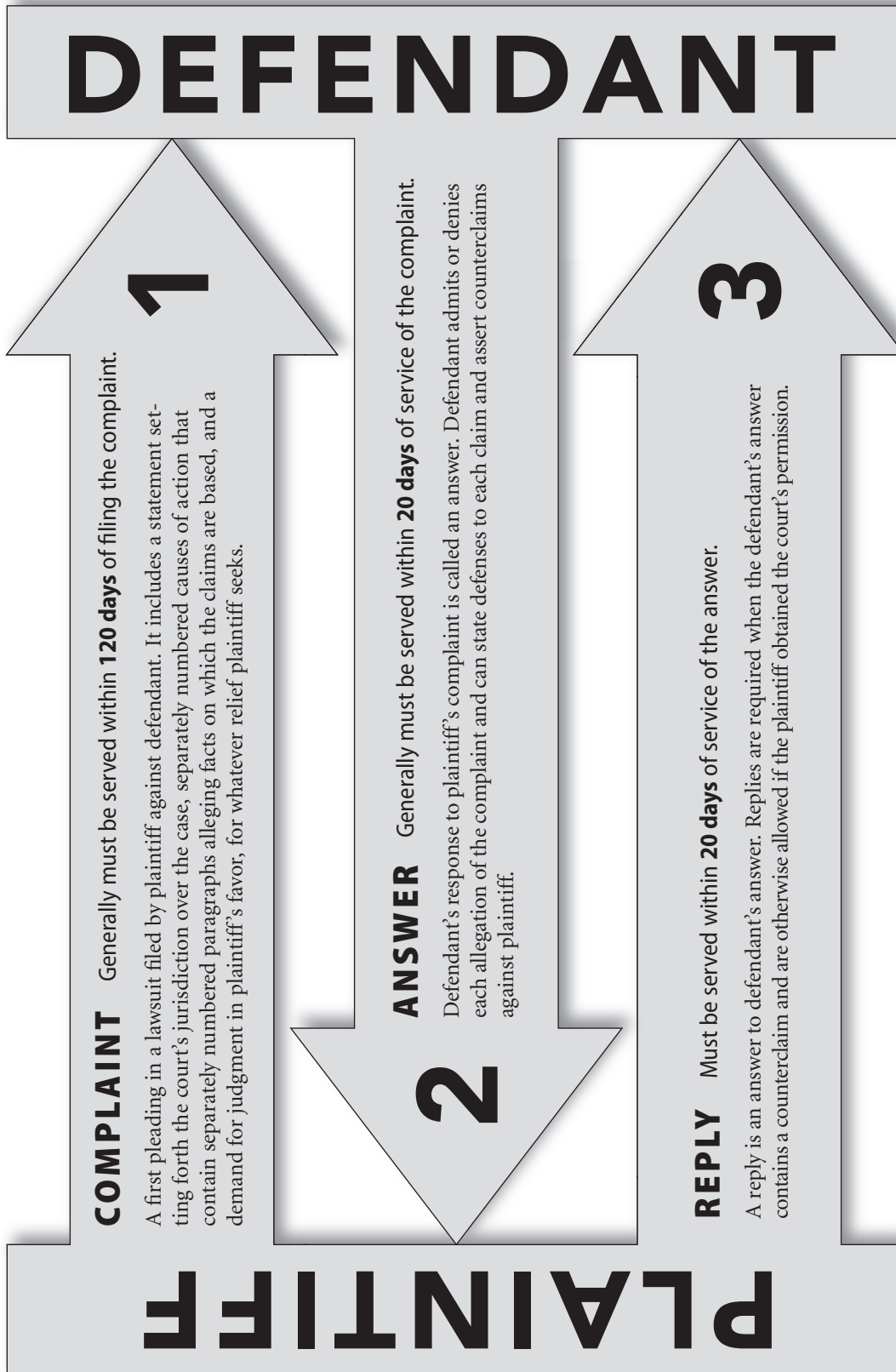


Pleadings

There are three primary forms of pleadings: (1) the complaint, (2) the answer, and (3) the reply.



Methods of Discovery

Procedural devices used to obtain evidence and information possessed by the opposing party and relevant to the claim being litigated.

		Rule	Definition	Participant	Admissibility in Court
DEPOSITIONS	Oral Depositions	FRCP 30	Oral testimony of a witness taken and recorded under oath.	Testimony taken from opposing party, a witness, an expert intended to be called at trial by the opposition or any person thought to have discoverable material.	The statement will be admissible if the person being questioned is providing live testimony, AND The deposition statement: (1) can be used to impeach a witness, (2) is from an adverse party, (3) is from an adverse witness and used for substantive purposes if it conflicts with witness' trial testimony, OR (4) if the witness is unavailable to testify at trial.
	Depositions Upon Written Questions	FRCP 31	Oral responses to written questions taken and recorded under oath.	Testimony taken from opposing party, a witness, an expert intended to be called at trial by the opposition or any person thought to have discoverable material.	
INTERROGATORIES		FRCP 33(a)	Sworn written responses to a set of written questions.	Interrogatories may be given only to a party.	The answers of a party obtained by an interrogatory can be used for any purpose.
REQUESTS TO PRODUCE		FRCP 34	One party's demand that the other produce documents and items, or allow inspection of such items or land possessed or controlled by the opposing party.	Requests to produce are only appropriate to serve upon a party.	Documents and reports are admissible unless their contents are prejudicial, hearsay or otherwise determined to be inadmissible.
REQUESTS FOR EXAMINATION		FRCP 35	If the physical or mental condition of a party is relevant to the case, a court can order the party to submit to a physical or mental examination by a certified examiner.	Physical and mental examinations can only be requested of a party whose mental or physical condition is in controversy.	Requests for physical and mental examinations are almost always admissible in court.
REQUESTS FOR ADMISSION		FRCP 36	A written request to admit relevant facts not in controversy, eliminating the need to provide supporting evidence. The party from whom the admission is sought may admit, deny or object to each of the requested admissions.	A party may serve a request for admission on any other party.	Requests for admission conclusively establish the matter admitted.

Types of Contracts

A contract is a voluntary agreement to do or not to do something that is mutually agreed upon by competent parties and supported by consideration.

Type	Definition	Formation	Acceptance	Examples
EXPRESS CONTRACT	Created by language, oral or written, demonstrating agreement.	Formed when there is a meeting of the minds between the parties.	Acceptance can be by words of agreement, oral or written, or performance.	<i>The entertainer entered into an express contract when the club owner offered her money to perform on Saturday night, and the entertainer agreed.</i>
IMPLIED IN FACT CONTRACT	The terms are implied circumstantially from the parties' conduct, assumed intentions or relationship.	Formed by non-verbal conduct, when one party accepts something of value knowing that the other party expects compensation.	Acceptance is inferred from the parties' acts, conduct, or words even if they are not explicitly words of agreement.	<i>Harry sits down in a barbershop and gets his hair cut—there is an implied contract that Harry will pay the barber in consideration for the barber having cut Harry's hair.</i>
BILATERAL CONTRACT	Each party makes a promise or set of promises to the other.	Formed upon the mutual exchange of promises.	Acceptance by promise.	<i>In a contract for the sale of a house, the buyer promises to pay \$400,000 in consideration for the seller's promise to deliver title to the house.</i>
UNILATERAL CONTRACT	One party promises to do or refrain from doing something in return for the other party's performance.	Formed when one side makes a promise and the other side performs.	Acceptance by performance.	<i>Hallie states, "Painter, if you paint my house before Saturday, I will pay you \$1,000 when you are finished." The Painter completes the painting of the house on Friday.</i>
QUASI-CONTRACT (IMPLIED IN LAW)	An equitable remedy compensating a party relying on a representation to her detriment, or from conferring on another an unjust enrichment without compensation when contract law would otherwise yield an unfair result.	No contract is formed.	No acceptance, but rather, an equitable remedy is imposed by law.	<i>Mower arrives at the wrong house to mow the lawn. Homeowner knows Mower is at the wrong house, but allows him to mow the lawn anyway. Under a theory of unjust enrichment, Mower will recover for his services in mowing the lawn.</i>

Types of Contractual Defenses

Once a contract has been formed, it can be determined to be unenforceable by reason of a defense. Defenses can be asserted based upon: (1) defects in the subject matter of the agreement, (2) the capacity of a party to contract, or (3) the failure of the agreement to qualify for judicial relief.

Type of Defense	Rule	Defenses	Rule	Examples
DEFENSES TO FORMATION	A contract will be unenforceable if the contract was not properly formed.	No Mutual Assent	A contract cannot validly be formed unless the parties reach a meeting of the minds about the terms. If the parties did not reach the “same bargain at the same time,” there is no contract.	<i>Mutual Mistake. Misunderstanding. Misrepresentation.</i>
		No Consideration	A contract cannot validly be formed unless it contains a bargained-for exchange between the parties.	<i>A promise to make a gift. Preexisting duty.</i>
		Statute of Frauds	Certain types of contracts will not be enforced unless they are in writing signed by the party to be charged.	<i>An oral contract for the sale of land. Contracts that cannot be performed within a year. Sale of goods for \$500 or more.</i>
LACK OF CAPACITY DEFENSES	Once a contract is formed, it is possible that it will be unenforceable due to a lack of consent or an inability to consent as a result of being a member of a protected class.	Legal Incapacity	A contract cannot validly be entered into by a person in a protected class, who the law deems incapable of understanding the consequences of incurring binding obligations.	<i>Infancy. Mental Incapacity. Intoxication.</i>
		Lack of Free Will	A contract will not be valid if one party used coercion, threats or acts to influence the other in a way that precluded the other party from exercising free will when contracting.	<i>Duress. Undue Influence. Fraud.</i>
DEFENSES TO ENFORCEMENT	Once a contract has been formed, it is possible that it will be unenforceable because enforcement of its terms would cause an unfair result.	Changed Circumstances	Required performance under a contract will be excused if circumstances change in a such a way that the parties did not know or have reason to know would occur, and such circumstances render performance extremely difficult or impossible.	<i>Impossibility. Impracticability. Frustration of purpose.</i>
		Unconscionability	A court may choose not to enforce a contract, which had an absence of meaningful choice for one party and unreasonably favorable terms for the other at the time of contract formation.	<i>Party in a superior bargaining position taking undue advantage of the lack of experience of the other.</i>
		Against Public Policy	A contract will not be enforced if it differs from the basic policies forming the foundation of public laws even though the acts contemplated might not be expressly prohibited by law.	<i>Racially discriminatory contracts are void against public policy.</i>
		Illegality	If formation or performance of the contract was tortious or illegal when entered into, or if the contract was legal, but subsequently became illegal because of a change in the law, the contract is void.	<i>Contracts requiring parties to steal goods from warehouses.</i>

Permissible Force for Justification Defenses

A justification defense deems conduct that is otherwise criminal to be socially acceptable and non-punishable under the circumstances. Justification focuses on the nature of the conduct under the circumstances.

Defense	Definition	Permissible Force	
		Non-Deadly Force	Deadly Force
ARREST BY A POLICE OFFICER	A person may use reasonable force in effecting a lawful arrest.	If there is probable cause to believe suspect has committed a felony; OR If the commission of crime is observed by the officer.	Only if it will prevent the escape of a felon who threatens human life.
ARREST BY A PRIVATE PERSON	A person may use reasonable force in effecting a lawful arrest.	Only if there is probable cause to believe crime was committed. Not that a reasonable or unreasonable mistake will not excuse an improper arrest.	Only to prevent the escape of a felon who actually committed the felony and threatens human life.
CRIME PREVENTION	A person may use reasonably necessary force to prevent a felony, riot or breach of the peace from taking place or from being completed.	If reasonably necessary to prevent a felony.	Only to prevent a felony in which human life is at risk.
DEFENSE OF DWELLING	A person may use non-deadly force that is no greater than reasonably necessary to prevent wrongful entry by another onto her property. In general, a person may not use deadly force to protect property, except to defend her dwelling (home) against an intruder who appears to be armed or who poses a risk to the safety of the people inside.	If reasonably necessary to prevent or stop unlawful entry.	Only if person inside the dwelling is threatened, or if it is used to prevent a dangerous felony inside the dwelling.
DEFENSE OF ANOTHER PERSON	A person may use force that is no greater than reasonably necessary to defend against an aggressor's imminent use of unlawful force.	If reasonably necessary to protect another.	Only if threatened with death or serious bodily injury.
DEFENSE OF PROPERTY	A person may use non-deadly force that is no greater than reasonably necessary to prevent the wrongful taking of her personal property.	If reasonably necessary to defend property in one's possession, except if asking to stop would suffice.	X
NECESSITY	A person may invoke the defense of necessity if the person acted in a reasonable manner to protect the life or health of another that was being imminently threatened because there was no other reasonable choice.	If reasonably necessary to prevent greater injury.	X
RESISTING ARREST	A person may use non-deadly force to resist an improper arrest. Note: There are jurisdictions that do not permit the use of force to resist improper arrest, and require the defendant to seek redress in civil court.	To prevent an improper arrest.	X
SELF-DEFENSE	A person may use force that is no greater than reasonably necessary to defend against an aggressor's imminent use of unlawful force.	If reasonably necessary to protect oneself.	Only if threatened with death or great bodily injury.

Elements of Adverse Possession

For possession to convert into title, a possessor of land needs to demonstrate the following occurred during the statutory period.

Elements	Definition	Rules	Examples
ACTUAL POSSESSION	Adverse possessor must physically use the land in the same manner that a reasonable owner would given its nature, character, and location.	The time the adverse possessor actually enters onto the land will trigger the statute of limitations to begin running.	<i>Living in a house on the property and paying taxes is considered actual possession.</i>
EXCLUSIVE POSSESSION	Adverse possessor cannot share possession with the true owner or the general public—possession must be as exclusive as would characterize an owner's normal use for such land.	People acting together and sharing only among themselves can acquire title to the property through adverse possession together as tenants in common.	<i>Living with the property owner in her house for the statutory period is NOT considered exclusive possession.</i>
OPEN AND NOTORIOUS POSSESSION	Adverse possessor's use of the land must be so visible and obvious that a reasonable owner who inspects the land will be on notice of the possessor's claim.	The adverse possessor's use of the land must be sufficiently apparent so as to serve as notice to the true owner that the adverse possessor is claiming possession over the land and to give the true owner an opportunity to defend her rights as a landowner.	<i>Building a house on land that belongs to another would be open and notorious possession, but living in an underground cave on that property might not be.</i>
ADVERSE OR HOSTILE POSSESSION	Use of the land is being made without the true owner's permission and with intent to claim the property as the possessor's own.	The state of mind of the adverse possessor is generally irrelevant. It does not matter whether the adverse possessor knows she is trespassing. Some jurisdictions require a good faith belief on the part of the possessor that they have a legal right to the property (i.e., reasonably believed the property being fenced in belonged to the possessor rather than the neighbor).	<i>Installing a fence that encroaches onto neighbor's property can form the basis for an adverse possession claim against the neighbor.</i> <i>Leasing a house from the owner while the owner lives abroad is NOT hostile possession because the owner provided the permission to use the land.</i>
CONTINUOUS POSSESSION	Adverse possessor's use of the land must be uninterrupted for the statutory period of time determined by the state in which the property is located.	Intermittent periods of occupancy are generally insufficient to amount to continuous use; however, incessant use is not required. Use must be no less than annual. Possessor may tack on preceding owner's time in order to satisfy the statutory time period.	<i>An uninvited adverse possessor living in another person's pool house each summer during the statutory period, that use is sufficient to be continuous.</i>

Types of Deeds

A deed is a document used to certify ownership of a piece of land, and used to transfer ownership or other interests in the land.

Type	Definition	Covenants	Covenant Application
GENERAL WARRANTY DEED	A deed that contains six specific promises (covenants) about grantor's title to the property and warrants against any defects in the title.	Covenant of seisin. Covenant of right to convey. Covenant against encumbrances. Covenant of quiet enjoyment. Covenant of warranty. Covenant of further assurances.	Covenants warrant title against defects arising <i>before</i> and <i>during</i> the period the grantor has title.
SPECIAL WARRANTY DEED	A deed that contains six specific promises (covenants) about the grantor's title to the property, but only warrants against defects arising during the time grantor had title.	Covenant of seisin. Covenant of right to convey. Covenant against encumbrances. Covenant of quiet enjoyment. Covenant of warranty. Covenant of further assurances.	Covenants warrant title against defects arising only <i>during</i> the period the grantor has title.
QUITCLAIM DEED	A deed that makes no promises about the grantor's title to the property, but rather conveys whatever right, title or interest the grantor has in the property without making any promises regarding grantor's right to make such transfer.	None.	N/A.

Covenants of Title in Warranty Deeds

Covenants are promises from the grantor (seller) of land to the grantee (purchaser) included in the deed representing the property interest.

	Definition	Present or Future Promise?
COVENANT OF SEISIN	A promise that grantor owns the estate or interest that grantor is representing as belonging to grantor in the deed.	Present.
COVENANT OF RIGHT TO CONVEY	A promise by grantor that the person granting title has sufficient capacity and title to convey the estate which grantor by deed undertakes to convey.	Present.
COVENANT AGAINST ENCUMBRANCES	A promise that there are no easements, covenants, mortgages, liens or other encumbrances on the property or against the title or interest being conveyed, other than those specifically set forth in the deed.	Present.
COVENANT OF QUIET ENJOYMENT	A promise that the grantee will not be disturbed in her possession or enjoyment of the property by a third party's lawful assertion of superior title to the property.	Future.
COVENANT OF WARRANTY	A promise that the grantor will defend on behalf of the grantee, any reasonable claims of title by a third party and will compensate the grantee for any loss sustained by the assertion of superior title.	Future.
COVENANT OF FURTHER ASSURANCES	A promise that grantor will perform whatever acts are reasonably necessary to perfect the grantee's title if it turns out to be imperfect.	Future.

Strict Tort Liability

In the following situations, liability is automatically imposed upon an actor upon demonstrating (i) causation and (ii) damages.

Strict Liability Situations	Rule	Elements	Examples
ABNORMALLY DANGEROUS ACTIVITIES	Strict liability is imposed upon a person who knowingly engages in abnormally dangerous activities which involve a high degree of risk of serious injury to people or property and which cannot be eliminated by the exercise of reasonable care.	<ol style="list-style-type: none"> (1) The activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised; AND (2) The activity is not one of common usage. 	<p><i>Use of explosives.</i></p> <p><i>Storing or moving hazardous waste.</i></p> <p><i>Testing rockets.</i></p> <p><i>Maintenance of a nuclear reactor.</i></p>
WORKERS' COMPENSATION	Workers' compensation is a no-fault system, which means that an employee injured while on the job need not demonstrate that her injury was a result of employer negligence. All she has to do is prove that she was actually injured at work.	<ol style="list-style-type: none"> (1) Employee injured; (2) The injury occurred on the job; AND (3) Workers' compensation is the sole remedy against the employer. 	<p><i>An employee that gets into a car accident en route to or from work cannot collect workers' compensation.</i></p> <p><i>An employee that gets into a car accident while travelling on business can collect workers' compensation.</i></p>
WILD OR VICIOUS ANIMALS	Strict liability is imposed upon the owners of a wild animal and upon the owners of domestic animals who know or should have known of the animal's propensity to do an act that might endanger a person's safety or the property of others.	<ol style="list-style-type: none"> (1) Animal that is wild or known to have dangerous propensities; (2) Causation; AND (3) Damages. 	<p><i>If a domesticated dog escapes from the yard and bites a neighbor, the dog owner will not be strictly liable for the neighbor's injuries provided the dog owner was not on notice of the dog's propensity to bite.</i></p> <p><i>If the owner knew the dog had a propensity for biting, the owner would be strictly liable for injuries resulting from the dog's bite.</i></p> <p><i>If owner kept a wolf in his yard that bit the neighbor, the owner would be strictly liable for injuries caused by the wolf irrespective of whether owner has notice of its propensity to bite or not.</i></p>
PRODUCTS LIABILITY	Strict liability is imposed upon the manufacturer, retailer or supplier of goods under circumstances in which a defect in their goods causes injury to a purchaser or a bystander.	<ol style="list-style-type: none"> (1) A person suffers injury or property damage, AND (2) The injury or damage is the result of a dangerously defective product, which was defective in its production, design or safety warning. 	<p><i>A soda manufacturer is liable for a woman's eye injury caused by the explosion of a soda's cap.</i></p>