may be a wrongfully made law. For example, parents of Matthew Ferdon, who was permanently injured during his birth, sued the doctor for medical malpractice in causing that injury. Before the case, the legislature passed a law that limited the amount of noneconomic damages an injured person could receive in a lawsuit based on medical malpractice. Noneconomic damages are payments for injuries that are difficult to quantify, such as pain and suffering, mental distress, and loss of enjoyment of the normal activities, benefits, and pleasures of life. As part of the case, the Ferdons argued that the statute that limited his amount of noneconomic damages to $410,332 was improperly made, or unconstitutional.

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The Ferdons appealed after losing their challenge to the noneconomic damages limit in the trial court and in the court of appeals. The Wisconsin Supreme Court agreed to examine the issue and decided that the limit on damages set by the statute created two groups of people: (1) severely injured people who did not receive the full amount of their damages because of the limit; and (2) less severely injured people who fully recovered their damages because those damages were less than the limit. The unequal treatment of the two groups of people, the court concluded, was not rationally related to the legislature's goal of lowering the costs of health care. Therefore, the statute violated the equal protection of Wisconsin's residents guaranteed by the constitution. The court had checked the legislature's power by invalidating one of its laws.

The court did not get the last word on the issue, though. The legislature revisited the limit on noneconomic damages and this time increased the limit to $750,000 and listed within the law its justification for the limit. One might assume that now, with the changes made to the law, the Wisconsin Supreme Court would decide that the limit on noneconomic damages in medical malpractice suits is constitutional. But the court system cannot review a legislative action, such as the passing of a law, without having a case that parties affected by that legislative action have brought before the court. A new plaintiff whose damages are limited by the statute could, like the Ferdons, challenge the law through civil litigation. Ferdon's case illustrates the separation of powers among the branches of government.

Summary

Civil procedure allows an injured or wronged person a remedy. Through civil litigation the court system can serve as a check on another branch of government. The civil procedure that governs civil litigation is designed to promote fairness, efficiency, and accuracy for all who walk through the courthouse doors.

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Study Questions

1	Who are the parties to a civil lawsuit? What causes a lawsuit to be created?	
2	What is the purpose of the rules of civil procedure?	
3	Give examples of the kinds of disputes that are resolved in civil litigation. Do these include criminal matters?	
4	How do the objectives of the trial court and the appellate court differ?	
5	How does civil litigation help keep a balance of power between the branches of government?	
6	What would happen if there were no statute of limitations in civil cases?	

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Study Questions in the Cognitive Domain

1	Who are the parties to a civil lawsuit? What causes a lawsuit to be created?	The plaintiff, who claims to have been injured or wronged by the defendant, and the defendant, who may or may not have caused the injury. The lawsuit begins when the injured person files a complaint setting out the facts and showing that he or she has a legal claim against the defendant.	Cognition
2	What is the purpose of the rules of civil procedure?	The rules of civil procedure ensure fairness to both the plaintiff and the defendant, as well as to the people, by reaching a fair and final resolution of the dispute in a fair manner.	Comprehension
3	Give examples of the kinds of disputes that are resolved in civil litigation. Do these include criminal matters?	Civil litigation resolves tort cases, contract disputes, divorce and family matters, and property disputes. Criminal matters are not included.	Application
4	How do the objectives of the trial court and the appellate court differ?	The trial court determines the relevant facts and applies the applicable law. The appellate court ensures that the law was correctly determined and applied.	Analysis
5	How does civil litigation help keep a balance of power between the branches of government?	A court can find that a law passed by the legislature is unconstitutional or that an action by the executive branch violates a statute.	Synthesis
6	What would happen if there were no statute of limitations in civil cases?	If there were no time limit on when a plaintiff could start a lawsuit after the underlying event occurred, the defendant would never have finality in the case and witnesses might not accurately remember facts.	Evaluation