

Chapter 5: Civil Suits for Money Damages

Chapter Summary

Chapter 5 includes a detailed explanation of the process of executing a civil suit for money damages. Students are reminded that money damages are the principal form of common law remedy and are not to be confused with equitable remedies (discussed in Chapter 6). Civil suits for money damages generate extensive pleadings—documents filed by the parties in the pre-discovery stage of the civil dispute process. After the filing of either a motion to dismiss or a motion for summary judgment, the process of discovery begins. Discovery—the process whereby the parties to a dispute share information, gathering important insights into one another’s case—takes place according to pre-established rules of civil procedure and norms established by the court. In the absence of a pre-trial settlement, litigants proceed to trial following the discovery phase and a pretrial conference. Assuming that a complete trial takes place, the losing party commonly files a notice of appeal with the trial court and prepares legal briefs. In some instances, appellate courts hold oral arguments on the merits of the appellant’s petition. At the conclusion of the appellate process, successful plaintiffs, known as judgment creditors, seek to enforce judgments against defendants, commonly known as judgment debtors. In the American legal system, once all appeals to higher courts are exhausted, the result of a civil suit for money damages is considered *res judicata* and the litigants may file no additional suits regarding the same questions of fact or law.

Learning Objectives

After reading Chapter 5, students should be able to:

1. Identify and define the various types of fees charged by attorneys to their clients.
2. Identify the basic documents that comprise the pleadings in a civil suit for money damages—i.e., the complaint, summons, answer, and reply.
3. Identify and describe the various motions filed by parties prior to the discover stage of a civil suit for money damages—i.e., the motion for summary judgment and the motion to dismiss.
4. Identify and describe the purposes of discovery and the various tools of discovery employed in civil suits for money damages.
5. Characterize the purpose of pretrial conferences and pretrial orders in civil suits for money damages
6. Identify and describe the principal events of the civil trial processes.

7. Identify and describe the basic rules of evidence observed in the civil trial process—i.e., the rules regarding hearsay evidence, leading questions, use of best evidence, relevance, materiality, and privileged communications.
8. Identify and describe the various types of damages sought and awarded in civil suits for money damages—i.e., nominal, compensatory, liquidated, and exemplary damages.
9. Identify and characterize the various post-trial motions commonly filed in a civil suits for money damages.
10. Identify and describe both the means by which parties seek appellate review and the process employed by appellate courts in reviewing trial court decisions.
11. Identify and describe the application of the principle of *res judicata* in civil suits for money damages.
12. Identify and describe the basic techniques for enforcing judgments in civil suits for money damages.

Outline of Essential Concepts

I. Legal Profession

A. Stratified bar

1. Legal profession is segmented into differentiated, informal status groups varying along the lines of type of practice, clientele represented, firm recruitment practices, and bar participation
2. Significant income stratification among lawyers

B. Hiring a Lawyer

1. Initial exploratory discussions (often free of charge to client)
2. Attorney fees
 - a. Flat fee (most common form)
 - b. Hourly fee
3. Contingency fees
 - a. 33 to 40 percent for in-court victories
 - b. 22 to 33 percent for out-of-court settlements
4. Depending on the lawyer-client contract, losing plaintiff may be responsible for costs associated with litigation
5. Defense attorneys often charge by the hour or on a flat fee basis

II. Pleadings, Answers, and Replies

- A. Complaint—initial pleadings, filed by plaintiff, contains allegations of fact
- B. Summons—accompanies complaint
- C. Answer—filed by defendant
 1. Failure to respond to complaint may result in default judgment

2. Courts may allow filing of an answer after statutory period expires
 - a. Admissions
 - b. Denials of specific facts (denial of specific allegations)
 - c. General denial (often considered out of order)
 - d. Assertion of new facts
- D. Reply—filed by plaintiff if defendant alleges new facts
- E. Defendant may file a counterclaim—creates a separate cause of action seeking relief against the plaintiff
- F. Motions
 1. Motion to dismiss (demurrer)—key question: “Is there a legal rule permitting plaintiffs to recover in the event plaintiff proves all facts alleged in complaint?” [If plaintiff fails to state a claim upon which relief could be granted, or if material facts cannot be proven in court, motion is granted]
 2. Motion for summary judgment—filed when no material facts are in dispute
- G. When pleadings are complete, the case is regarded as being *at issue*.

III. Discovery

- A. Information sharing processes among litigants
- B. Federal Rules of Civil Procedure requires full disclosure prior to trial
- C. Tools of discovery
 1. Depositions
 2. Interrogatories
 3. Production of documents
 4. Physical and mental examinations
 5. Requests for admissions

IV. Pretrial Conference

- A. Meeting of parties prior to trial
- B. May lead to settlement prior to trial
- C. Judge attempts to narrow the scope of the trial and identify areas of agreement among the parties
- D. Pretrial order issued at conclusion of conference
 1. Lists of witnesses prepared
 2. Evidence lists prepared
 3. Stipulations and admissions identified
 4. Pretrial order supplants the pleadings

V. Trial Phase of Litigation

- A. Seventh Amendment—right to jury trial in civil cases in federal court
- B. Jury selection
 1. Trial jury commonly known as a petit jury (traditional consists of 12 members)
 2. Initial pool of prospective jurors selected at random—must represent a fair cross-section of the community

3. Mail questionnaires sent to jurors and eligible jurors then directed to courthouse at specified day
 4. Names drawn at random from initial pool compromises temporary panel for trial
 5. *Voir dire*—question and answers session with attorneys prior to trial
 - a. For cause challenges (unlimited in number)
 - b. Peremptory challenges (limited in number)
- C. Opening statements
1. Attorneys outline case for jurors
 2. Attorneys not allowed to testify to jury
 3. Opening statements are not considered evidence
 4. Defense counsel may present statement immediately following plaintiff counsel's opening statements or after the conclusions of the plaintiff's case
- D. Parties and the burden of proof
1. Plaintiff shoulders the burden of proof
 2. Defendant shoulders burden of proof when new facts are alleged
 3. Pattern of direct and cross examination (followed by re-direct examination and re-cross examination)
 - a. Substance of cross examination is limited to the scope of the direct examination
 - b. Substance of re-direct is limited to the scope of cross examination

VI. Rules of Evidence

- A. Basic rules (plaintiff case presented first)
1. Leading questions—general principle: not allowed on direct examination (some exceptions apply)
 2. Hearsay evidence (some exceptions apply)—corresponds to right to confront witnesses
 3. Best evidence rule
 4. Relevance
 5. Materiality
 6. Privileged communications
- B. Motion for a nonsuit (motion for a directed verdict)—typically filed by defendant at conclusion of plaintiff's case [if granted, trial ends with defendant prevailing]
- C. Defendant's presentation (not required)
- D. Plaintiff's rebuttal (limited in scope to defendant's case)
- E. Request for a directed verdict (may be filed by either party at conclusion of defense case)
- F. Jury summations—plaintiff's counsel presents summation first
1. Plaintiff may set aside some time for rebuttal
 2. Attorneys must stay within the record
- G. Judge's instructions to the jury
1. Judge issues instructions
 2. Standard of proof: preponderance of the evidence

- H. Jury deliberation and verdict
 - 1. Foreman selected when jurors begin deliberations
 - 2. Three fifths of states allow less than unanimous verdicts in civil suits
 - 3. Judge may poll the jury in an effort to reveal intimidation

VII. Remedies in Civil Suits for Money Damages

- A. General damages
- B. Nominal damages
- C. Compensatory damages
- D. Exemplary damages
- E. Liquidated damages
- F. Comparing compensatory and exemplary damages
- G. Post-trial motions
 - 1. Motion for a new trial
 - a. Filed by losing party alleging that the verdict goes against the weight of the evidence
 - b. Losing party may file motion claiming that court erred at some point during the trial
 - 2. Remittitur—gives plaintiff option of taking less in damages or going through a new trial
 - 3. Partial new trial may be held in order to re-calculate damages

VIII. Appeal Phase of Litigation

- A. Typical grounds for appeal
 - 1. Court error in admitting or refusing to admit evidence
 - 2. Content of jury instructions
- B. Basis for appeal is created by attorneys registering objections at trial (failure to object is considered a waiver to a claim of judicial error)
- C. Notice of appeal must be filed with trial court
- D. Appeals must be filed with statutorily specified time limits
- E. Upon notice of appeal, all pleadings and trial records are reduced to written form and delivered to appellate court
- F. Parties file written appellate briefs
- G. Oral arguments held before appellate court (though typically not a matter of right)
- H. Following oral arguments, judges take a vote of first impression and initial opinion writing tasks begin (assignment of opinion writing duties varies by jurisdiction)
- I. Following final vote on the merits, judges produce written opinions party losing on appeal may petition the court for a rehearing

IX. Res judicata

- A. Requires that once all appeals to higher courts are exhausted, the judgment in the case is final (parties may not ask that the same questions of law and fact may not be adjudicated)

- B. Article IV, section 1 of U.S. Constitution (Full Faith and Credit Clause) requires that a decision that is *res judicata* in one state is *res judicata* in all other states.

X. Enforcing Judgments

- A. Writ of execution is method of requiring judgment debtor to pay judgment creditor—court orders appropriate public officers to seize as much of defendant's property as is necessary to pay the judgment
- B. Wages may be subject to garnishment

Important Terminology

Adversary process—description of litigation and trial activities in the American legal system. This term refers to the fact that at all stages of the civil litigation process, plaintiffs and defendants oppose one another, seeking legal and factual advantage in all allowable ways.

Answer—defendant's response to a plaintiff's complaint. The answer contains denials and admissions to specific factual allegations or may contain a general denial.

At issue—description of a civil suit at the moment the pleading phase of litigation is complete. At this point, the boundary lines of the factual disagreement are drawn and the subject of the trial comes into focus.

Attorney's fees—dollar amount paid by clients to attorneys for their services and representations. Fees may take the form of a flat fee, an hourly fee, or a contingency fee.

Benefit rule—refers to the idea that if a plaintiff in any way gains from a defendant's activities, the amount of relief owed to the plaintiff is reduced by an amount equal to the monetary value of the gain.

Best evidence rule—requires attorneys to present in court written documents or actual exhibits when it is claimed that such items of physical evidence exist.

Burden of proof—concept referring to the fact that one of the parties to a lawsuit must demonstrate that the weight of the evidence requires an outcome in their favor.

Compensatory damages—remuneration for loss of money due to the past and future harm directly attributable to the wrongful conduct of a defendant.

Complaint—document filed by the plaintiff in a civil suit notifying the defendant as to the factual basis for filing suit and the court that will exercise jurisdiction in the case.

Contingency fee—dollar amount paid to by a plaintiff to his attorney in the event that the plaintiff prevails in a civil suit for money damages.

Counterclaim—allegations entered by a defendant into the pleadings in a civil suit creating an entirely new cause of action

Denial of specific facts—type of answer in which the defendant acknowledges the truth of some of the plaintiff's allegations, but denies other elements of the complaint.

Deposition - out-of court, sworn testimony of a witness or party to a suit taken under oath and reduced to writing. Depositions are taken in a setting wherein the rules of evidence are relaxed and objections to questions are ruled on by the court at a later time.

Discovery—the process of exchanging information between parties to a civil dispute. Discovery uncovers evidence used to test the factual allegations of the plaintiff. Common discovery tools include depositions, interrogatories, production of documents, physical and mental examinations, and requests for admissions.

Doctrine of avoidable harm—idea that the plaintiff in a civil suit must not engage in activities that exacerbate the injuries for which money damages are sought.

Exemplary damages—often known as punitive damages. Exemplary damages are designed to punish defendants, holding them out as examples to others who might engage in similar wrongful conduct. Exemplary damages are awarded only in tort cases where evil intentions are present in the defendant's conduct and breach of contract cases where a tortious breach is present.

Federal Rules of Civil Procedure—adopted in 1938 to require full disclosure of facts prior to the commencement of civil trials and taking the element of surprise out of civil litigation. Among the implications of the Federal Rules of Civil Procedure is the tendency to encourage pretrial settlements based on the parties' awareness of the likelihood of prevailing at trial.

Flat fee—dollar amount charged by attorneys to the clients for the performance of routine services such as the handling of a real estate title search, preparation of a will, or representation on a minor criminal matter or uncontested divorce. Flat fees are the most commonly used form of attorney fees.

For cause challenge—claim by an attorney, following *voir dire*, that a prospective juror is not qualified for jury service due to the presence of some factor that would compromise the juror's objectivity as a finder of fact.

Garnishment—process whereby a portion of a non-compliant judgment debtor's wages or salary are, at the court's direction, ordered withheld by an employer and transferred to a judgment creditor to satisfy an outstanding judgment.

General damages—one type of compensatory damages that need not be entered in the plaintiff's complaint. This type of damage is assumed to be present and part of the injuries sustained by a successful plaintiff.

General denial—indication in the defendant's answer to a complaint that all of the plaintiff's factual allegations are untrue.

Hearsay evidence rule—refers to the concept that out-of-court statements by witnesses or the parties to a suit are, with some exceptions, inadmissible at trial. The hearsay evidence rule follows from the principle that all items of evidence and statements made in court must be subject to cross-examination.

Hourly fee—dollar amount charged by attorneys to clients for each hour, or portion thereof, dedicated to work on a client's case.

Immaterial evidence—information not essential to the legal causes of actions being litigated. Although immaterial, some information may be relevant.

Interrogatories—written questions for which written responses are prepared by the parties, but not witnesses, to a civil suit and signed under oath. Generally inadmissible at trial, interrogatories are used primarily to learn about information in the hands of the opposition.

Irrelevant evidence—information not linked to the truth or falsity of a material fact in a civil suit.

Judgment creditor—the party to whom compensation is owed as a result of a damage award in a civil suit.

Judgment debtor—the party owing money to a successful plaintiff following a civil suit for money damages.

Judgment—court's order concerning monetary damages owed to a successful plaintiff.

Jury foreman—person chosen by other jurors at the outset of jury deliberations to serve as a discussion leader, supervise votes, and function as a spokesperson for entire jury.

Jury nullification—the extra-legal occasion of jurors creating new rules of law or disregarding facts inconsistent with their own values or views of justice.

Jury summations—closing statements made by attorneys for both parties after the presentation of evidence is complete and prior to jury deliberations.

Leading questions—an inquiry made by an attorney to a witness wherein the answer to a question is included in the presentation of the question. With some exceptions, leading

questions are not allowed during direct examination of witnesses. Example: “Isn’t it true, Mr. Jones, that you knowingly drove your automobile faster than the posted speed limit?”

Legal briefs—written legal arguments prepared by both parties in appellate cases urging the court to rule in one way or another on an important questions of law.

Liquidated damages—form of monetary award reflecting a prior agreement of the parties as to the amount owed by one party to another in the event of a breach of agreement.

Motion for a nonsuit—asks that the court rule that the rule that the nonmoving party has failed to meet their burden of proof in a civil suit. Often, a motion for a nonsuit takes place after the presentation of the plaintiff’s case and immediately prior to the presentation of the defense case in a civil suit. Sometimes known as a motion for a directed verdict, motions for nonsuit may be filed by either party to a civil action.

Motion for summary judgment—asks that the court rule that the non-moving party could not possibly prevail on the merits of the case even if all evidence were viewed in a light favorable to the non-moving party. Motions for summary judgment may be made by either party to a civil suit and are typically made prior the commencement of trial.

Motion for a directed verdict—see motion for a nonsuit.

Motion to dismiss—filed by the defendant in a civil suit for money damages asking the judge to consider whether, assuming the truth of the plaintiff’s allegations, the law allows the plaintiff to recover damages in particular set of circumstances. Motions to dismiss are often made when the defendant believes that the plaintiff has in the complaint failed to state a claim upon which relief could be granted.

Nominal damages—awarded by a jury when it is decided by a jury that a defendant engaged in wrongful conduct but that the damages inflicted are slight.

Oral arguments—verbal statements made by attorneys to appellate judges or justices arguing that some error or procedure or in the interpretation of law either did not did not occur at trial.

Peremptory strikes—technique of removing, without justification, a prospective juror from the initial panel created prior to the state of trial.

Petit jury—trial jury, often composed of 12 members.

Physical and mental examinations—discovery tool used when mental or physical characteristics harm is alleged by the plaintiff to have resulted from the defendant’s wrongful conduct. This discovery tool requires the plaintiff to submit to examination by a doctor hired by the requesting party and is used, in a strategic sense, to balance the expert testimony offered by the plaintiff.

Pleadings—documents filed with the court by parties to a civil suit, including the complaint, summons, answer, reply, and any counterclaims.

Preponderance of the evidence—standard of proof used in civil suits for money damages. A preponderance of the evidence refers to the largest portion of the evidence, a quantity of evidence far less than the proof “beyond a reasonable doubt” standard employed in criminal cases.

Pretrial conference—meeting among attorneys and a judge that occurs after discovery and just prior to trial. Pretrial conferences involve identification of outstanding issues that remain for adjudication and an effort to narrow the scope of factual disputes to be resolved at trial. In the event that a pretrial conference does not yield a pretrial settlement, the court issues a pretrial order.

Pretrial order—document issued by the court containing a list of witnesses and evidence that each party agrees to an all of the parties’ stipulations and admissions. The pretrial order supplants the pleadings and represents the new boundary lines for the dispute at trial.

Privileged communication—information that may not be disclosed under the rules of evidence because to do so would violate the social or cultural norm that some types of relationships among persons are confidential and must be shielded from the glare of public disclosure.

Productions of documents—discovery tool wherein one of the parties to a suit requests that the opposite party provide for inspection and photocopying any document, writing, computer file, graph, chart, map, photo, or other item in his possession or control.

Punitive damages—see exemplary damages.

Rebuttal evidence—presented after conclusion of the defense presentation. Subjects of rebuttal evidence are limited in scope to those matters raised during the defense presentation.

Remittitur—granted by a judge whenever the jury’s verdict is against the weight of the evidence. When granted by the court, the plaintiff has the option of accepting a lesser judgment or scheduling a new trial.

Reply—the plaintiff’s answer to a defendant’s counterclaim.

Res judicata—the principle that once all appeals are exhausted, the result of a civil suit is final both with regard to the verdict and the judgment. The U.S. Constitution (Art IV, section I) requires that a case that is *res judicata* in one state is *res judicata* in all other states.

Retainer—fee paid by a client to an attorney in advance of future legal work. In a retainer relationship, clients often pay an annual fee and are entitled to a pre-specified amount of legal work by the retained attorney or firm.

Request for admissions—discovery tool in which parties ask the opposing side to admit or deny specific facts. In the event that no reply is offered, the matter is considered admitted.

Special damages—awarded to reflect the unique circumstances of a plaintiff's injuries. Examples include medical bills, loss of earnings due to hospitalization, and loss of future earnings. Special damages must be specifically listed in a complaint and proven at trial.

Standard of proof—quantity of evidence necessary for a plaintiff to prevail at trial. In a civil suit for money damages, the standard of proof is known as proof by a preponderance of the evidence.

Stratified bar—refers to the fact that the universe of practicing lawyers differs significantly by area of practice, client type, income, and social status. The stratified bar explains, in part, variation in individual client access to attorneys.

Verdict against the weight of the evidence—refers to a request by the losing party at trial who claims that the evidence presented at trial is inconsistent with the jury's verdict. If a motion for summary judgment is granted, a new trial is ordered by the court.

Voir dire—the question and answer sessions that occur during the process of jury selection. Literally translated, "to speak the truth," *voir dire* involves brief dialogue between attorneys and prospective jurors. *Voir dire* is often the setting in which attorneys choose to exercise one or more peremptory strikes.

Writ of execution—a routine order issued by a judge directing a sheriff to seize a judgment debtor's personal property in order to effectuate a sale and satisfaction of an outstanding judgment.

Practice Examination

True-False Questions

1. ____ In the pleadings stage of a civil suit for money damages, defendants file a document known as a reply in response to a plaintiff's complaint.
2. ____ Defense attorneys typically charge clients a contingency fee for handling their case.
3. ____ Defendants who fail to answer a plaintiff's complaint are subject to a default judgment.

4. ____ In a civil suit for money damages, a case is said to be *at issue* when the pleading phase is ended.
5. ____ Interrogatories are, in most jurisdictions, admissible as evidence at trial.
6. ____ The pretrial order is considered part of the discovery phase of a civil suit form money damages.
7. ____ The question and answer sessions that comprise *voir dire* are, in all jurisdictions, conducted by judges.
8. ____ In the process of jury selection, attorneys are allowed an unlimited number of for cause challenges.
9. ____ The best evidence rule requires that, when possible, photocopies of documents must be presented at trial rather than original documents.
10. ____ Attorneys are not allowed to testify to the jury when making closing arguments (summation).

Multiple-Choice Questions

1. In the pleadings stage of a civil suit for money damages, plaintiffs are known to file:
 - A. an answer
 - B. a complaint.
 - C. general denials.
 - D. counterclaims.
2. If a defendant believes that in the pleadings stage of a civil suit for money damages a plaintiff has failed to state a claim upon which relief could be granted, the defendant should file a:
 - A. motion to dismiss.
 - B. motion for summary judgment.
 - C. motion for directed verdict.
 - D. notice of appeal.
3. According to the Melone and Karnes text, depositions are one form of discovery wherein:
 - A. attorneys may not cross-examine witnesses.
 - B. objections to direct questions are not allowed.
 - C. witnesses may be compelled to appear by subpoena.
 - D. testimony given is never admissible at trial.

4. In the event that a pretrial settlement does not occur at the time of a pretrial conference, judges typically issue a _____ that contains a list of witnesses to be called and evidence to be presented at trial.
- A. voir dire
 - B. summons
 - C. pretrial order
 - D. remittitur
5. The motion for summary judgment is generally regarded as a:
- A. pre-trial motion.
 - B. part of the trial stage of a civil suit.
 - C. post-trial motion.
 - D. remittitur.
6. Suppose that in a civil suit for money damages, a defense attorney argues, prior to the presentation of the defense case, that the evidence presented by the plaintiff at trial could not reasonably lead a jury to a verdict in favor of the plaintiff. In this case the defense attorney has most likely filed a:
- A. notice of appeal.
 - B. motion for summary judgment.
 - C. motion for directed verdict.
 - D. motion to dismiss.
7. The standard of proof employed in a civil suit for money damages is known as:
- A. proof beyond a reasonable doubt.
 - B. proof by a preponderance of the evidence.
 - C. proof by a scintilla of evidence.
 - D. proof by a clear and convincing evidence.
8. If a jury decides that a plaintiff in a civil suit has suffered no measurable injury yet awards one dollar in damages as a way of recognizing the wrongful conduct of the defendant, the jury has granted the plaintiff:
- A. liquidated damages.
 - B. compensatory damages.
 - C. nominal damages.
 - D. special damages.
9. If, following a jury verdict in a civil suit for money damages, a judge decides that the plaintiff may accept a reduced damage award or submit to a new trial, a _____ has been ordered.
- A. motion for directed verdict
 - B. motion of for a nonsuit
 - C. motion for summary judgment
 - D. remittitur

10. As opposed to trial courts, appellate courts resolve:
- A. questions of law
 - B. questions of fact
 - C. both A and B are correct
 - D. neither A nor B are correct

Answers to Practice Examination Questions

True-False

- | | |
|------|-------|
| 1. F | 6. F |
| 2. F | 7. F |
| 3. T | 8. T |
| 4. T | 9. F |
| 5. F | 10. T |

Multiple Choice

- | | |
|------|-------|
| 1. B | 6. C |
| 2. A | 7. B |
| 3. C | 8. C |
| 4. C | 9. D |
| 5. A | 10. A |

Links to Useful Websites

[Link to website of the American Bar Association]

<<http://www.abanet.org/>>

[Link to website of Association of Trial Lawyers of America]

<<http://www.atla.org/>>

[Link to website for the National Institute for Trial Advocacy]

<<http://www.nita.org/>>

[Link to Legal Information Institute's material on the Federal Rules of Civil Procedure]

<<http://www.law.cornell.edu/rules/frcp/overview.htm>>

[Link to Legal Information Institute's material on the Federal Rules of Evidence]

<<http://www.law.cornell.edu/rules/fre/overview.html>>