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## **New York Civil Cases: Commencement and Pre-Trial**

New York Civil cases are those in which individuals, corporations or government agencies seek to recover damages, enforce their rights or otherwise protect a legal interest from interference by another. Essentially, the civil law enables people to assert or defend their rights in an orderly, nonviolent manner and enables them to resolve legal disputes in a fashion which society finds acceptable.

In your Civil Litigation I and II classes — both required classes — you will learn in greater detail about how civil cases proceed from the commencement to the end.

### **Introduction**

What is a civil case? It is not a criminal case.<sup>1</sup> Civil cases encompass a broad range of legal subjects, such as breach of contract, injury to person or property, divorce proceedings and a contest of the validity of a will.

The purpose of a civil case will vary depending on the nature of the matter involved.

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<sup>1</sup> As previously stated, criminal cases involve a prosecution for violations of statutes that define particular crimes, such as murder or robbery. Because criminal conduct is a breach of the public order and a violation of the public interest, the prosecution is brought on behalf of the people by the state or federal government.

## Examples of Civil Actions

ACTION	RELIEF
Automobile accident were to bring an action against the other driver	Recover damages for the physical injury suffered
Breach of contract	Recover money damages caused by the breach or, if feasible, seek to have the other party fulfill the terms of the contract
Trespassing on the property of another	Seek an injunction to prevent that conduct from happening again

Therefore, many remedies are available, with the appropriate choice depending upon the circumstances involved.

A civil case in New York develops in accordance with procedures in the Civil Practice Laws and Rules.<sup>2</sup> Similar to criminal cases, the civil cases follow a particular path. Example: A person believes he or she has been injured or damaged by another. That person, who will be the plaintiff, consults an attorney. The lawyer will first obtain the necessary information from the client, including all facts and circumstances that may serve as the basis for a legal action. The attorney may then take statements of witnesses, secure pertinent documents (e.g., medical reports) and research the applicable law to determine if the client has a valid case.

### Timeliness — The Statute of Limitations

As part of the initial review, the attorney may have to determine whether the action is timely, especially if the client has waited a number of years before seeking legal assistance. Because the memories of witnesses dim and evidence may be lost with the passage of time, a statute of limitations fixes the time period within which actions may be brought. The limitation varies with the type of case.<sup>3</sup>

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<sup>2</sup> This is one of the books you will learn to use in Civil Litigation I and II. The Civil Practice Laws and Rules (CPLR) governs civil practice; the Criminal Procedure Law (CPL) governs criminal practice.

<sup>3</sup> Under certain circumstances, the time period to bring an action may be extended, as, for example, in cases involving the infancy (i.e., status as a minor) or insanity of the injured party. In some situations, the time may be extended if the potential defendant has left the state or is residing in the state under a false name unknown to the injured person.

### **New York Statute of Limitations for Civil Cases: Examples**

<b>ACTION</b>	<b>WHEN AN ACTION MUST BE COMMENCED</b>
Intentional Torts <sup>4</sup>	1 year from the incident
Medical Malpractice	2 ½ years from the incident
Personal Injury	3 years from the incident
Negligence	3 years from the incident
Sales Contracts	4 years from the incident
Divorce on the Ground of Adultery	5 years from discovery of adultery
Injury suffered as a result of a rape	5 years
Contracts	6 years from the incident
Victim Injury or loss from a crime	7 years from the crime
Adverse Possession	10 years from the incident
To recover a money judgment	20 years from when the party was entitled to recover it

### **Jurisdiction and Venue**

If an attorney determines that the client has a case, a summons and complaint will be prepared and served on the other party. The lawyer's client is called the plaintiff in the action, and the person against whom the action is brought is called the defendant. Probably the most common means of effecting service is to deliver the summons personally to the defendant. Depending on the circumstances, other means may be permitted to accomplish service, such as publication in local newspapers. Proper service will give the court personal jurisdiction.

In beginning the action, the plaintiff's attorney must select the proper court. Some courts have jurisdiction only over specific types of matters. For example, Family Court is designated to handle questions relating to alimony, custody or child support, while Surrogate's Court deals

<sup>4</sup> For example, assault, battery, defamation (libel or slander)

with the settlement of estates and related matters. Even where a court has jurisdiction over a particular type of case, it may be limited by the monetary amount of the action. Thus, if an attorney wanted to institute an action for \$50,000 on behalf of a client, such a case could not be commenced in a county court with a \$25,000 jurisdictional limit. In this instance, the attorney would bring the action in Supreme Court — the court of general, original jurisdiction in New York State, which means its jurisdiction is broader than that of other courts.

The plaintiff's attorney also must select the proper venue for the action by bringing it in the appropriate county, which generally, is the plaintiff's county of residence.<sup>5</sup>

Under certain circumstances, an action's venue may change.<sup>6</sup>

## **Pleadings**

Pleadings are written documents that enable the parties to present the significant facts concerning each side of the case to the court. The *complaint*, for example, indicates the nature of the plaintiff's case by setting forth the allegations concerning the claim against the defendant and the relief demanded.

After receiving the complaint, the defendant is required to submit a responsive pleading called an *answer*. In the answer, the defendant may admit or deny the various allegations made by the plaintiff and raise any defenses that might be appropriate. Any claim the defendant wishes to make against the plaintiff may be included with the answer and is known as a counterclaim. For example, if two individuals were involved in an automobile accident, the plaintiff might bring an action against the defendant for personal injuries and damage to the vehicle. It might be the defendant's position, however, that the plaintiff was responsible for the accident. In such a case, the defendant might wish to file an action for injuries against the plaintiff, which could be included with the answer as a counterclaim. This process enables related claims to be heard together, rather than requiring the parties to litigate the same incident twice in separate cases.

If several defendants are involved in an action, one defendant may claim against another defendant by what is known as a *cross-claim*. A defendant who desires to claim against a person not already a party to the action, who may be liable to the defendant for all or part of the

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<sup>5</sup> Certain actions, such as those involving municipalities or school districts, must be brought in the county where those entities are located.

<sup>6</sup> If, for example, the plaintiff has selected the wrong county for trial of the case, the defendant may request that the venue be changed. Or, if the plaintiff has designated the proper county but there is reason to believe an impartial trial cannot be obtained in that county, this would constitute grounds for a change of venue. A change of venue may also be secured for the convenience of material witnesses.

plaintiff's claim, may file a *third-party complaint*, where, for example, the plaintiff purchases an item of equipment that proves to be defective and institutes an action against the merchant who sold the item, the merchant might assert that the equipment was improperly constructed, and thus would file a third-party complaint against the manufacturer.

If a counterclaim is filed against the plaintiff, a reply to the allegations is required. Where a third-party complaint has been made, the party served must file an answer. In this manner, the position of all parties is made known to the court.

If the defendant fails to appear after having been served with the summons and complaint or fails to file a responsive pleading, the plaintiff may then be able to secure a default judgment, since the defendant is acknowledging liability by not responding. If the plaintiff seeks a specified amount of money damages that can be readily computed (or money due on an unpaid promissory note), a judgment for that amount, plus interest and costs, may be obtained. If the claim is not for a certain sum or cannot be computed, then the court will take proof on the question of damages, which it will then determine.

After the pleadings have been filed, it may be necessary to modify, correct or supplement them. Defects also may be present in a party's case which entitle the other side to relief. Such matters are usually resolved by means of motions that are heard and decided by the court. For example, a defendant's attorney, after reviewing the complaint, may want more specific information concerning the allegations. In that event, the attorney would request a bill of particulars from the plaintiff's lawyer, specifying the desired items. By means of various motions, the parties may be able to establish the issues or determine points of dispute which otherwise would have to be resolved by trial, or terminate a case that is legally insufficient. In a personal injury action, for example, the defendant is entitled to information about the date and approximate time of the occurrence, a statement of the injuries and a description of those claimed to be permanent.

Upon reviewing this information, the defendant's attorney may discover that the plaintiff cannot succeed in the action, as, for example, when the plaintiff's pleadings are defective or the time limit for filing the particular action has expired. In such an instance, the defendant would be entitled to move for dismissal, bringing the case to a conclusion without a trial.

## **Disclosure**

Disclosure is the process of obtaining facts or information to help attorneys prepare for trial. By such proceedings, attorneys may obtain copies of pertinent documents, view physical evidence or, where relevant, request that a party undergo a physical or mental examination.

A party also may take the depositions of other parties or witnesses, which typically involves questions that are both asked and answered orally under oath. The attorneys for both sides have an opportunity to question the individual whose deposition is being taken, and the questions and responses are recorded by a stenographer. In some instances, when a potential witness is located out-of-state, written questions (called *interrogatories*) are used.

In this way, the attorneys are informed of the testimony that various individuals may be expected to give at the trial, possibly enabling them to resolve some of the issues before trial. Also, under certain circumstances, the deposition may be introduced at trial if the witness is unavailable to testify or makes contrary statements at the trial.

### **Pretrial Conferences**

After the pleadings have been filed, motions decided and disclosure of evidence completed, the attorneys will meet with the court before the trial takes place. At this meeting, the attorneys may stipulate which items they agree upon and also clarify those areas where there is dispute.

The pretrial conference helps to ensure that only the relevant issues will be raised at the trial. The conference may also disclose grounds for a reasonable settlement between the parties without having to resort to trial. If settlement is not possible, the case will go to trial.