



Legal Research, Writing, and Civil Litigation

Class 10

Discovery - Overview

- Purpose of Discovery: To give each party the chance to find out all necessary information to conduct the trial.
- **What information is discoverable?**
 - Almost anything; names of witnesses, witness statements, party statement, document, physical and mental examinations, records, photographs, etc.
- **What information is not discoverable?**
 - Information protected by a privilege, such as:
 - Attorney-client privilege
 - Spousal privilege
 - Work product: This means that an attorney's (or firm member's) notes, impressions, etc. cannot be discovered by the opposing party unless it is necessary to allow the party to get information that can't otherwise be obtained in a practical manner

Discovery – Overview (cont.)

- Rule 37 gives the court the power to sanction parties for failing to comply with a discovery requirement.
- **Important:** Civil cases are not like criminal cases, where a defendant has a right to remain silent. In a civil case, any party can be asked any question and must respond with the truth (unless the party invokes the 5th Amendment privilege against self-incrimination).

Mandatory Disclosure (Rule 26)

- First, the parties have a conference with the parties and the judge to map out a discovery plan.
- This information must be turned over to the other party within 14 days after the initial conference even without a request to do so (if the conference was before the party was joined, the party has 30 days from service of process):
 - Names and addresses of material witnesses involved in the case
 - Copy or description of all relevant documents
 - Computation of damages that the party is seeking
 - Insurance information that is relevant to the case
 - Information regarding the expert witnesses that will be used by the party (not necessarily what he's going to say - just the expert's background and credentials)
- Should there be more mandatory disclosure?

Dispositions (Rules 30 and 31)

- Depositions can be oral or written
- Depositions can be taken of any person, even a non-party and the subpoena process is available to force any person to submit to a deposition
- The party conducting the deposition must give all parties reasonable notice about the deposition and all parties have the right to have an attorney present at the deposition and to participate in it.
- The deposition (if oral) takes place with all parties and/or their lawyers present with a court reporter. All sides can question the witness about almost anything. Hearsay and other inadmissible evidence can still be asked about in a deposition. The purpose of a deposition is as much to see where to look for information as it is to get information.
- A party of the deponent may object to a question and stop it from being asked or answered (e.g., on the grounds of privilege or work product); the party that asked the question can go to the judge and get an order forcing the deponent to answer the question.

Dispositions (Rule 30 and 31) (cont.)

- After the deposition, the deponent reviews it for accuracy and then signs it.
- Use of depositions in court at trial: A deposition can be used at trial in the following circumstances:
 - to impeach a party's testimony (i.e., by contradicting it with her own deposition)
 - against the deponent's party (e.g., the plaintiff can use the deposition of the defendant in its case in chief)
 - if the deponent is dead, unable to attend, incompetent, or lives far away
 - any other "exceptional circumstances" that make it in the interest of justice to allow the deposition into evidence

Other Discovery Devices

- **Interrogatories (Rule 33):**
 - These are written questions given to an opposing party; they are designed to discover the opposing side's view of the case as a whole, not just the statements of the other party herself.
 - The responses can be prepared by the opposing attorney and the same objections can be made as with depositions.
 - These can be used in court when the rules of evidence allow
- **Production of Documents and Property for Inspection (Rule 34)**
 - This is used when a party wants to inspect property or items necessary for preparation of its case

Other Discovery Devices (cont.)

- **Request for Physical or Mental Examination**
 - Can only be asked for if good cause to conduct the exam exists
 - Only available to examine a party or a person under a party's control
 - The report on the examination must be given to all parties
- **Request for Admission**
 - Any party can ask another party to admit to a fact so that it does not have to be proven in court. If admitted, it is assumed to be true in court.
 - A party who declines to admit an obvious fact for no good reason can be sanctioned by the court by being forced to pay for the expense and time required to prove that fact.



QUIZ TIME!