

Edwards & Ragatz News

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“Balancing The Scales Of Justice — For Those Who Need It Most”



"Jury service is one of the highest duties of citizenship, for by it the citizen participates in the administration of justice."

- Harlan Fisk Stone

12th Chief Justice
U.S. Supreme Court

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Questions From Clients. Page 1

First in a 5-part series of articles on questions clients frequently ask.

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This is the first article in a five-part series that answers client's questions.

Questions From Clients:

“I’ve heard lots of terms like complaint, deposition, mediation. Can you explain these terms and what happens during a civil lawsuit?”

Within the justice system are both *criminal* and *civil* matters. The main purpose of the *criminal* justice system is to punish the criminal and incarcerate that person if it’s appropriate.

The main purpose of the *civil* justice system is to obtain justice for the injured person by trying to get compensation of monetary damages. In addition, in some cases, the civil justice system seeks to punish the wrongdoer by awarding punitive damages to the injured person.

In order to achieve a successful resolution it is critical that the client and attorney act as a team and effectively communicate with one another.

Procedures can vary from case to case, but generally, the pretrial and trial procedures of a civil lawsuit are as follows:

I. Pleadings

Complaint
Answer



Responsive Motions
Counterclaims
Cross Claims and Third-Party Claims
Amendment

The **pleadings** in a lawsuit are filings that set forth either the complaining party’s allegations and causes of action, or the defending party’s responses to those allegations along with any defenses or causes of action the defending party may assert.

See **LAWSUIT**, page 2

10 things you should buy used, 10 you should buy new

It’s been said that a new car depreciates the minute you drive away from the dealership. And depreciation doesn’t just happen to cars. There are several other items that are more economical and budget-wise to buy used.

An article by Liz Pulliam Weston, personal finance columnist on MSN Money, names the top 10 items to buy used and those she recommends buying new, using a cost-versus-use equation.

Why you should buy used:

Most **books** don’t get read more than once and they are very easy to find used at steep discounts.

Used **DVDs and CDs** are sold by online retailers such as Amazon.com, movie rental See **BUY USED**, page 3

Buy Used:

1. Books
2. DVDs and CDs
3. Toys
4. Jewelry
5. Sports equipment
6. Timeshares
7. Vehicles
8. Software and console games
9. Office furniture
10. Hand tools

Buy New:

1. Laptops
2. Car seats
3. Plasma and high-definition TVs
4. DVD players
5. Vacuum cleaners
6. Digital cameras and video cameras
7. Shoes
8. Mattresses
9. Wet suits
10. Helmets

Can you answer these Debt Collection Abuse questions?

1. What classifies as debt collection harassment?

- A. Threats of violence or harm
- B. Obscene or profane language
- C. Repeatedly using the phone to annoy someone

D. All of the above

2. What is the statute of limitations on pursuing a debt collector who has violated the law?

- A. 1 year
- B. 5 years
- C. There is no statute of limitations

3. You can make a debt col-

lector quit contacting you.

- A. True
- B. False

4. When can a debt collector contact me?

- A. Between 8 a.m. and 8 p.m.
- B. Between 8 a.m. and 9 p.m.
- C. Between 9 p.m. and midnight

5. Does being the victim of identity theft stop debt

collectors?

- A. Yes
- B. No
- C. Yes, if you can prove you are a victim of identity theft.

6. It is legal to secretly record your phone conversation with a debt collector?

- A. True
- B. False

-Answers on page 4-

LAWSUIT

From page 1

A civil action begins with the filing of a complaint, which contains factual allegations, a description of the legal claims, and typically asks for money relief.

The defendant must **answer** the **complaint**, responding to each allegation and may set forth one or more defenses.

The defendant may challenge the claims with a **responsive motion**, or file a **counterclaim** with a request for relief. The defendant may also file a **cross claim** against another defendant or file a **third-party** complaint against a nonparty. Either party also may **amend** the pleading.

II. Pretrial Procedure

Discovery
Discovery Methods
Protective Orders
Sanctions

During **pretrial procedure** the court may schedule a case management conference to try to expedite and streamline litigation. Later the court may schedule a pretrial conference to address simplification of issues, etc.

Discovery is allowed for any matter that is not privileged that is relevant to the lawsuit. Each party obtains evidence in the form of depositions, witness testimony, documents or physical evidence, either to support its claims and/or defenses or refute the opposing party's claims and/or defenses. A party or nonparty may ask to enter a **pro-**

tective order to protect them from annoyance, embarrassment, oppression or undue burden or expense.

Either party may seek **sanctions** from the court for the other party to compel discovery. If a party ignores sanctions, they may be in contempt of court.

III. Dismissal

Voluntary Dismissal
Involuntary Dismissal
Summary Judgment

Frequently civil actions are dismissed before a trial. They can voluntarily be dismissed by the plaintiff; counterclaims can be dismissed by the defendant, or involuntarily dismissed by the court as a sanction for failure to comply with court rules. Either party also may move for a **summary judgment**, arguing that the opposing party cannot present evidence that is sufficient to demonstrate "genuine issue as to any material fact."

IV. Non-Judicial Methods of Resolution

Mediation
Arbitration
Offers of Judgment

Cases can be resolved by the parties before a trial through **mediation**, where a neutral third party works with parties for a resolution. The court can order the parties to participate in **arbitration** which is similar to a mini-trial with the arbitrator rendering a written decision. The parties also can agree to

arbitration. Before trial a party may submit an **offer of judgment** to settle a claim on certain terms.

V. Trial

Demand for Jury
Jury Selection
Opening Statements
Motion for Directed Verdict
Closing Argument
Jury Instructions
Verdict

Once steps I-IV have been completed a party may notify the court that it is ready to be set for trial.

The first step in a **trial** is the **jury selection**, and then the opening statements are presented. After the plaintiff presents its case, the defendant may move for a **directed verdict** on the grounds that the plaintiff failed to present sufficient evidence. If a directed verdict is not requested, evidence is presented and both sides are allowed to present closing arguments. The case is then submitted to a jury which returns a **verdict**.

Next Month:

How long will my lawsuit take?

Do you have a law-related question?
E-mail newsletter@edwardsragatz.com
or call Jayne Krichbaum at 904.399.1609.

Source: "The reporter's guide to a civil lawsuit" by Susan Tillotson Bunch, floridabar.org.



GUIDELINES
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"Guidelines For Choosing A Safe Nursing Home" tells how to choose a nursing home and has a handy nursing home checklist.

"Be Prepared Before A Car Accident" tells what do following a car accident and includes a checklist.



Edwards & Ragatz's
Hurricane Preparedness Guide

Table of Contents

- 2008 Storm Dates
- Hurricane Categories
- Evacuation Routes
- Evacuation Signs
- Evacuation & Family Plan
- Evacuating a Pet
- Evacuating a Disability
- Evacuating Your Home
- Important Links & Numbers

Hurricane Season lasts from June 1st to November 30th

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A CAR ACCIDENT

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Buy Used ...

Continued from page 1

chains like Blockbuster, used music stores and yard sales.

You never know when you buy a **toy** if it will be a hit or end up at the bottom of the toy box. Rather than gamble, cruise consignment shops and yard sales for bargains.

New **jewelry** typically is marked up 100 percent. You would have a difficult time getting your money back if you ever decided to sell.

Sports equipment, such as weights and badminton racquets, are often purchased with good intentions, but all too often end up collecting dust. The exception to purchasing used sporting equipment includes anything that molds to the wearer's body such as shoes and baseball mitts.

Before you buy a **timeshare**, check the resale values online; don't take an agent's word for how much depreciation to expect.

The average new **car** loses 12 percent of its value in the first year. Buy a used car and you'll save money on your insurance, too.

Used **software and console games** can be purchased for half price or less than buying new.

Office furniture is built to take a beating and last a lifetime. Good quality office desks, filing cabinets

and credenzas are relatively easy to find.

Hand tools, like hammers, wrenches, shovels and hoes, can last decades and are relatively easy to find at yard sales.

**Why you should buy new:**

You're taking a chance when you buy any used **computer**, but a used laptop is more apt to have been dropped, banged and spilled on than a desktop computer.

New **car seats** can be purchased for as little as \$50 and safety technology tends to improve each year.

If you buy a **plasma or high-definition TV**, you want the warranty and even an extended warranty. If the screen dies, it can cost hundreds or thousands to fix or repair.

DVD players have lasers that will eventually wear out and cost more to replace than the unit is worth.

Vacuums are another item that are prone to abuse and may cost you more to fix than if you had simply

bought new.

If a **digital or video camera** has been damaged, it may not be obvious when you buy it used. To save money buying a camera, buy last year's model.

Don't buy **footwear** that has already been molded by someone else's foot. Poor-fitting shoes can cause everything from bunions to back problems.

Think of all the stuff you do on your **mattress**, now think about sleeping in someone else's stuff. Mattresses aren't made to last forever. They have a lifespan of eight to 10 years.

Wet suits lose their ability to keep you warm over time. The constant change in water pressure eventually compresses the neoprene which causes it to lose its thermal properties and buoyancy.

A **helmet** is meant to protect against one accident and no more. A crash typically crushes the foam inside the helmet casing, and the damage may not be visible. Helmets aren't that expensive, \$20 for kids sports and bike helmets and starting at \$100 for motorcycle helmets. Not that expensive compared to a head injury or worse. Spend the money.

Source: Liz Pulliam Weston—MSN Money

Protecting parents, loved ones, from financial elder abuse

(NAPSA)-Although you have tried your best to assure your elderly relative is well cared for and safe from harm, that person can still fall prey to financial abuse. Here are a few warning signs:

- Bills are not being paid and money is missing from your loved one's accounts.
- The person who is supposed to be handling finances has been withdrawing large sums.
- There is evidence of forgery or forced property transfers.
- Expensive items have been purchased using the older person's money, but without permission.
- The older person has been denied access to his or her own funds or home.



A geriatric care manager is a health and human specialist who helps families who are caring for older relatives.

A geriatric care manager can help detect elder financial abuse. GCMs can interview, monitor and supervise paid caregivers. Additionally, they can make sure they are bonded, background checked and have no access to older people's finances.

For more information, visit the Consumer Library section of www.caremanager.org.

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Nursing Home Neglect
Car and Truck Accidents
Medical Malpractice
Insurance and Coverage
Litigation
Product Liability
Construction Site Accidents
Business Litigation
Debt Collection Abuse



Send comments, questions and requests for an e-mail newsletter to newsletter@edwardsragatz.com, or call [marketing/publicrelations](mailto:marketing/publicrelations@edwardsragatz.com) assistant Jayne Krichbaum, 904.399.1609.

"Balancing The Scales Of Justice — For Those Who Need It Most"

Product Recalls & New FDA Label Warnings

More than 10 million Fisher-Price tricycles, toys and highchairs have been recalled because of reported injuries.

Seven million tricycles, which feature popular character Dora the Explorer, Barbie and more, have a protruding plastic ignition key that can lead to injuries. More than 1 million Healthy Care, Easy Clean and Close to Me highchairs have been recalled after 14 problem were reported and seven children required stitches. Also recalled are more than 2.8 million Baby Playzone Crawl & Cruise Playground toys, Baby Playzone Crawl & Slide Arcade toys, Baby Gymnastics Play Wall toys, Ocean Wonders Kick & Crawl Aquarium toys, 1-2-3 Tetherball toys and Bat & Score Goal toys. About 100,000 Fisher-Price Little People Wheelies Stand 'n Play Rampway toys were recalled. Call 800.432.5437 for more information.

1.4 million FIXIT One Million Candlepower Rechargeable Spotlights have been recalled due to a burn hazard.

There have been 13 reports involving minor skin chemical burns and battery acid burn. The charging adapter can overcharge the battery, causing it to leak battery acid.

The flashlights sold for \$10 at Walgreens, Rite Aid, Bealls, Tuesday Morning, Ace Hardware, Boscov's and Winn-Dixie October 2003--October 2009.

Contact Innovage for a full refund at 888.408.1140 or info@spotlightrecall.org.

Chuck E. Cheese recalled 1.1 million light-up rings and 120,000 star sunglasses. The plastic can break, expose the batteries, and pose an ingestion hazard to children.

If ingested, the batteries

may damage the stomach, intestine, esophagus or nasal mucus membrane.

There have been two incidents involving the light-up rings: one child swallowed a battery, the other inserted a battery into his nostril.

The rings were sold at Chuck E. Cheese from April 2009 through June 2010.

Return the rings or glasses to any Chuck E. Cheese for refund. Call 888.778.7193 for more information.

FDA Drug Safety Labeling Warnings as of September:

Advil Allergy Sinus caplets, **Alleve** capsules and **Children's Advil Cold** oral suspension: drug facts labeling must include a stomach bleeding warning.

Atripla tablet, used to treat HIV, may cause birth defects and liver enzyme monitoring should be considered for patients without pre-existing hepatic dysfunction.

Biltricide tablets, used to treat parasitic worm infections, may not be effective if used with P450 inducers, such as rifampin (an antibiotic).

Cubicin for injection, used to treat bacterial infections of the skin, may cause patients to develop respiratory, thoracic and tumor disorders, and pneumonia.

Exelon Patch, used to treat moderate dementia, may cause confusion, abnormal liver function tests or duodenal ulcers.

Flagyl, used to treat rosacea, may affect the central nervous system with brain disease, aseptic meningitis, optic nerve damage, speech disorder or hypersensitivity.

Heparin Sodium injection, used to prevent blood clot formation, may cause a reaction that may progress to serious formation of blood clots that may be fatal.

Meridia weight-loss capsules may increase the risk of heart attack and stroke in patients with cardiovascular disease.

Plavix, an acid reducer, should not be taken with genetic variation inhibitors, as it may interfere with the blood's ability to clot. Consider using another acid-reducing agent.

Sources: www.fda.gov, www.cpsc.gov



Fisher-Price recalled more than 10 million tricycles, toys and highchairs because of reported injuries.



Consumers should immediately stop using the FIXIT Rechargeable Spotlight.



The Chuck E. Cheese rings came in blue, green, purple, yellow and pink.

Answers to Debt Collection Abuse Quiz, page 2:

1. D; 2. A; 3. A; 4. B; 5. C; 6. False Minimum passing: 4 out of 6 correct Take the entire quiz on www.edwardsragatz.com.