

Public Safety Laws: Legal Theories & Process



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CIVIL LIABILITY PROCESS

- Legal Theories & Defenses
- Pleading Stage
- Discovery Stage
- Summary Judgment Stage
- Trial Stage
- Appeal Stage

State Tort Claims

- Tort defined: A civil wrong for which the court will provide a remedy in the form of an action for damages:
- 1) Negligence Tort Claims
- 2) Intentional Tort Claims
- 3) Strict Liability Tort Claims

LEGAL THEORIES

- Respondeat Superior - an employer is liable for the acts of the employees by the mere fact of employment

LEGAL THEORIES

- Vicarious Liability - indirect liability attributable to an individual or agency for actions of an employee (other than for just being an employee - respondeat superior)
- Example - on scene supervisor inaction to stop police beating of defendant by officers assigned to him/her.

Federal Law or Constitutional Claims

- Civil Rights Act of 1871 - (Ku Klux Klan Act) - 1st attempt pursuing constitutional violations - slavery issues
- Seldom used till 1960 (36 times in 90 years)
- Later codified as Title 42 Section 1983
- Now the primary tool in pursuing federal litigation against police for federal law or constitutional rights violations

Section 1983

“Every person, who under color of any statute, ordinance, regulation, custom, or usage, of any State or territory, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any right, privilege, or immunity secured by the Constitution and laws, shall be liable to the party injured in the action at law, suit in equity, or other proper proceeding for redress.”

LEGAL DEFENSES

- Legal defenses are factual assertions designed to limit or negate liability.
- Affirmatively pled facts that go to the existence or the amount of liability. In order to have a legal defense available, the defendant would have to plead the specific defense in its answer to the plaintiff's complaint.
- The timing of this assertion typically occurs at the filing of the answer, or later in an amended answer.
- The most common defenses in security-related claims are contributory/comparative negligence and assumption of risk.

LEGAL DEFENSES

- **Immunity – claim to be free from liability for torts:**
- Absolute Immunity - unqualified freedom from tort liability.
- Qualified Immunity - limited freedom if actions do not violate clearly established law.

LEGAL DEFENSES

- Representation Agreement - legal defense
 - Acting within the Scope of Employment
- Indemnification Agreement - financial protection when acting within the Scope of Employment
 - Compensatory Damages - Paid
 - Punitive Damages - NOT Paid

LEGAL DEFENSES

- Affirmative Defense - a response by the defendant in the answer which relieves the defendant of liability even if the allegation in the complaint is assumed true
- Statute of Limitations - time limitations
- Counterclaim - the defendant sues plaintiff
- Amending the Pleadings - updating the claims based on new information or theory

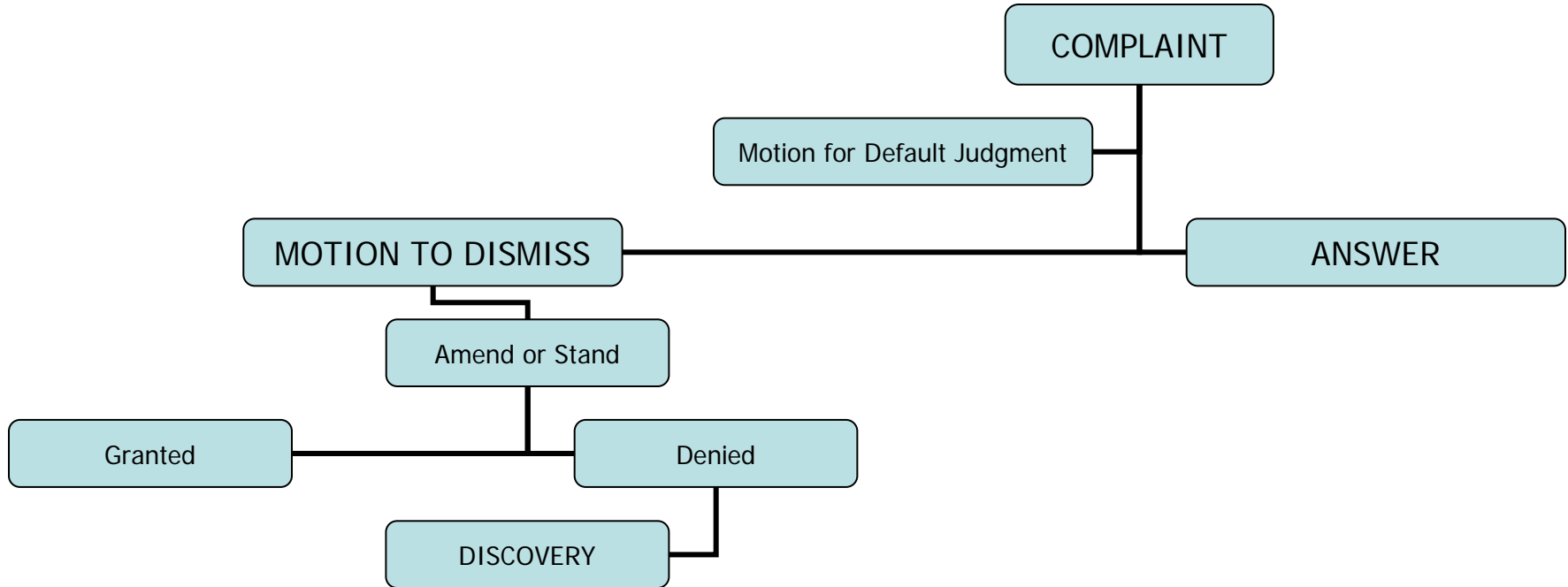
PLEADING STAGE

- Pleadings:
 - 1) Complaint - Plaintiff
 - 2) Answer – Defendant
- Summons - notice to appear and answer
- Complaint - Should have 3 parts
 - Jurisdiction of court
 - Statement of claim
 - Prayer for relief

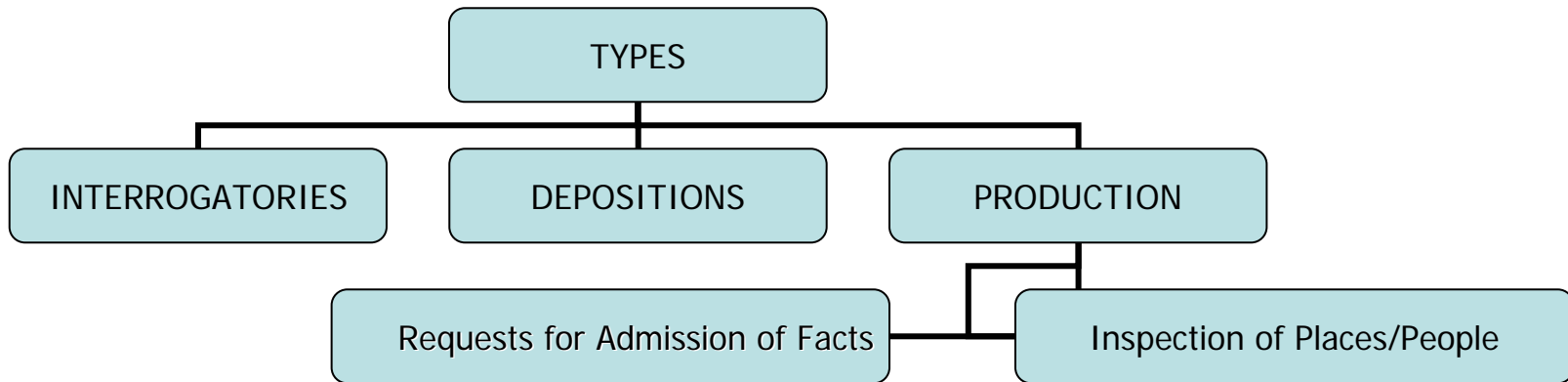
PLEADING STAGE

- Answer - the defense response
 - Admit to the facts or allegations
 - Not answer (considered as an admission)
 - General denial to all claims
 - Specific denial to certain charges
 - Denial of knowledge or information

PLEADING STAGE

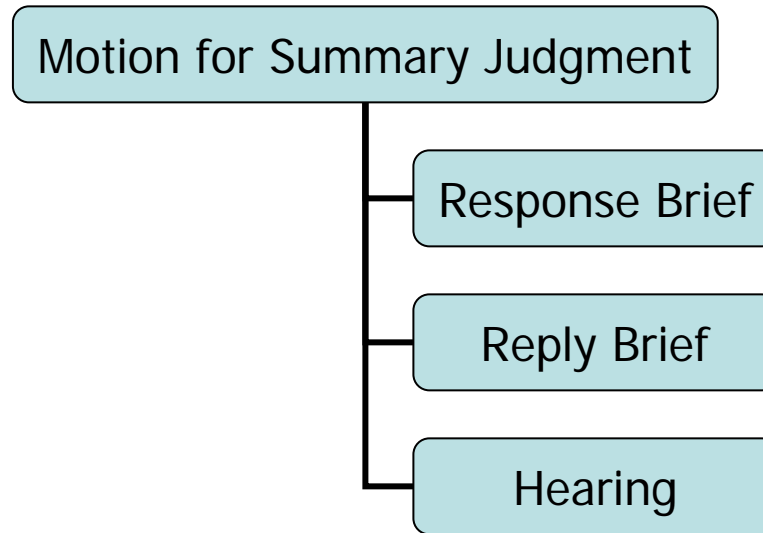


DISCOVERY STAGE



SUMMARY JUDGMENT STAGE

Standard: No genuine issue of material fact and therefore entitled to judgment as matter of law



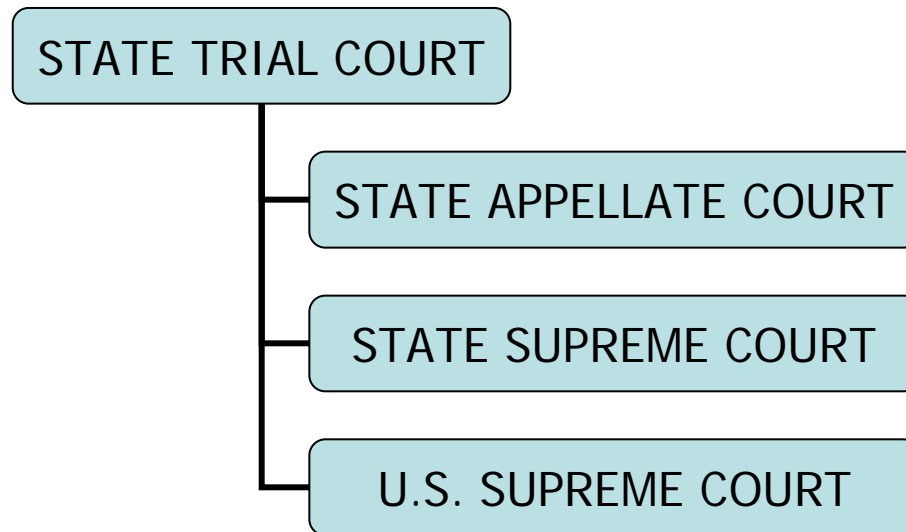
TRIAL STAGE

- Opening Arguments
- Plaintiff's Case
- Motion for Directed Verdict
- Defendant's Case
- Closing Arguments
- Verdict/Judgment
- JNOV/Reconsideration

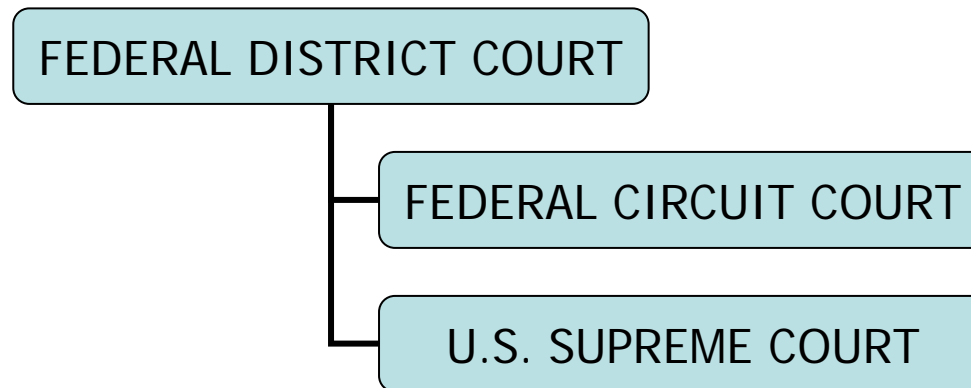
TRIAL STAGE

- Motion for Directed Verdict – motion after plaintiff's case presented, failed to meet the necessary showing of required elements under the legal theory offered by plaintiff
- Judgment Notwithstanding the Verdict - motion that the case should not have gone to the jury and the jury verdict should be overturned by the judge in the case

APPEALS STAGE



APPEALS STAGE



APPEAL STAGE

- Holding of the Case - court answer and reasoning
- Dissenting Opinion - reject the holding and/or reasoning of the court
- Concurring Opinion - agree on holding but not the reasoning of the court

APPEAL STAGE

- Final Order of the Court
 - Affirm -- Agree with the holding of prior court
 - Reverse -- Change the holding of prior court
 - Remand -- Send the case back to the lower court to decide the case based on the holding

CASE BRIEF

- Summarizes court opinion
- Provides legal precedent
- Use IRAC Model:
 1. Issue- Key consideration for the court
 2. Reasoning- legal principles
 3. Analysis- facts & law
 4. Conclusion- Who won & why

QUESTIONS



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