

Civil Procedure Before Trial

CHAPTER 12

CASE FILE

- ✘ Read the case file at the beginning of the chapter
 - + Can you make an informed decision as to the merits of Martinez's claim with only the information provided? Explain. If not what other information might you require?
- ✘ Read the following article and watch the video attached
 - + http://www.huffingtonpost.com/2014/07/06/officer-punching-woman_n_5560463.html
 - + Answer the following question: To what regard should the police be able violate / restrict personal rights and physically subdue suspects in the course of their duties.
 - + Do we know enough information about the situation discussed in the article above to make an informed decision? Why or why not?

CIVIL PRE TRIAL PROCEDURE - JURISDICTION (294-302 [INCLUDING VENUE])

- ✘ What is a cause of action? If no defense can be produced what types of remedies does a civil court generally provide?
 - + What are the cases called where the plaintiff requests monetary damages?
 - + Discuss the modern and realistic differences between a case at law and a case in equity
- ✘ Review application 12.1. Based on what you've read in this type of civil case upon whom does the burden of proof for the cause of action lie?
- ✘ How does a plaintiff determine the proper court to file his lawsuit? (Be sure to discuss both subject matter and territorial jurisdiction)
 - + Do all courts hold independent and non-overlapping levels of jurisdiction? Explain.
 - + When concurrent jurisdiction exists who has the final say in the court that will hear the case? Explain.
- ✘ Assume you are living in Monmouth county and you are filing a civil lawsuit against another person. Create a table indicating court jurisdiction for the case under the following conditions:
 - + Defendant Lives in Monmouth County
 - + Defendant Lives in Ocean County
 - + Defendant Lives in Bronx Borough (New York)
 - + Defendant Lives in The Bronx and the amount in controversy is \$100,000
- ✘ Vocabulary

JURISDICTION

- ✘ Jurisdiction – the right to hear a case and render judgment (original / appellate)
 - + Subject matter Jurisdiction – the court that has a legal right to hear a case based on the reason for the lawsuit
 - + Territorial Jurisdiction – the court that has a right to hear a case based on the location of residency for the defendant.
 - + Both Subject matter and territorial jurisdiction must be satisfied (unless waved by defendant) for the court to hear a civil case.

TWENTIETH CENTURY-FOX FILM CORP V TAYLOR (297-300)

- ✘ Read the case on the assigned pages and answer the case analysis questions.
- ✘ Review Page 302
 - + Discuss what In Rem Jurisdiction is and when it applies.

JURISDICTION

You live in Monmouth county and file a civil lawsuit against another person:

Defendant Lives in	<i>Subject M Juris.</i>	<i>Territorial Juris.</i>	<u>Original Juris.</u>	Rule
Monmouth County	NJ State Courts	Monmouth County (State)	Monmouth County (State)	Territorial and Subject Matter Jurisdiction
Ocean County	NJ State Courts	Ocean County (State)	Ocean County (State)	Territorial is Ocean County
Orange County (NY) Lawsuit <75k	NY or NJ State Courts	Orange County NY (State)	Orange County NY (State)	Territorial is NY State Courts / Orange County
Orange County (NY) Lawsuit >75k	NY / NJ / Federal District Courts	Orange County - NY (State) / Federal District Courts	Orange County - NY (State) or Federal District Courts***	Concurrent Jurisdiction / Diversity of Citizenship

*** In this example the lawsuit can be filed in either court. However, if it is filed in the state courts the Defendant can remove the case to federal court

PLEADINGS (302 – 313)

- ✘ What is a pleading? What kinds of pleadings exist and what do each of these types of pleadings do?
 - + What is the difference between counterclaims / cross claims and third party actions?
 - + What occurs after pleadings? Does a trial immediately occur? Why or why not?
- ✘ What type of information is contained within the complaint? What do each of these terms mean?
 - + What is a docket number?
- ✘ What forms are issued after a complaint is filed with the court?
 - + Once the summons is issued how is the defendant notified of the lawsuit? By Whom and through what potential methods?
- ✘ After the defendant is informed of the lawsuit what options does the defendant have?
 - + What occurs if the defendant ignores the summons?
 - + What types of answers can be given if the summons is not ignored?
- ✘ Vocabulary

MOTIONS AND DEPOSITION (313-325)

- ✘ What is a motion? What are motions used to rectify or challenge? (313 / 315) When are motions (specifically pretrial) utilized?
- ✘ What is discovery? What are the three most common tools of discovery and what do they do?
 - + What is a deposition? Under what circumstances are deposition utilized?
- ✘ Think about the idea of Disclosure? Why would disclosure be an important part of ensuring a fair process? Explain.
- ✘ Does every case go to trial? Explain what happens in a pretrial conference / settlement conference
 - + What does it mean for a court to dismiss a civil case with prejudice? Why would it not be a good idea to have case dismissed without prejudice if you were a defendant without any counterclaim?
- ✘ Vocabulary

MTV NETWORK V CURRY (316)

- ✘ Read the Case MTV Network v Curry on page 316, answer all case analysis questions
- ✘ Read Application 12.5 on page 324. Think about the judge's instructions to the jury. Why do you think he gave the jury these instructions?
- ✘ Review figure 12-7 on page 320 / copy pertinent information into your notes – you do not have to copy the entire story under how it works just write down a short sentence to help you understand.
- ✘ Do the same thing with Figure 12-8 on page 323 that you did with 12-7

APPLICATION AND ANALYSIS (326)

- ✘ Complete Application and Analysis Questions 1,2,3, and 4. We will discuss your answers in class.