

Introduction

An impartial enforcement and dispute resolution process is essential to any system that preserves private property interests. To conduct business and enforce rights, we need a process to resolve disputes.

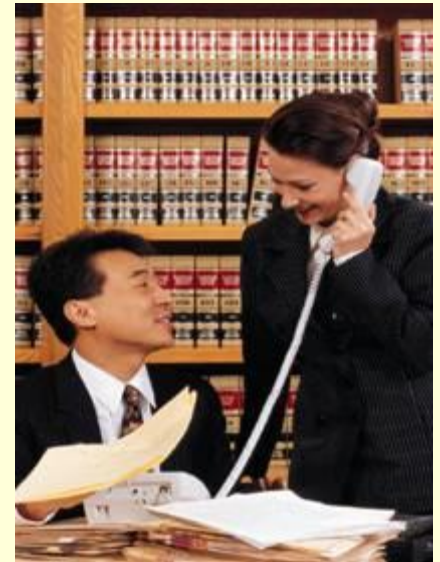


Learning Objectives

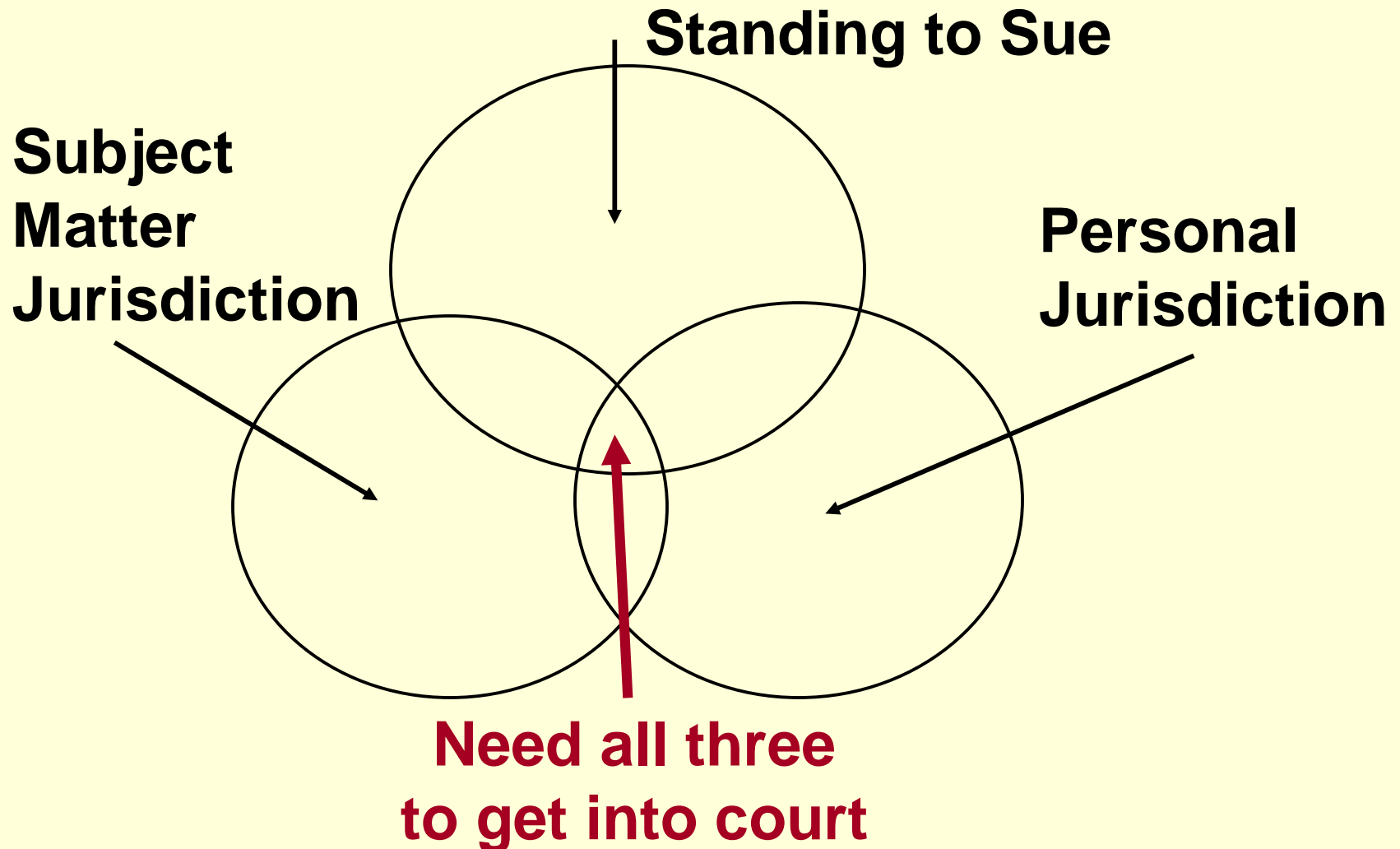
- To understand the litigation process and the parties to a case.
- To learn how issues can impact litigation;
- To understand the steps and costs associated with discovery.
- To learn about the pretrial and trial procedures in litigation.
- To appreciate how cases are decided and the process for appeal and enforcement of judgments.

Parties

- ❑ Plaintiff v. Defendant
- ❑ Counterclaim- Counterplaintiff v. Counterdefendant
- ❑ Appellant v. Appellee
- ❑ Petitioner v. Respondent
- ❑ Third-Party Defendant

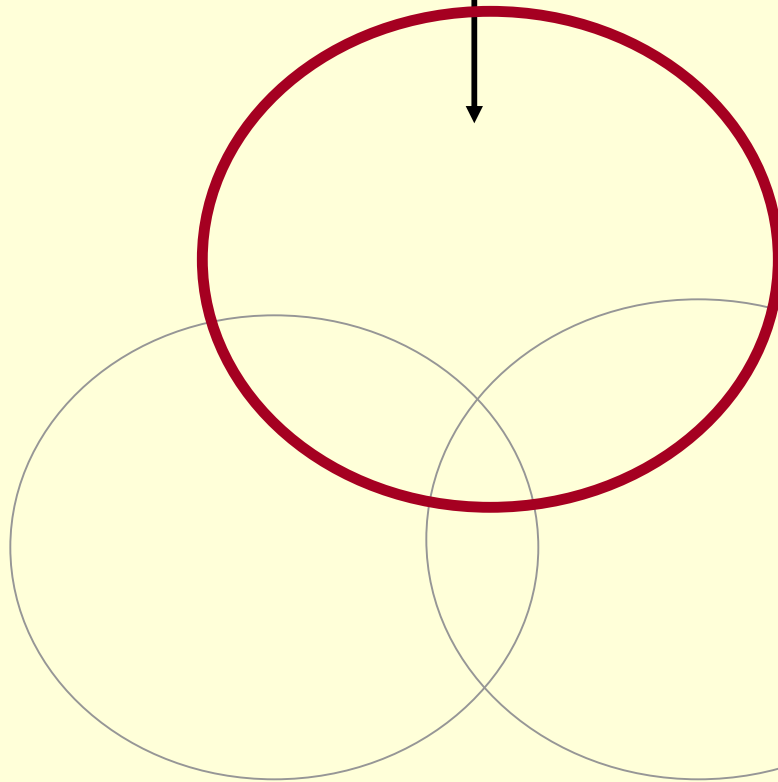


Getting Into Court



Getting Into Court

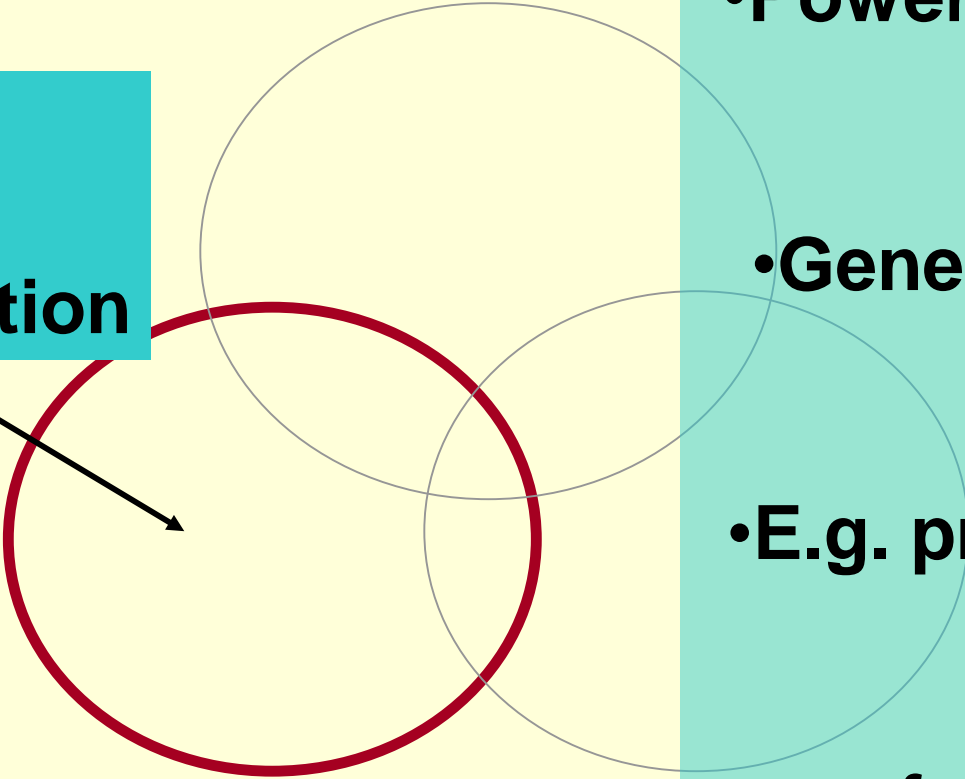
Standing



- **Must involve actual case or controversy**
- **Plaintiff must have personal stake in resolution**

Getting Into Court

**Subject
Matter
Jurisdiction**

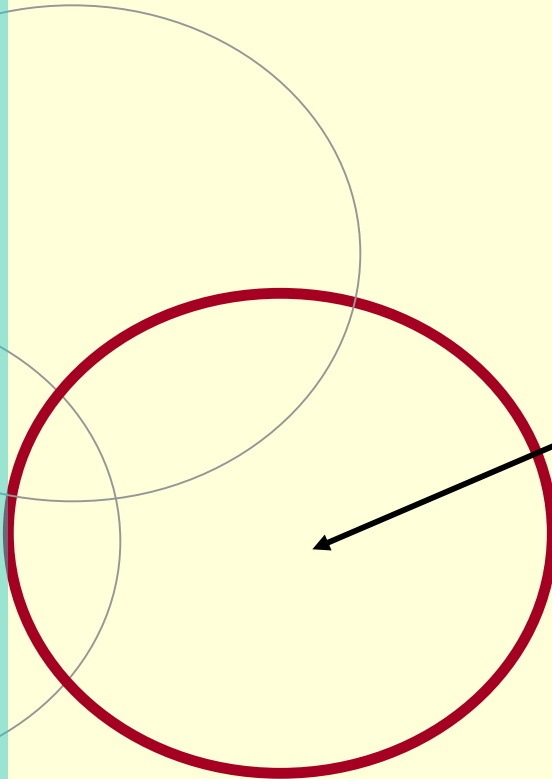


- **Power to hear type of case**
- **General or limited jurisdiction**
- **E.g. probate court, traffic court, federal courts.**

Getting Into Court

- Court's authority over parties to case
- Summons/service of process
- Long arm statutes – minimum contacts
- Extradition

**Personal
Jurisdiction**

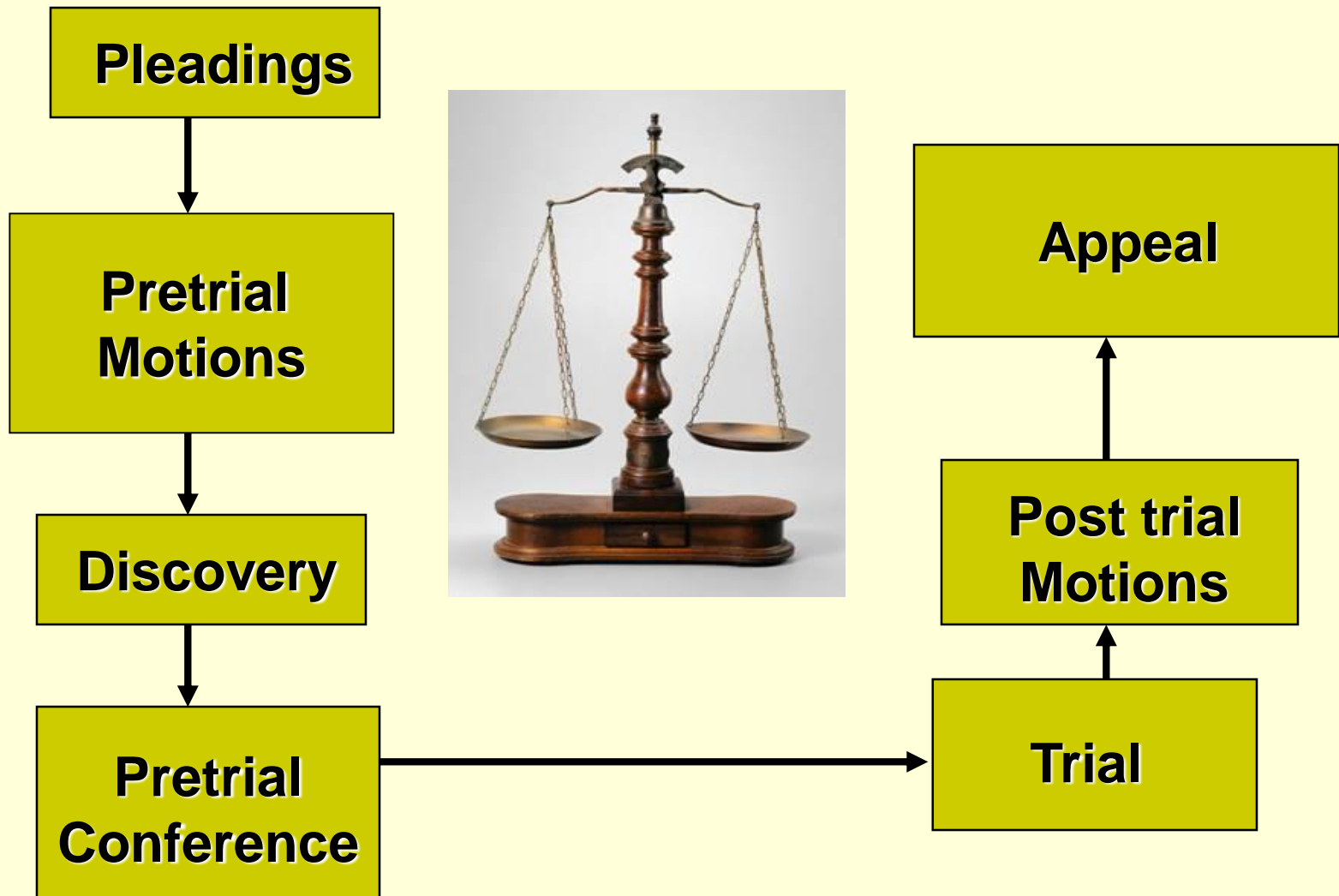


Class-Action Suits

- ❑ Filed On Behalf Of All With Similar Claim
- ❑ Notice Given To All Members Of Class
- ❑ Plaintiffs Pay Court Costs
- ❑ Settlement
 - Benefits Class
 - Release All Claims



Procedural Rules



Pre-Trial Procedures

□ Pleadings

- Complaint
- Answer- Counterclaims

□ Default Order – court may order if no answer filed.



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- For any court to exercise authority in any given case, which of the following must happen:**
- a. Court has jurisdiction of subject matter**
 - b. Court can exercise personal jurisdiction of the defendant**
 - c. Plaintiff has standing to bring the case before the court**
 - d. All the above**

Discovery

■ Purpose

- Lawsuit Based On Merits Of Case
- Assist In Trial Preparation
- Narrow Issues

Types:

Interrogatories

Request for
Production of
Documents

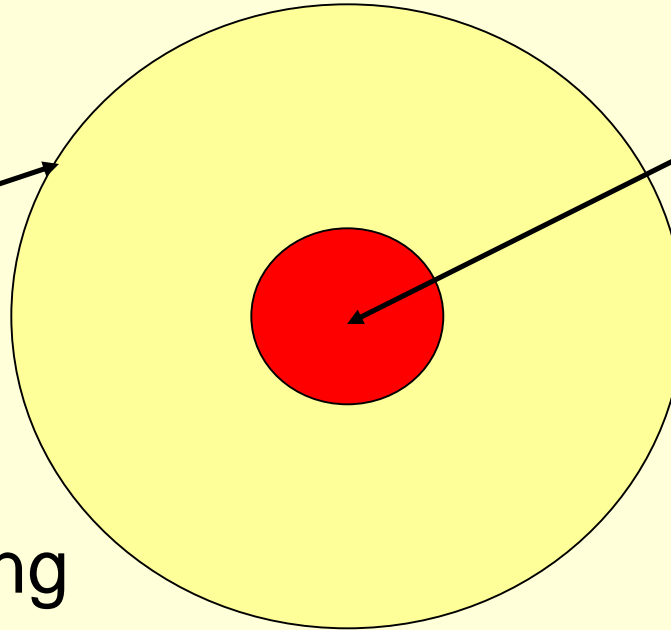
Deposition

Request for Admissions

Scope of Discovery

Discoverable Information

Allowable if it will lead to evidence admissible during trial



Evidence Admissible At Trial

High Cost of Discovery caused by

- time searching for information
- preparing depositions
- copying and shipping costs
- attorneys fees interpreting requests

Discovery Abuse

- Parties become aggressive
- Damage to litigation process
- Key is to act reasonably and prudently
- Avoid extreme positions

Motions

Pretrial Determination of

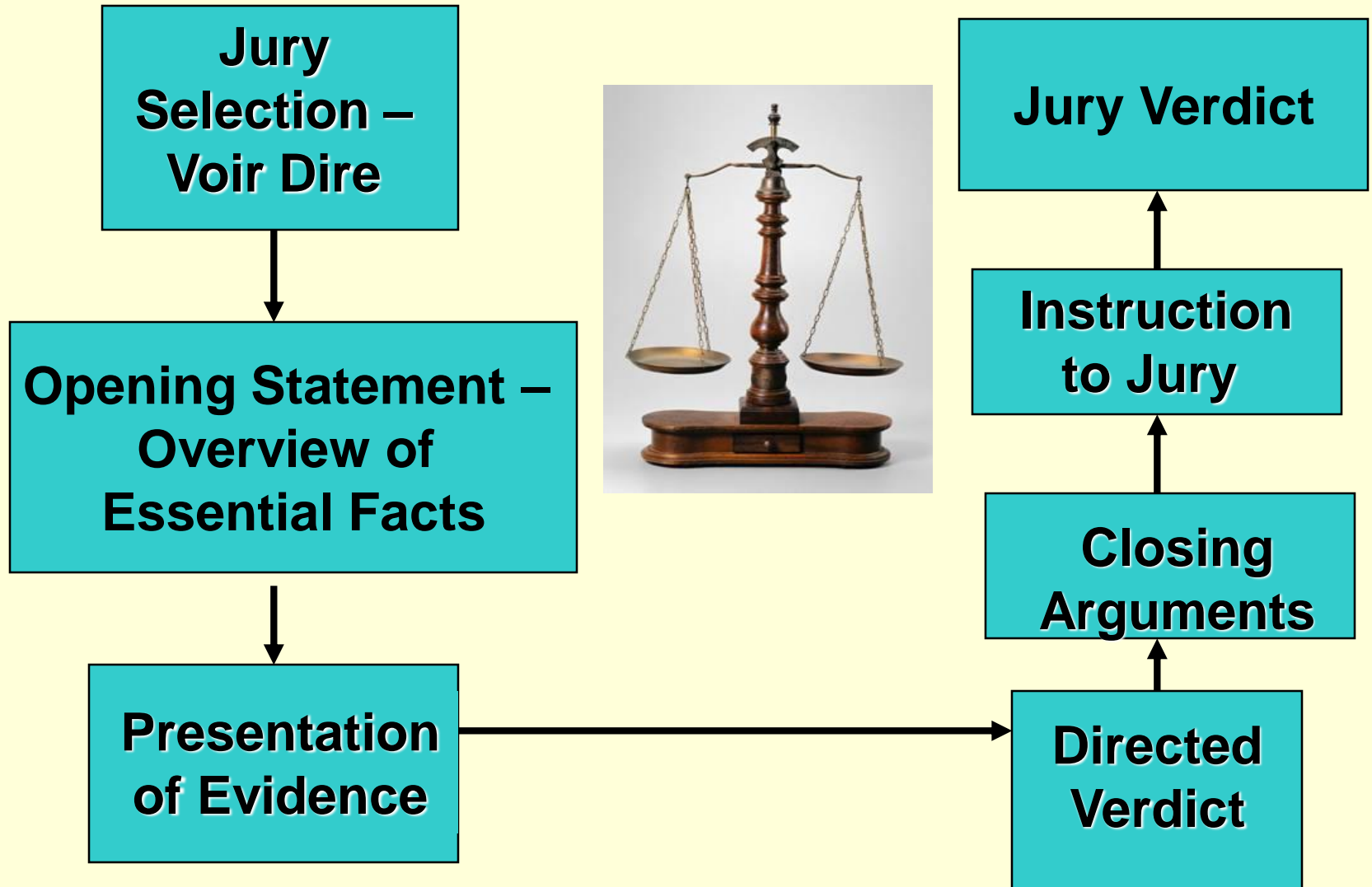
- Question of Law
- Statute of Limitations
- Judgment on Pleadings or Summary Judgment (concludes litigation prior to trial)
- Frivolous Cases (Fed. Rule 11)



Trial – Jury Selection

- Voire Dire – to speak the truth
- Challenges
 - For cause
 - Peremptory
- Constitutional violations
- Elimination of peremptory challenges?

Trial



Burden of Proof

- ❑ Burden/responsibility of evidence
- ❑ Criminal cases- beyond a reasonable doubt
- ❑ Civil cases
 - Preponderance of evidence
 - Clear & convincing proof



Civil Case Decision

- ❑ Judgment- in favor of party that won jury's verdict
- ❑ Judgment notwithstanding the verdict- post trial motion. Judge may enter judgment counter to jury's verdict



Post-Trial

- Appeals procedure
 - Brief
 - Oral argument
 - Judge/Justice's opinion
- Deference to trial courts
- Enforcement
 - Execution
 - Garnishment
- Doctrine of *Res Judicata*



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“Directed verdict” refers to the

- a. Power of court over parties involved.**
- b. Power granted to litigant to reject jurors.**
- c. Power of court to order sworn questioning of witnesses outside of court.**
- d. Power of court to grant a decision in favor of defendant when insufficient evidence is presented at trial.**