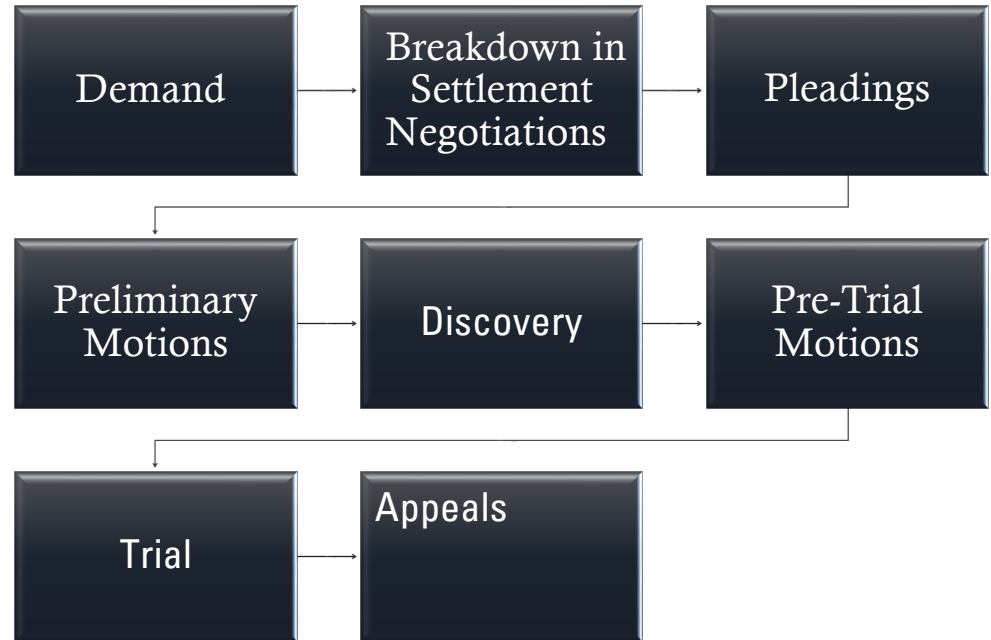

THE BASICS OF PRACTICING LAW: PERSONAL INJURY

2022-2023 LSBA Leadership Class Presentation





PHASES OF A PERSONAL INJURY LAWSUIT



DEMAND

- Demand letter is sent to Insurance Company to compensate injured party for injuries sustained as a result of tortfeasor's actions.
- Usually occurs after most treatment has been complete by client and medical bills/records have been gathered

BREAKDOWN OF SETTLEMENT NEGOTIATIONS

- Parties reach an impasse as to the amount offered by insurance company.
 - Plaintiff must file suit prior to prescription regardless of the finalization of settlement to preserve cause of action
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PLEADINGS

- Complaint
 - Plaintiff files suit
- Answer
 - Defendant answers the allegations in the complaint within the time delays set forth in the code of civil procedure and asserts any additional claims
 - Cross-Claims
 - Reconventional Demand

Preliminary Motions

- Parties may engage in the filing of exception motions challenging things like venue, jurisdiction, standing, cause of action, and prescription
 - Judgment on the Pleadings may also be filed at this time, if applicable.
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DISCOVERY

- Investigation & gathering evidence
 - Written Discovery
 - Interrogatories
 - Requests for Admissions
 - Document Production
 - Depositions

PRETRIAL MOTIONS

- Motion in Limine
 - Parties file these motions to keep out irrelevant or unfairly prejudicial evidence (typically against experts).
 - Motion for Summary Judgment
 - If facts are not in dispute, a MSJ is filed requesting a judge to rule based on evidence rather than moving on with trial.
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TRIAL

- The merits of the case are heard by either a judge or a jury
- Each side will present evidence and witness statements
- The jury will be given instructions and will render a verdict.
- Trial can last anywhere from a few hours to weeks.

APPEAL & WRIT

- Parties ask a higher court to review the trial court proceeding
 - Arguments and briefs are submitted along with the record of evidence from the trial court
 - The appellate courts give deference to the trial courts as the trier of fact.
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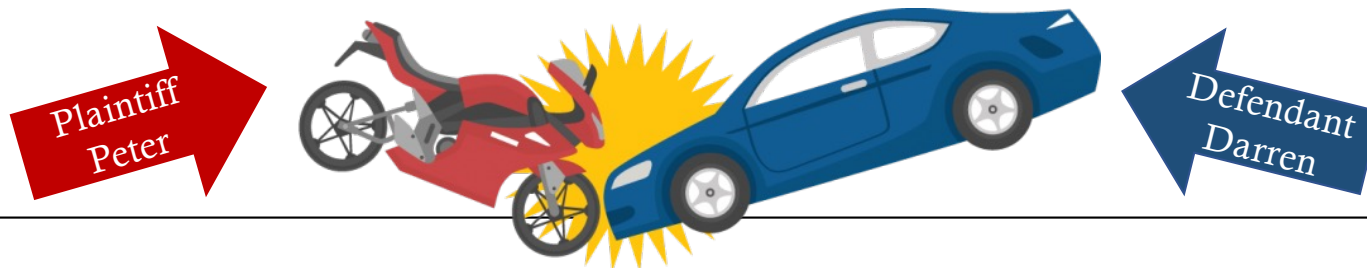
FACTS OF THE CASE



CASE FACTS

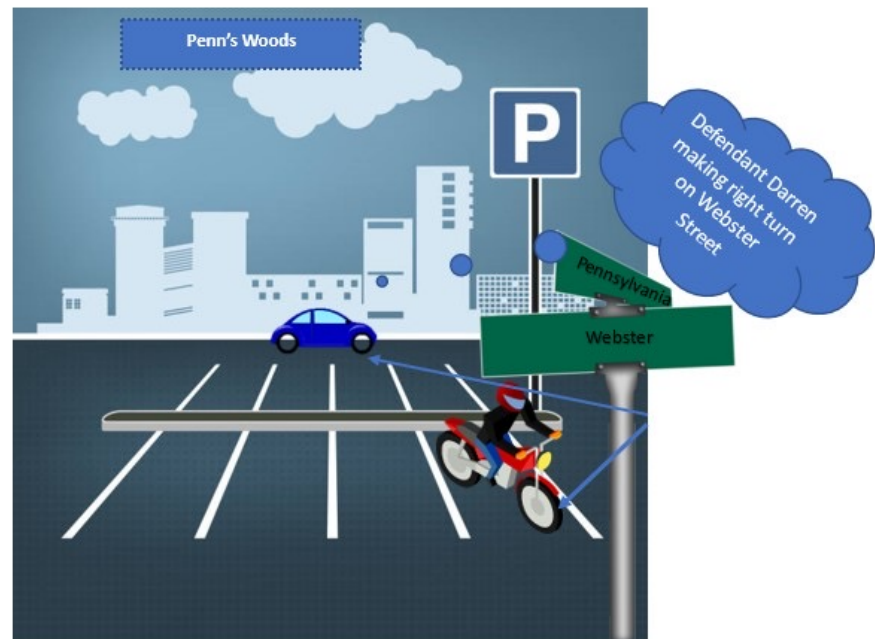
UNCONTESTED FACTS

- Date of Accident: September 4, 2017
- Time: 18:19
- Location: Penn's Woods on Webster Street



PLAINTIFF PETER

- Was in a parking space on Webster Street;
- Was parked on-street parking;
- Was legally parked;
- Had not moved from the parking space where the motorcycle was parked when Defendant Darren's vehicle violently struck him making a right turn on Webster Street; and
- Sustained multiple injuries including, but not limited to a fractured right tibia, a fractured right femur, a fractured left tibia, a fractured pelvis, and a closed hear injury.



Plaintiff Peter alleges Defendant Darren negligence caused his injuries.

DEFENDANT DARREN

- Was carefully and lawfully driving on Webster Street;
- Was suddenly hit by Plaintiff Peter when he darted into the street as Darren was attempting to park;
- Did not get no indication from Plaintiff Peter, by signal or otherwise, that he was about to enter traffic; and
- Sustained several cervical fractures and a closed head injury.



Defendant Darren alleges Plaintiff Peter is the direct and proximate cause of his harm when Plaintiff Peter pulled in front of him without wearing a helmet.

DISCOVERY



DISCOVERY

- What is it?
 - The formal process of exchanging information between the parties about the witnesses and evidence that will be presented at trial
 - Prevents "trial by ambush"
 - Types of discovery (*see* C.C.P. 1421)
 - Depositions by oral examination or written questions
 - Written interrogatories
 - Production of documents or things or permission to enter upon land or other property for inspection
 - Physical and mental examinations
 - Request for release of medical records
 - Requests for admissions
-

DISCOVERY

- Interrogatory Example – Mitigation of Damages
 - Interrogatory No. X:
 - Please identify all ways in which you mitigated your damages arising out of the subject accident.
 - Answer To Interrogatory No. X:
 - Plaintiff objects as affirmative defenses shall be specifically pled by the Defendants rather than sought during discovery. Subject to that objection, Plaintiff sought medical treatment for his injuries. Plaintiff reserves the right to supplement this response.
 - Interrogatory Example – Course and Scope of Employment
 - Was Plaintiff within the scope and course of his employment with his employee. Meaning, when the accident occurred, was employee performing work for his employer?
 - Plaintiffs object to this Interrogatory to the extent it calls for conclusions of law.
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DISCOVERY

- General Objection to Discovery Requests
 - Plaintiff objects to this Request in that it is vague, ambiguous, overly broad, and unduly burdensome. Plaintiff further objects to the extent that this Request seeks information which is confidential and/or privileged. Subject to these objections, and without waiving same, Plaintiff will make responsive documents available for inspection and/or duplication at a mutually convenient time and location...
 - Objection to Interrogatories – Excessive Number
 - This interrogatory exceeds thirty-five in number, including sub parts, in violation of C.C.P. 1457(B) and Louisiana Uniform State Rules of Court, Rule 10.0. Subject to and without waiving said objection, and in the spirit of cooperation, plaintiff answers as follows:
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DISCOVERY

- What is the significance of signing a request for discovery?
 - Attorney's certification that she has read the request, response, or objection, and that to the best of her knowledge, information, and belief after reasonable inquiry:
 1. Consistent with all the rules of discovery and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;
 2. Not interposed for any improper purpose, such as to harass or to cause unnecessary or needless increase in the cost of litigation; and
 3. Not unreasonable, unduly burdensome, or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.
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**MOTION FOR
SUMMARY
JUDGMENT**



MOTION FOR SUMMARY JUDGMENT (MSJ)

- What is it?
 - Granted if there "is no genuine issue as to material fact and the mover is entitled to judgment as a matter of law" (C.C.P. 966)(A)(3))
 - Designed to secure the "just, speedy, and inexpensive determination" of certain actions
- When can you use it?
 - "After an opportunity for adequate discovery"(C.C.P. 966(A)(3))
 - General Timeline (CCP. 966(B) & (C))*:
 - Must be filed and served at least 65 days before trial.
 - Hearing shall be set at least 30 days after filing and not less than 30 days prior to trial.
 - Opposition to MSJ must be filed in served at least 15 days before MSJ hearing
 - Reply memorandum must be filed and served at least 5 days before MSJ hearing.
 - Judge must render a judgment on MSJ at least 20 days prior to trial.

*Court can extend deadline if all parties agree. (C.C.P. 966(B))

MSJ (CONT.)

- Burden of Proof (C.C.P. 966(D))
 - Generally, rests on the mover of the MSJ.
 - However, mover does not have to negate all essential elements of adverse party's claim.
 - Rather, mover must point out the absence of factual support for one or more elements.
 - In turn, adverse party must produce factual support to establish existence of genuine issue of material fact or that mover is not entitled to judgment as a matter of law.
 - Judgment
 - Court must state its reasons for granting or denying the MSJ.
 - Judgment may be rendered for a particular issue, theory of recovery, cause of action, or defense, even if it does not dispose the entire case.
 - Can be appealed.
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HEARING



HEARING PROCESS

C.C.P. 966 & District Court Rules

- What type of hearing takes place?
 - A contradictory hearing should be set not less than 30 days after the filing and not less than 30 days prior to trial date.
 - How should parties be notified?
 - Notice of hearing shall be served on all parties not less than 30 days prior to the hearing in accordance with law.
 - Which party establishes the burden of proof at the hearing?
 - The burden of proof resides with the mover (point out the absence of factual support for claim, action, or defense of adverse party. Likewise, burden on adverse party to factual support to establish the existence of a genuine issue of mater fact or that mover not entitled to judgment as a matter of law.
 - Court will only consider those documents in support of or in opposition to the MSJ
 - How can a party object?
 - Shall be raised in a timely filed opposition or reply memorandum.
 - Shall be considered by the court prior to rendering judgment.
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HEARING (CONT.)

- When can a continuance be granted?
 - For good cause shown the court may order such continuance of the hearing..
 - What type of disposition can be granted and rendered?
 - MSJ may be rendered dispositive of a particular issue, theory or recovery, cause of action, or defense, in favor of one or more parties.
 - Granting of MSJ does not dispose of the entire case.
 - MSJ may be rendered or affirmed only to the issues pled before the court.
 - When should evidence not be admitted at trial to establish fault of party or nonparty?
 - Upon the granting of MSJ in provision with C.C.P. 966 that a party or nonparty is not negligent, is not at fault, or did not cause in whole or in part injury or harm alleged.
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**SUPERVISORY
WRITS & APPEAL
PROCESS**



SUPERVISORY WRITS

- What is it?
 - Used when a party requests a higher court review the decision of a lower court.
 - Discretionary.
 - Differs from an appeal in that the judgment from which the writ is taken is not a final judgment
 - May be applied for and granted under Article V of the LA Constitution and the court rules of the appellate and supreme courts. C.C.P. 2201.
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APPEAL PROCESS

Generally found in C.C.P. Book III & individual court rules

- What is an appeal?
 - Right of a party to have a judgment of trial court revised, modified, or reversed (C.C.P. 2083)
 - Limitation
 - Cannot be taken by a party who confessed judgment (C.C.P. 2085)
 - When taken?
 - Depends on type of judgment you are appealing:
 - Devolutive (an appeal that does not suspend the effect of an order): 60 days (C.C.P. 2087)
 - Suspensive (an appeal that suspends the effect of an order): 30 days (C.C.P. 2123)
 - Appellee's answer:
 - The appellee (defendant in an appeal) is not required to answer (C.C.P. 2133)
 - Can be dismissed at any time by: (C.C.P. 2162)
 - Consent of all parties
 - Lack of jurisdiction of appellate court
 - Appeal is abandoned
 - Things to note:
 - Security may need to be furnished (C.C.P. 2124)
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APPEAL OR WRIT?

- Depends on the designation of a final judgment C.C.P. 1915
 - If a court renders a partial judgment, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court. (B)(1)
 - No designation, then cannot be immediately appealed. (B)(2)
 - In turn, a party must take a writ.
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