

# Opening Assignment

“Courtrooms exist so that irrational people, incapable of amicably resolving their differences, can lie under oath at one convenient location.”

From [Has My Lawyer Called Yet?](#) by Lawrence B. Fox

In your own words, what does this quote say about the court system? Do you agree or disagree? Explain?

# Pretrial Procedure

- Petition (Complaint - Federal)
  - Party filing the lawsuit is called the Plaintiff
  - Service of Process (Citation)
    - Notice of the lawsuit physically handed to the other party
    - First Monday after 21 days to respond (14 in Small Claims Court)

# Pretrial Procedure

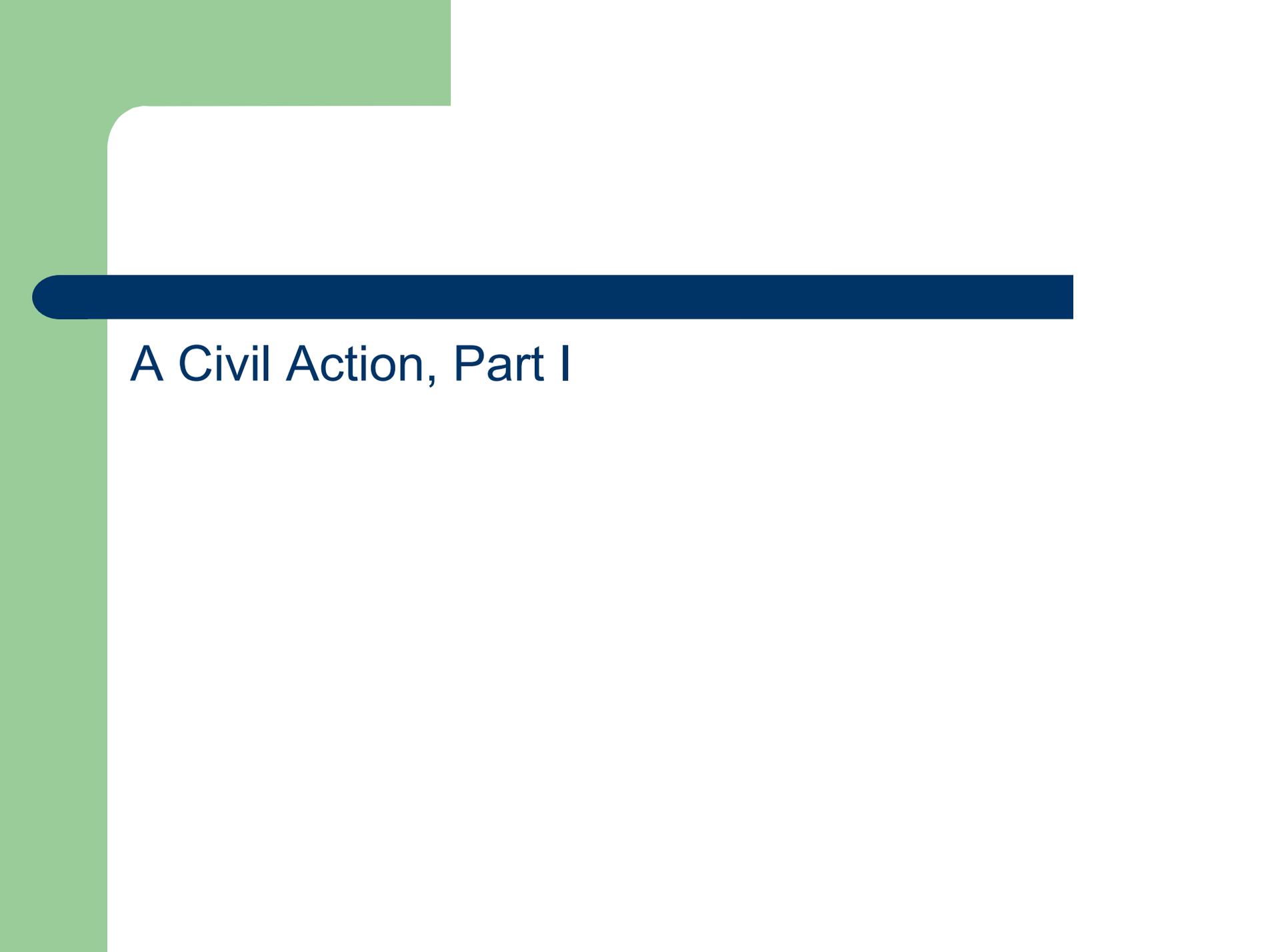
- Answer
  - Party being sued is called the Defendant
  - General Denial
    - Basically: “I deny everything stated in the Petition.”
  - Counterclaim
    - Forces plaintiff to also defend the lawsuit

# Pretrial Procedure

- Motion
  - Any request that a party makes to the court must be in writing
- Hearing
  - In court proceeding involving only judge and attorneys (no witnesses) where the motion is decided

# Pretrial Procedure

- Motion for Default Judgment
  - When defendant fails to answer
- Motion to Dismiss for Want of Prosecution
  - When plaintiff fails to follow through on lawsuit
- Motion to...

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# A Civil Action, Part I

# Civil Procedure

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# Pretrial Discovery

- Process of acquiring information for trial includes:
  - Interrogatories
  - Request for Admissions
  - Document Productions
  - Depositions

# Discovery Motions/Hearings

- Motion to Compel Discovery
  - When one party doesn't comply
- Motion for Summary Judgment
  - When one party hasn't shown enough proof through discovery



## A Civil Action, Part II

# Opening Assignment

**We didn't see much of the actual trial in "A Civil Action."**

**Think about the case for a minute...**

**How would Jan have gone about proving that the spilled chemicals and solvents actually reached the drinking water of Woburn?**

# Burden of Proof

- Criminal
  - **Beyond a Reasonable Doubt** – there is no other reasonable explanation for what occurred – burden is on the prosecution
- Civil
  - **Preponderance of the Evidence** – the suggested outcome is more likely than not – burden is on the plaintiff

# Evidence

- Evidence
  - anything the judge allows to be presented to the jury that helps to prove or disprove the alleged facts
- Includes:
  - Witness Testimony
  - Documents - Records, reports, memos, letters, etc.
  - Pictures
  - Graphics & Demonstrations

# Witnesses

- Fact Witness
  - anyone with personal knowledge of the facts
- Expert Witness
  - anyone with superior knowledge by experience, education or training who can elaborate on the facts
- Hearsay
  - Something that was spoken by someone other than the witness

# Who Put the Water in the Gas Tank?

- **Who do you think should win this case? Explain. What testimony persuaded you?**
- **After our discussion of the case, did you change your mind at all? What things did you consider in changing your mind or in sticking to your opinion?**



## A Civil Action, Part III

## Opening Assignment

After *A Civil Action*, you can probably see that a civil trial is a long and complicated process with an uncertain outcome. Is there a better way? How can people better solve their disputes? Give some specific suggestions, think about examples from the movie where the parties discussed settling the case.

# After the Court's Decision

- The court's signs a written *judgment* announcing it's decision
- Appeal?
  - Can appeal decisions made in trial courts
  - Only the record from the trial is considered

# Getting Paid

- Writ of Execution
  - Order to the Sheriff/Constable to seize defendant's assets
  - Assets sold at auction and money given to the plaintiff
- Judgment Lien
  - Judgment filed in county deed records
  - Defendant can't sell any property without paying it
  - Plaintiff can foreclose on property in some states

# Alternative Dispute Resolution (ADR)

- **Litigation** is the process of resolving disputes in court
- **ADR** provides alternative to litigation

# Negotiation

- Any discussion between the parties or their attorneys with the intent of settling the dispute
- **Settlement** means an agreed resolution to the dispute

# Mediation

- Structured negotiation with the help of an impartial third party (mediator)
- Mediator has no decision making authority, but may help the sides reach an agreement
- If parties agree, they sign a contract

# Arbitration

- More formal proceeding with presentation of evidence to third party (arbitrator)
- Arbitrator makes a decision that is binding on the parties

# ADR Question #1

- Your boss at Mako Manufacturing is getting ready to sign a contract with a supplier to provide a specialized part to a new machine. She is concerned with avoiding the delays and high costs of litigation that might result if there are any problems with the contract. What do you tell her?

## ADR Question #2

- Six months later the supplier provides a part which Mako claims does not meet the specifications of the contract. To get another supplier to design and build the part will take at least another year. What can Mako do at this time?

## ADR Question #3

- The supplier refuses to remake the part. As a result, Mako is forced to file a lawsuit against the supplier. Your boss admits that she should have listened to you the first time, and asks what she should do now. What can you recommend?

