



## The Spirit of the Law

Civil and criminal trials begin differently. Civil cases are brought by individuals. The injured party begins the suit by filing a complaint with the court. In contrast, criminal cases are brought by the government. In minor criminal cases—misdemeanors—the action begins when a police officer or clerk-magistrate issues a summons for the suspect to appear in court. In major criminal cases—felonies—the action begins with a hearing before a judge to see if there is probable cause to refer the case to the prosecuting attorney to prosecute it or turn it over to a grand jury to decide if the suspect must stand trial. Once a trial begins, however, the procedures in civil and criminal cases are very similar.

### FYI

When two or more persons cannot resolve a dispute, they may litigate, or bring a legal action into a court of law. Each side will have an opportunity to present its argument and any evidence to support it. A judge or jury will then consider the evidence and make a decision.

### Legal Issues:

1. Are pleadings considered evidence?
2. Are photographs introduced in court considered documentary evidence?
3. Does a grand jury determine the outcome of a case?
4. Must jurors agree unanimously when deciding civil cases?

## Civil Trial Procedure

Civil trials begin with the use of pleadings. These are papers filed with the court by the plaintiff and the defendant at the beginning of a lawsuit. They establish the issues that the court is being asked to decide by setting forth the plaintiff's allegations (claims or assertions) and the defendant's answers to those allegations.

### Pleadings

The first pleading filed is the plaintiff's complaint. A **complaint** is a legal document containing a short and plain statement of the plaintiff's claim against the defendant. The complaint must contain sufficient facts to allow the plaintiff to win the case if the allegations prove to be true and there are no defenses to them. Figure 6-1 on page 75 shows a typical complaint.

A civil lawsuit begins when the complaint is filed with the court. The clerk of the court issues a summons, or notice to the defendant that a lawsuit has begun. The defendant must answer the complaint within the time period allowed or lose the case by default. An **answer** is a formal written document that admits or denies each allegation of the complaint and states any defenses that the defendant plans to use. A defense is a reason that excuses an otherwise wrongful act. Figure 6-2 on page 76 shows an answer to the plaintiff's complaint.

### Methods of Discovery

Under modern trial practice, the aim of the court is to make the facts of a case known to all parties involved before the trial begins. In this way, the issues that are in dispute become clearly recognized. In addition, the case takes less time to try and, many times, can be settled without even going to trial.

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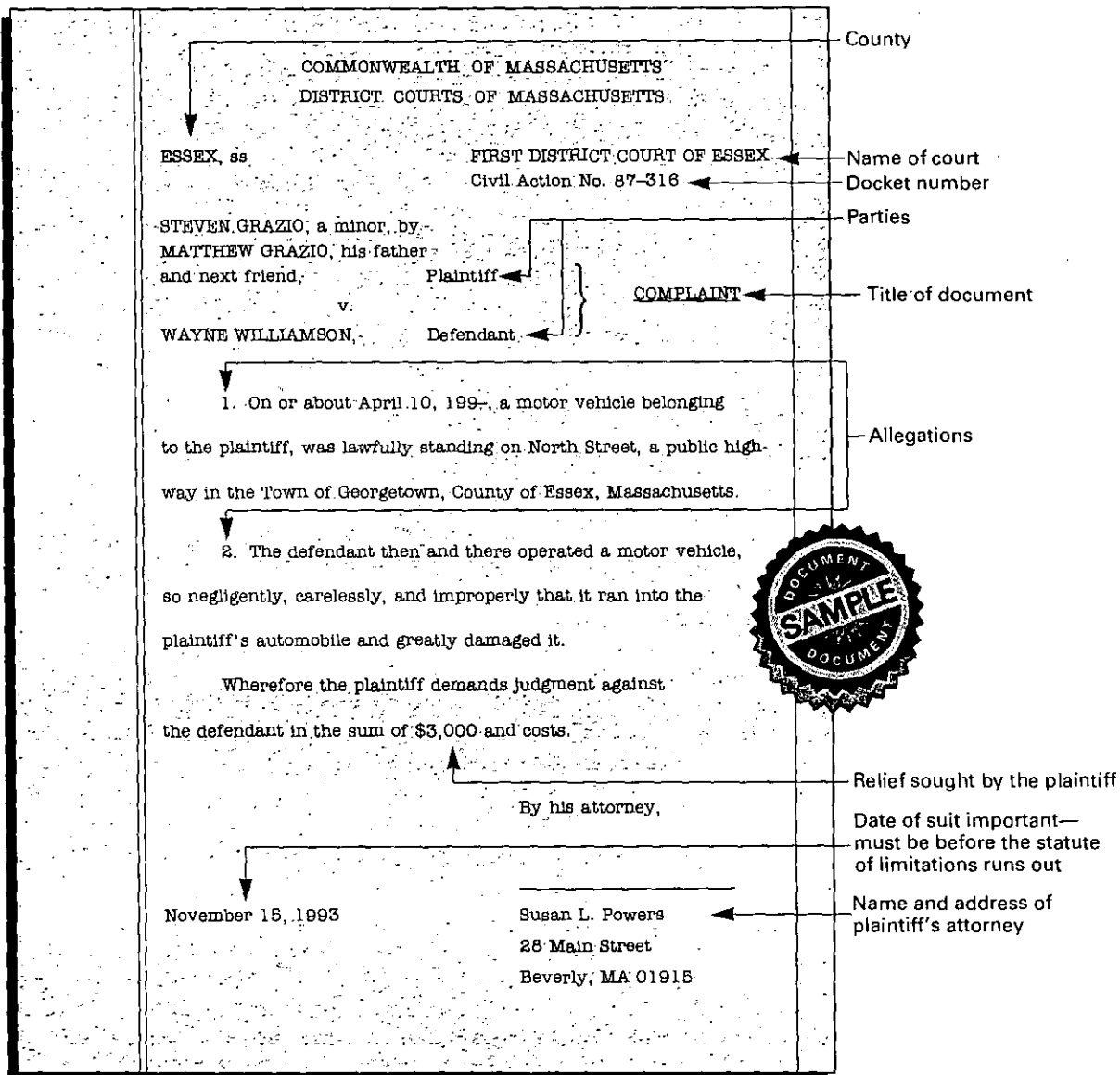


Figure 6-1 What are the defendant's duties regarding this complaint?

Methods used to bring facts out before the trial are called methods of discovery. The most common of these are depositions, interrogatories, requests for documents and other evidence, physical and mental examinations, and requests for admission.

If a case cannot be settled after the discovery phase, the clerk of the court places the case on the calendar, or court docket, for trial.

### Pretrial Hearing

Before the actual trial takes place, a pretrial hearing usually occurs. This is an informal hearing before the judge in an attempt to simplify the issues and discuss matters that might help to dispose of the case quicker.



COMMONWEALTH OF MASSACHUSETTS  
DISTRICT COURTS OF MASSACHUSETTS

ESSEX, ss FIRST DISTRICT COURT OF ESSEX  
Civil Action No. 87-316

STEVEN GRAZIO, a minor, by  
MATHEW GRAZIO, his father  
and next friend, Plaintiff }  
v. } DEFENDANT'S ANSWER  
WAYNE WILLIAMSON, Defendant }

1. The defendant has no knowledge or information sufficient to form a belief regarding the truth of the allegation of paragraph 1 of the complaint.

2. The defendant denies the allegations of paragraph 2 of the complaint.

3. Further answering, the defendant says that at the time of the alleged accident, the plaintiff's motor vehicle was parked next to a fire hydrant. This violated the law and caused or contributed to the causing of the damages complained of.

By his attorney,

December 10, 1993

George Rodriguez  
792 Washington Street  
Peabody, MA 01960

Figure 6-2 A person who receives a summons on a complaint must file an answer to the complaint. How does this document answer the complaint in Figure 6-1 on page 75?

### Steps in a Jury Trial

The steps in the trial consist of selecting the jury, opening statements, introduction of evidence, closing arguments, instructions to the jury, the jury's verdict, and the court's judgment.

#### Selecting the Jury

On the day set for a jury trial, the judge calls the court to order and has a jury drawn from a pool of citizens who have been called to serve as jurors. The jury's job is to determine the facts of the case and to apply the law to those facts. The judge supervises the attorney's questioning of each juror selected from the pool.

Determining whether a juror will be biased or prejudiced is difficult. Attorneys must think about such things as the juror's background,

**YOU  
And The  
LAW**

Where can you go for help in your area when hiring a lawyer? What factors should you consider in choosing a lawyer? Can you change lawyers if you do not like the one you have chosen?

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education, experience, relationships, attitudes, and employment. They must also consider how the jurors will relate to one another as a group.

### Opening Statements

The next step in the trial, after the jurors have been selected, is the opening statement of each attorney. It is at this time that the attorneys for each side tell the judge and jury about the case and what they intend to prove. The plaintiff's attorney makes an opening statement first, followed by the defendant's attorney. In some states, the defendant's attorney may elect to postpone making the opening statement until after the plaintiff's evidence has been presented.

### Introduction of Evidence

At the conclusion of the opening statements, the prosecuting attorney presents to the court and jury all of the state's evidence. This may consist of documentary evidence (papers), such as written contracts, sales slips, letters, business papers, or affidavits (sworn statements). In addition it may include real evidence (actual objects) such as weapons, articles of clothing, photographs, and items found at the scene of a crime. The testimony of witnesses is another commonly used form of evidence.

Witnesses are people who have observed events that are relevant to the case on trial. They are subpoenaed (requested by a court order to appear in court) to testify to facts within their personal knowledge. They may also testify as to opinions that they may have formed based on the facts they may have perceived, such as an opinion that a person was drunk. Sometimes expert witnesses, who do not testify as to the facts but give expert opinion on facts or principles that apply to the case, are called.

*Example 1.* A subpoenaed witness failed to appear in court. Another refused to answer questions asked during the trial. It was held that the presiding judge had the right to declare both witnesses to be in contempt of court and that the judge had the power to impose a fine or a jail sentence.

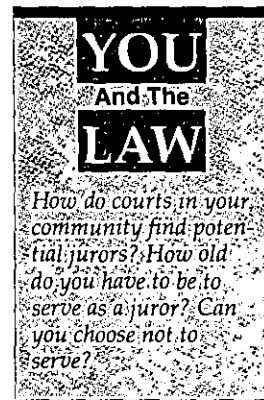
The defendant's attorney has the opportunity to cross-examine, or question, the plaintiff's witnesses. The aim of the cross-examination is to test further the truth of the witnesses' statements and to bring out any related evidence that was not developed on direct examination. When the plaintiff's attorney rests, the defendant's attorney presents evidence favorable to the defendant. The attorney uses witnesses and any other evidence important to the defendant's case. The plaintiff's attorney then has an opportunity to cross-examine the defendant's witnesses. Specific rules of evidence must be followed to ensure that trials are run fairly and in an orderly manner. When the attorneys have introduced all their evidence, they rest their cases.

### Closing Arguments

After both attorneys have rested their cases, they present their closing arguments. The plaintiff's attorney is first, followed by the defendant's attorney. Each attorney summarizes the evidence and suggests reasons why the judge or jury should find in favor of his or her client.

### Instructions to the Jury

Juries are composed of ordinary people who are usually not experts in law. Therefore, in all jury trials someone has to explain the law to the jury. The judge, as the trial's impartial referee, delivers these jury instructions. Attorneys from both sides may offer suggestions about the instructions to



assist the judge with this process. Ultimately, however, the final charge to the jury is up to the judge. The judge must explain the law in terms that the jury will understand. Yet, he or she must not dilute the law so much that the instructions become inaccurate.

### Verdict and Judgment

After receiving instructions about the law, members of the jury go to the jury room for their deliberations. The decision of the jury is called a **verdict**. In a civil case, the jury finds "in favor of" one of the parties, influenced by the evidence that carries the most weight. There are variations from state to state as to the number of jurors who must agree to reach a verdict. In Massachusetts, for example, five-sixths of the jury members must agree to reach a verdict in a civil case.

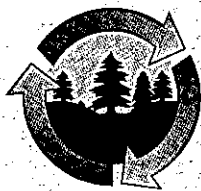
Following the jury's verdict, the court issues a judgment. A **judgment** is the court's determination or decision in a case. It is the act of the trial court that finally determines the rights of the parties.

### Execution of Judgment

There is now a winning party and a losing party. The judgment of the court must be executed, or carried out. The plaintiff may receive payment from the defendant in settlement of a claim. Or the defendant may be allowed to retain property claimed by the plaintiff. Sometimes the winning party must return to enforce a judgment.

A judgment is enforced by the issuance of an execution by the court. The execution may be an order by the judge to the sheriff to take property belonging to the person who lost the case. The sheriff must sell the property

## Law and Environment



In the 1970s the ethical treatment of the environment became enforceable law.

In 1970, Congress passed the National Environmental Policy Act. The act requires all federal agencies

to prepare environmental impact statements detailing the consequences of the agency's proposed actions and the agency's consideration of alternatives. The policies and provisions of this and other environmental laws are monitored and enforced by the Environmental Protection Agency (EPA).

The Clean Air Act was also enacted in 1970. This act requires the EPA to establish air quality standards and regulations governing sources of air pollution. The Clean Air Act enforces EPA regulations through civil penalties, administrative orders, and even criminal prosecution for violations.

In 1972, Congress passed the Clean Water Act to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The act requires the EPA to enforce minimum standards for the discharge of pollutants into waterways. This act also penalizes the unlawful discharge of pollutants into waterways. Violators are forced to remove the discharge and restore any areas damaged by the discharge.

To complement the Clean Air Act and Clean Water Act, Congress passed the Toxic Substance Control Act in 1976. This law authorizes the EPA to evaluate and regulate the manufacturing, distribution, and handling of toxic chemicals. It restricts the disposal of toxic substances and requires detailed record-keeping and labeling for manufacturers and processors of toxic substances.

1. What is an environmental impact statement?
2. Are the EPA's duties included under the Clean Water Act?

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at an auction and use the proceeds to pay the amount of the judgment to the person who won the case. Or the execution may be an order to the sheriff to remove a person or property to another location.

## Criminal Trial Procedure

Criminal cases often start with the arrest of the defendant. This is followed by an immediate court hearing designed to protect the defendant's rights. The case is then postponed to give time for the prosecuting attorney, who represents the state, and the defendant's attorney to prepare their cases.

### Arrest of the Defendant

An arrest occurs when a person is deprived of his or her freedom. A police officer may arrest a person at any time if the officer has a warrant for that person's arrest. An arrest warrant is an order issued by a court saying that a person is charged with a crime and is to be arrested. An officer may arrest a person without a warrant if the officer has good reason to believe that the person has committed or is presently committing a felony. In addition, an officer may, without a warrant, arrest someone who has committed a misdemeanor if the misdemeanor involves a breach of the peace and is done in the officer's presence. Various state statutes also allow officers to make arrests for specific misdemeanors done in their presence, even if there is no breach of the peace.

### Rights of the Defendant

When people are arrested, they must be informed of their constitutional rights, as set forth in the case of *Miranda v. Arizona*. Under the *Miranda* warnings, people have the right to know the crimes with which they are charged and the names of the police officers making the arrest. They have the right to use the telephone soon after they are brought to the police station to call their families, a friend, or lawyer, or to arrange for bail. **Bail** is money or other property that is left with the court to assure the court that the person will return to stand trial. People who are arrested also have the right to remain silent. If they decide to answer questions, they have the right to talk to an attorney beforehand. They can also have an attorney present during the questioning. People who cannot afford an attorney have the right to have the court appoint one to represent them free of charge. In addition to the *Miranda* warnings, the accused also have a constitutional right to a fair trial and to be presumed innocent until proven guilty of a crime by a court of law.

### Search and Seizure

A police officer may search a person, a motor vehicle, a house, or other building at any time if permission is given or if the officer has a search warrant. A search warrant is a court order allowing an officer to conduct the search. The search must be limited to the area mentioned in the warrant. The one whose person or property is being searched has a right to see the search warrant or to have it read out loud. The officer keeps the warrant, however, since it must be returned to the court.

If an officer has reason to believe that a person is carrying a hidden weapon, the officer may conduct a limited search called a frisk. This is done by patting the outer clothing of a person. If the frisk reveals something that feels like a weapon, the officer may search for and remove that object. The officer must return any lawful object that is found. When the search is over,

## Reducing Legal Risks

You have certain rights within the law. Make an effort to know those rights, especially those that apply if you are placed under arrest and those that apply to any court proceeding. If you are in a court of law in any capacity—plaintiff, defendant, witness or juror—remember your rights as well as your obligations.



►The scope of a search warrant is determined by the object that is being sought. How might the search areas differ in the search for a 25" television set and a search for a handgun?



the person must be either released or arrested. Persons who have been arrested may be searched without a warrant.

When someone is arrested in a house or building, the police may conduct a limited search of the area in which the arrest took place without a search warrant. They must have a warrant, however, to search the entire building. A limited search of a car may be made without a warrant if someone is arrested in the car. A more complete search of the car may be made if there is good reason to believe that the car contains something illegal that the police may take as evidence. In addition, the police have the right to impound (take possession of) a car until a search warrant is obtained from the court.

*Example 2.* In a 1976 case, a car was impounded by the police in a South Dakota community for a number of parking violations. While making a routine list of the car's contents, the police found a bag of marijuana. They charged the owner with possession of the substance. The Supreme Court of the United States held that the search without a warrant was constitutional in this case because the police of this community had followed a standard procedure of writing down the contents of every car they impounded.

Police may seize suspicious items, such as illegal drugs or weapons, that are in plain view without obtaining a warrant. This is known as the plain-view exception to the requirement of obtaining a search warrant. The U.S. Supreme Court has said that "information obtained from observing an object in plain sight may be the basis for probable cause or reasonable suspicion of illegal activity."

In 1981, the Supreme Court said that police can search the entire passenger area of a car without a search warrant once the occupants are placed under arrest. A year later, the Court held that police officers who have legitimately stopped an automobile and who have probable cause to believe that contraband (illegal goods or substances) is concealed somewhere within, may conduct a warrantless search of the vehicle, including compartments and containers within the vehicle whose contents are not in plain view.

*Example 3.* Acting on information from a reliable informant, police officers stopped an automobile driven by a person whose description matched the description given by the informant. They had been told that the automobile contained drugs. The police opened the trunk,

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without a warrant, and discovered a bag of heroin inside. In holding the warrantless search legal, the U.S. Supreme Court said, "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle."

In 1991, the U.S. Supreme Court held that once police have probable cause to believe a crime is being committed, they do not have to obtain a warrant in order to seize a vehicle and search it as well as any closed container inside it. In that same year the Court said that once a motorist gives police permission to search a car, officers may open bags or containers within the car.

The Supreme Court has held that the Constitution permits school officials to search students without a search warrant. The officials must have reasonable grounds to believe that the search will turn up evidence that the student has violated either the law or rules of the school. Also, the search must be done in a reasonable manner.

### *The Arraignment*

As soon as possible after an arrest, the suspect is brought before the court, informed of the nature of the complaint, and made aware of his or her rights. At this time, the judge may find cause to dismiss the complaint. Or, the judge may find probable cause that a crime was committed and refer the case to the prosecuting attorney. Depending upon the jurisdiction, the prosecuting attorney either prepares an information or presents the case to the grand jury. An *information* is a set of formal charges drawn up by the prosecuting attorney. A **grand jury** is a jury of inquiry. It is a group of citizens called together by a court official to determine whether there is enough evidence to justify accusing certain persons of certain crimes.

There is a clear difference between a grand jury and a petit jury. A grand jury conducts a preliminary hearing in secret to determine whether someone must stand trial. In contrast, a petit jury decides on the guilt or innocence of the person tried. A trial jury is called a petit jury because it usually has a smaller number of members than a grand jury. If the members of a grand jury believe, after hearing the evidence and listening to the testimony of witnesses, that a crime has been committed by the named individual or individuals, they issue an indictment. An **indictment** is a written accusation issued by the grand jury charging the individual or individuals named in it with a certain crime. An indictment does not mean that the named person is guilty of the crime. It only means that the grand jury believes that a crime has been committed and that there is a possibility that the person named in the indictment is guilty of the crime.

Following the indictment or information, the accused is brought to court to be arraigned. **Arraignment** is a procedure in which the accused is brought before the court, read the indictment or information, and asked to plead guilty or not guilty. The accused is informed of his or her rights, including the rights to counsel and to have counsel appointed if he or she cannot afford an attorney. If the person pleads guilty, the judge may impose the sentence at that time. If the person pleads not guilty, the case proceeds to trial.

### *The Trial*

The trial opens with the selection of the jury if one is requested by the defendant. After the jury is selected, the attorneys make opening statements

#### **FYI**

Around 500 B.C., there was a special court in ancient Greece. It tried only homicide cases and was called the Areopagus. Homicide trials were held outside so no one would have to share a roof with the accused murderer.



