

Chapter 2 Overview of a Tort Case

COMPLETION

1. Before initiating a complaint, a plaintiff may want to send the defendant a(n) _____ letter in which are detailed the reasons behind his or her claim as well as the plaintiff's expectations in terms of a settlement.

ANS: demand

PTS: 1

2. If a defendant fails to take any action in opposition to a complaint being served, the plaintiff may be able to get a _____.

ANS: default judgment

PTS: 1

3. A(n) _____ indicates that the plaintiff has read his or her complaint and that it is, to the best of the plaintiff's knowledge, true.

ANS: verification

PTS: 1

4. If a defendant raises a(n) _____ defense, he or she has the burden of proving that defense.

ANS: affirmative

PTS: 1

5. A _____ is a claim raised by the defendant against the plaintiff, while a _____ is a claim raised by the defendant against a codefendant.

ANS: counterclaim, cross-claim

PTS: 1

6. In some states a motion for failure to state a claim upon which relief can be granted is referred to as a(n) _____.

ANS: demurrer

PTS: 1

7. _____ are written questions submitted to an opposing party, while a(n) _____ is an oral examination of a witness under oath.

ANS: Interrogatories, deposition

PTS: 1

8. Records from an opposing party can be obtained via a _____.

ANS: request for production of documents

PTS: 1

9. If a defendant wants to have the plaintiff examined by an independent physician, he or she can file a _____.

ANS: request for medical examination

PTS: 1

10. A party can file a motion _____ when the opposing party requests information that is privileged and can file a motion _____ when the opposing party refuses to reveal discoverable information.

ANS: for protective order, to compel

PTS: 1

11. If a party decides that no material fact is at issue and that the case should be decided as a matter of law, he or she should file a(n) _____.

ANS: motion for summary judgment

PTS: 1

12. The purpose of a _____ is to promote settlement of cases and to make arrangements for the orderly presentation of witnesses and exhibits.

ANS: pretrial conference

PTS: 1

13. An attorney who wants to resolve an evidentiary issue before trial so that the matter is not brought to the attention of the jury should file a _____.

ANS: motion *in limine*

PTS: 1

14. A trial before a judge is referred to as a(n) _____.

ANS: bench trial

PTS: 1

15. During the process of _____ in which the attorneys or the judge asks potential jurors a series of questions, each party can use _____ to remove those whom the attorney alleges are unable to decide impartially, and can use _____ to remove those he or she wants excluded but for whom the attorney is unable to allege any bias.

ANS: voir dire, challenges for cause, peremptory challenges

PTS: 1

16. An attorney gives an overview of his or her case and establishes the theme for the case during _____, and tries to persuade the jury to find in his or her client's behalf during _____.

ANS: opening statements, closing arguments

PTS: 1

17. The purpose of _____ is to impeach testimony given during direct examination.

ANS: cross-examination

PTS: 1

18. A plaintiff in a tort case has the burden of proving each element of his or her case by a _____. If the defendant feels he or she has failed to meet this burden the defendant can move for a _____.

ANS: preponderance of the evidence, directed verdict

PTS: 1

19. During a process known as _____, the judge instructs the jury on the rules of law to be applied after which the jury will be requested to render a _____ or _____ verdict.

ANS: charging the jury, general, special

PTS: 1

20. If a party believes that a verdict was reached that was contrary to the evidence and to the law, he or she can move for a _____. If the party believes that errors were committed at trial, he or she can move for a _____.

ANS: judgment notwithstanding the verdict, new trial

PTS: 1

21. Once all appeals have been considered and completed, any issues litigated are considered _____, in that they cannot be relitigated at a later date.

ANS: res judicata

PTS: 1

TRUE/FALSE

1. A complaint must establish the basis for the court's jurisdiction.

ANS: T PTS: 1

2. A verification must always accompany a complaint.

ANS: F PTS: 1

3. A demurrer is a motion stating that the court in which the complaint was filed lacks jurisdiction.

ANS: F PTS: 1

4. One purpose of discovery is to promote the equitable settlement of cases.

ANS: T PTS: 1

5. Interrogatories are usually answered by or with the assistance of attorneys.

ANS: T PTS: 1

6. Deposition testimony can be used to impeach a witness at trial but cannot be introduced at trial if the witness fails to appear.

ANS: F PTS: 1

7. If a party fails to respond to a request for admissions, those matters within that request will be deemed admitted at trial.

ANS: T PTS: 1

8. To rebut a motion for summary judgment, a party must merely allege that a factual dispute does indeed exist.

ANS: F PTS: 1

9. One of the reasons behind a pretrial conference is to clarify the issues and defenses to be raised at trial.

ANS: T PTS: 1

10. The purpose of a motion *in limine* is to limit the number of questions that can be raised during voir dire.

ANS: F PTS: 1

11. An attorney has an unlimited number of peremptory challenges.

ANS: F PTS: 1

12. The majority of jurors decide the outcome of a case during opening statements.

ANS: T PTS: 1

13. If a party believes that the opposing party has failed to meet its burden of proof at trial, it will move for a summary judgment.

ANS: F PTS: 1

14. Attorneys give relatively little attention to jury instructions because they have little impact on the outcome of a case.

ANS: F PTS: 1

15. A jury that is asked to deliver a general verdict must provide answers to interrogatories in addition to rendering a verdict.

ANS: F PTS: 1

16. Counsel's failure to make the appropriate objections at trial can be remedied by counsel later making a motion for a new trial.

ANS: F PTS: 1

17. A party that believes a verdict is unsupported by the evidence presented at trial may move for a judgment notwithstanding the verdict.

ANS: T PTS: 1

18. The philosophy underlying res judicata is that everyone must be given ample opportunity to make arguments before the courts.

ANS: F PTS: 1

SHORT ANSWER

1. What are the four elements of any complaint?

ANS:

- A complaint must state that the court has jurisdiction, i.e., the authority to hear the case.
- The complaint must list the parties to the action.
- The complaint must provide a brief summary of each of the elements of the case along with the basic facts that will be used to prove each element.
- The complaint must specify the relief being sought by the plaintiff.

PTS: 1

2. What are two possible motions a defendant might file in response to a complaint?

ANS:

Motions can be filed alleging, among other things, a lack of jurisdiction over the person or subject matter, improper venue, insufficiency of process, or failure to state a claim upon which relief can be granted.

PTS: 1

3. In what circumstances might one opt to use interrogatories?

ANS:

Interrogatories are a relatively inexpensive way of soliciting basic objective information. Interrogatories are limited in usefulness because they are usually answered by or with the assistance of opposing counsel, whose aim is typically to provide as little information as possible.

PTS: 1

4. In what circumstances might one opt to take a deposition?

ANS:

Because depositions are considerably more time-consuming and more expensive than interrogatories, attorneys carefully select those whom they want to depose. At a deposition, deposing counsel will be able to observe the demeanor and presentation of the witness and assess how a jury might respond to the deponent. The attorney will also be able to pursue lines of questioning more thoroughly than by using interrogatories because he or she can ask follow-up questions and observe the witnesses' body language as they respond to the questions. A court reporter, present during the deposition, prepares a transcript of everything that is said. The transcript can then be introduced at trial. For that reason an attorney may opt to depose a witness whose testimony he or she wants to use at trial if the attorney believes that witness will not appear for the trial. Counsel can also use the witness's statements made during the deposition to impeach (discredit) the witness's testimony at trial.

PTS: 1

5. What is the difference between a challenge for cause and a peremptory challenge?

ANS:

A party who wants to excuse a particular juror and can show that the juror has already formed a judgment as to how the case should be decided or for some reason is unable to decide the case impartially, may use a challenge for cause.

The party who wants to dismiss a particular juror but cannot allege bias may remove the juror using a peremptory challenge. No reason need be given for a peremptory challenge.

PTS: 1

6. What is the purpose of filing a motion for summary judgment?

ANS:

During the discovery process a party may evaluate the dispute and determine that there is no material fact at issue for the jury to decide and that the court should render a decision as a matter of law without having to go to trial. In this event the party will file a motion for summary judgment, requesting that the court enter a judgment on its behalf, thus dispensing with the need for a trial (FRCP 56). A party can also request a partial summary judgment, which, in effect, eliminates particular issues.

PTS: 1

7. What is the purpose of making a motion for a directed verdict?

ANS:

Defendants move for a directed verdict, arguing that the plaintiff failed to meet the burden of proof on all the elements of her or his case. Such motions, though frequently made, are commonly denied, but if a motion for a directed verdict is granted, the case is in essence dismissed.

PTS: 1

8. What is the difference between a general verdict and a special verdict?

ANS:

A general verdict would require the jury to decide if the defendant was liable for the plaintiff's injuries and to determine what damages should be awarded. If a special verdict were requested, the jury would be required to answer special interrogatories, and the judge would have to determine the prevailing party after reviewing the jury's answers.

PTS: 1