

# HSCC 330

# Legal and Legislative

# Aspects of Health

# Care

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Civil Procedure

# Objectives

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- Upon completion of this section, the student should be able to:
  - identify key elements of a civil procedure trial
  - define a health professional's role in the procedure
  - define the defenses against recovery in a civil procedure trial

# Elements of a Jury Trial

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- Qualification
- Jurisdiction and venue
- Pleadings
- Complaint
- Answer
- Discovery
- Pretrial motions
- Summary Judgment
- Trial
- Post-trial

# Qualification

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- Does the case qualify?
- Case “at law” vs. case “in equity”

# Jurisdiction and Venue

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- Jurisdiction

- legal authority or power of a court to render a decision

- Venue

- location of a lawsuit

# Pleadings

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- Category of documents that set forth the claims and defenses of the parties

# Complaint

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- First document in a civil lawsuit
  - identifies facts of the case
  - proposes legal theories
  - asks for damages

# Answer

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- Response to the plaintiff's allegations in the complaint

# Discovery

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- Period that occurs between the service of the complaint and up to and including the trial
- Evidence gathering
- Interrogatories and depositions

# Pretrial Motions

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- Motion to dismiss
  - dismissal of case
- Motion in Limine
  - keeps information out (not relevant, prejudicial, questionable value)

# Discovery Pretrial Motions

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- Motion for protective order
  - protect confidential information
- Motion to compel
  - opposing side does not respond
- Motion for sanctions
  - filed if one side fails to comply with court order

# Summary Judgment

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- A way of getting around the judicial process
- Permits any party to move for summary judgment when he or she believes that there is no genuine issue of material fact and he or she is entitled to prevail

# Issues of Law vs. Issues of Fact

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## Issues of Law

- Facts are undisputed
- Solved by a judge

## Issues of fact

- Who is right?
- Solved by a jury

# Preventing Summary Judgment

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- Genuine issue
- Material fact

# Trial

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- Plaintiff carries the burden of proof
  - preponderance of evidence
  - substantial evidence
  - clear and convincing evidence
- Motion for directed verdict

# Post-Trial

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- Motion for a new trial
- Appeals
- Settlement

# Our Role in Civil Procedure

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- Witness
  - fact witness
  - expert witness
- Party
- Subpoena/Subpoena duces tecum

# Joint & Several Liability

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- Bringing suit against ALL persons who share responsibility for injury

# Defenses Against Recovery

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- Assumption of risk
- Borrowed servant
- Captain of the Ship Doctrine
- Comparative negligence
- Contributory negligence
- Good Samaritan Laws
- Intervening cause
- Statute of limitations
- Sovereign immunity

# Assumption of Risk

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- A plaintiff may not recover for an injury to which he assents
- Requirements

# Borrowed Servant

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- An individual who is dispatched by his employer to become an employee of another employer

# Captain of the Ship Doctrine

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- A physician who exercises control and authority over nurses and other health care professionals should be held liable for their negligence

# Comparative Negligence

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- Measured in terms of percentage
- Any damages allowed are diminished in proportion to the amount of negligence attributable to the injured

# Contributory Negligence

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- Liability of the defendant is limited if the patient contributed to his injury

# Good Samaritan Laws

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- Prevent liability for individuals who assist at the scene of an emergency

# Intervening Cause

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- An independent cause that intervenes between the original, wrongful act or omission and the injury

# Statute of Limitations

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- Prescribe limitations to the right of action on certain cause of action cases or criminal prosecutions
- 1-6 years
  - most are 2 years
- Beginning
  - day negligent act committed
  - when injury was discovered
  - day relationship ended

# Sovereign Immunity

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- Precludes suit against a sovereign unless that sovereign consents to the suit

In conclusion. . .

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