



Legal Research, Writing, and Civil Litigation

Class 12

Trial by Jury

- **Civil law right to trial by jury is very different from the criminal law right to trial by jury!**
- **The right to a trial by Jury**
 - The right to a jury applies in civil cases
 - “In suits at *common law*, where the value in controversy shall exceed twenty dollars”
 - This means that suits in “equity” don’t come with a jury trial right
 - Thus, equitable remedies, such as an injunction, are usually ordered by a judge, not a jury
 - If there is a trial that is a mix of common law and equity, it will get a jury trial at the option of the parties, for the non-equitable remedies involved
 - The \$20 clause is modified for inflation

Trial by Jury (cont.)

- **Jury Selection**

- Civil juries usually contain 6-12 members (plus alternates)
- Different jurisdictions have different requirements for a verdict, from simple majority to 2/3 to 3/4 to unanimous. It may also depend on the type of case
- During jury selection, the jurors must answer a *voir dire*
- Each side normally gets a certain number of “peremptory challenges” (ability to strike a juror without cause)
- Each side can challenge a juror for cause. If the judge agrees that the juror is biased or otherwise unfit for the case, the judge can dismiss the juror; there is no limit to challenges for cause
- Challenges (even peremptory) on discriminatory bases (e.g., race) are prohibited

Order of the Trial

1. Plaintiff's opening statement
2. Defense opening statement (optional); jurisdictions allow the defense to make its opening statement at the beginning of its case
3. Plaintiff's case: Plaintiff calls its witnesses, presents its documents through its witnesses
4. After plaintiff rests its case, the defense can move for "judgment as a matter of law" (also sometimes called a directed verdict) if the plaintiff has not met his or her burden of proof. This motion can be made and/or granted in whole or in part (e.g., one cause of action may be dismissed)
5. Defense's case: Defense calls its witnesses, presents its documents through its witnesses
6. After the defense rests its case, either party can move for a directed verdict based on the evidence.
7. Rebuttal by the plaintiff, surrebuttal, etc. if the judge allows it.
8. Closing statements
9. Jury instructions: The judge decides the law that should apply to the case and instructs the jury on the applicable law
10. Jury verdict
11. Post-trial motions for new trial and/or for judgment notwithstanding the verdict

Burdens of Proof & Standards for Motions

- In a civil case, the plaintiff has to prove every requirement element of each cause of action. If one element of a cause of action is not proven, the defendant must prevail on that cause of action.
 - Usually, the burden of proof in a civil case is by the “preponderance of the evidence”
 - For some cases, the burden of proof is higher; e.g., “by clear and convincing evidence”

Burdens of Proof & Standards for Motions (cont.)

- **Motions that can end the case:**
 - **Judgment on the pleadings:** Based on the pleadings, one party loses even if everything his or her pleading says is true
 - **Summary judgment:** A judgment made prior to trial based on the available documents and evidence
 - **Directed verdict/ judgment as a matter of law** (after a party rests its case): At any point, in order to grant a directed verdict, the judge must find that, given the evidence in the light most favorable to the non-moving party, no reasonable jury could conclude that the non-moving party could win the issue! i.e., there is no “triable issue of fact.”
 - **Judgment notwithstanding the verdict:** A judge can decide, after the verdict that, no reasonable jury could have reached the conclusion that the jury reached (the jury was unreasonable)
- So, why deny the motion before the verdict and then grant JNOV (judgment notwithstanding verdict)?
 - **New Trial:** In a civil case, after the verdict, the judge can rule that the verdict was “against the weight of the evidence” and order a new trial. Judges use this method to decrease excessive verdicts...



QUIZ TIME!