

## **Englische Rechtsterminologie – Skript 6**

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### **1. The Course of a Civil Lawsuit**

- is governed by FRCP in federal courts or similar state rules in state courts

#### *1.1. The Pleading Stage*

- plaintiffs complaint: **statement** on subject matter jurisdiction; **showing** that plaintiff is entitled to relief; **demand** for relief

- there's a low threshold - „notice pleading“

- respondents response: a) motion to dismiss asserting procedural defenses

b) or: answer contesting the plaintiffs claim on the merits

- amendments: generous practice but consider FRCP 11

#### *1.2. The Discovery Stage*

- facts of the case are investigated and developed through a pre-trial process called „discovery“ → one have to know some basics of the Adversary System

### *1.2.1 Adversary System*

- neutral and passive decision maker
- gathering and presentation of law and facts exclusively by the parties
- concentrated uninterrupted trial with clash of arguments and opposing evidence
- evidence gathering is up to the lawyers either during trial or before
  
- parties lawyers have the power to require anyone who has knowledge relevant to the case even th opposing party to come forward and divulge this knowledge under oath
  
- methods: deposition; subpoena; interrogatories; requests
- scope: anything which is relevant to the pending action except privileges and attorney work product
- enforcement: parties can seek compelling or protective court orders
- abuse of discovery: conducted mainly without court supervision; delay of proceedings; driving up the opposing partys costs

### *1.2.2. Pre-Trial Conference*

- hold by judges with all the lawyers to explore settlement opportunities
- if the negotiations fail the judge issues a pre-trial order
- determine the undisputed facts and the law (incl. stipulated facts)
- setting out remaining issues to be trialed

## **2. Jury Trial and How It Works**

### *2.1. Jury or Non-Jury Trial*

- 7th Amendment preserves right to a jury trial for civil cases in suits at common law
- disstinction common law / equity
- rule of thumb: action at common law if money damages are sought
- parties can unanimously opt out and choose a „bench trial“

## *2.2. The Course of a Jury Trial*

### *2.2.1. Selection of the Jury*

- jurors are laymen and are selected from jury pools based on voter registration and drivers license lists
- requirements: able to read and write and to be at least 18 years of age
- until recently highly estimated professions were exempted from jury duty but in 27 states there are today no more exemptions based on profession anymore
- „voir dire“ - selection process → challenge for cause, preemptory challenges
- compensation issues (financial unattractiveness)
- jurors have to be shielded from prejudicial influences → sequestered in a hotel
- division of function between judge and jury: judge decides issues of law / jury decides issues of fact
  
- however trial judge has the power to set aside the jury verdict if it lacks substantial evidence to support it

### *2.2.2. Safeguards of Quality of Fact Finding*

- Continental:
- professional Fact Finder
  - written reasoned decision
  - comprehensive review
  - oversight of output
- US Jury Trial:
- Group of Fact Finders from Community
  - Rules of Evidence → Coarse Filter of Facts
  - oversight of Inputs
  - no written decision
  - no insight in the decision process

### ***Vokabelliste***

• civil litigation	Zivilprozess
• pleading stage	Vortragsphase
• plaintiff	Kläger
• entitled to relief	einen Anspruch haben
• respondent	Beklagter
• motion to dismiss	Antrag auf Klageabweisung
• asserting	behauptend
• procedural defenses	verfahrensrechtliche Klageeinwände
• venue	Verhandlungsort
• legal claim	Rechtsanspruch
• merits	Sachverhalt
• adversary system	~ System der Gegenspieler / Streitverfahren
• charged	befugt, beauftragt
• clash of arguments	argumentative Auseinandersetzung
• pre-trial discovery	Beweissuche vor Prozessbeginn
• divulge	preisgeben
• oath	Eid
• deposition	mündliche Aussage
• subpoena	Vorladung
• interrogatory	schriftliche Befragung (eidlich)
• produce	vorbringen
• scope	Reichweite, Spektrum

• settlement opportunity	Möglichkeit der Schlichtung (Vergleich)
• exhibits	Beweisstücke
• injunction	gerichtliche Verfügung
• to opt out	optieren, wählen, auch: aus etwas aussteigen
• laymen	Laien
• exempted	ausgenommen
• mandatory	verpflichtend
• deliberations	Beratungen
• peremptory challenges	~ unabweisbare Anfechtungen
• sequestered	abgesondert, isoliert
• impartially	unparteiisch
• admissibility	Zulässigkeit
• compliance	Rechtmäßigkeit, Übereinstim- mung mit den Regelungen
• objection overruled	„Einspruch abgelehnt“
• objection sustained	„Einspruch stattgegeben“
• hearsay	Hörensagen, Gerüchte
• Verdict	Urteil
• preponderance	Überwiegen, Vormacht
• reputable	angesehen, seriös
• cross examination	Kreuzverhör
• safeguards	Schutzmaßnahmen