



Foundations in Law

Unit 4: Lawsuits and Liability: The Civil Justice System

Unit Overview

How does the civil justice system hold people and corporations accountable for their actions? How does civil law compare and contrast with criminal law? What is the role of civil litigation and liability in U.S. society? Is U.S. society too litigious?

In this unit, students are introduced to civil law and the legal structures designed to protect people from individuals and corporations that cause harm. Using a famous liability case as a case study, students compare and contrast the goals, professional roles, and standards of proof in civil and criminal law. As they take on the roles of different stakeholders in a civil case and bring the case to trial, they consider the role that settlement plays in the civil justice system and analyze the ways in which interest groups may affect public perceptions of the legal process. Students also reflect on the role and impact of civil litigation in U.S. society.

Framing Questions

- What are the goals of the civil justice system?
- In what ways can civil litigation advance or undermine justice?
- What influences the development of law and public policy related to tort liability?
- What are the roles of professionals in the civil justice system?

Understandings

- The civil justice system seeks to regulate relationships, remedy harms, and resolve disputes among individuals, corporations, and government entities.
- Civil litigation can promote individual and corporate accountability, but can also impose costs on society due to excessive damage awards and frivolous lawsuits.
- Law and public policy related to tort liability are shaped by experiences and perceptions of the public, special interest groups, advocacy organizations, and the media.
- Professionals working in civil justice systems advocate for the rights of individuals, corporations, and government entities involved in legal disputes.

Unit Project

Through immersion in a civil lawsuit, students learn how the civil justice system can both promote and at times impede justice. Playing the roles of plaintiff, defendants, and lawyers at three different law firms, students prepare for and participate in settlement negotiations and a civil mock trial. Teams consider claims of negligence against an electronics store and strict product liability against a cell phone manufacturer and retailer, and then use legal reasoning to identify relevant facts, calculate damages, develop legal arguments, engage in settlement negotiations, present opening and closing statements, and examine witnesses. After judgment is rendered on the case, students reflect on the impact of civil litigation on U.S. society.



| Law and Justice Content | Skills Taught |
|--|---|
| <ul style="list-style-type: none">• Differences between civil law and criminal law• Required elements for intentional torts, negligence, and product liability• Methods used to calculate damages• Processes in settlement negotiation• Steps in the civil litigation process | <ul style="list-style-type: none">• Apply elements of law to the facts of a case• Analyze the relevance of information• Provide reasoned legal arguments and respond to counterarguments• Work with others to develop and achieve team goals |
| Part 1: A Civil Complaint (8 sessions) | |
| <p>Students identify differences and areas of overlap between criminal and civil law as they take on the roles of lawyers and witnesses in a civil case. Students build their legal skills by developing and applying an understanding of causes of action, the elements of product liability, and guidelines for damage awards, using a famous liability case as a model.</p> | |
| Activity 1A: Speaking Civilly | |
| <p>Students participate in or observe a role play about Jordan Fremont, a fashion model who was injured by a cell phone that caught fire while she was using it. After exploring whether her 911 call should result in any action by police, students discuss the differences between civil and criminal law and the role that law enforcement plays in each. Students are introduced to the unit project.</p> | |
| Activity 1B: What's Fair? | |
| <p>Students read about different civil litigation cases and use the case studies to discuss the purposes and effects of civil litigation. They brainstorm arguments that might be made by different stakeholders in the cell phone case and identify criteria for a “fair” outcome in a civil case.</p> | |
| Activity 1C: Legal Eagles | |
| <p>After students are introduced to a variety of professions essential to the civil litigation process, they take on one professional role and form legal teams for the plaintiff and defense. Legal teams gather to review their roles and responsibilities and map out the steps in the civil litigation process they will follow to prepare for trial.</p> | |
| Activity 1D: One Hot Cup of Coffee | |
| <p>Students learn about intentional torts and causes of action in civil litigation by reviewing the famous “hot coffee case” of <i>Liebeck v. McDonald's Restaurants</i>. After creating a timeline of relevant facts in the case, students identify several potential causes of action and the grounds for each.</p> | |



Activity 1E: Negligence or Not?

Acting as jurors in the *Liebeck* case, students receive instructions on simple negligence and conduct deliberations on how the elements of simple negligence law apply to the relevant facts in the case.

Activity 1F: Product Liability

Continuing to act as jurors, students receive instructions on the elements of strict product liability and decide whether the claims made in the *Liebeck* case meet the necessary standard of proof. Students prepare to build their legal team's case by comparing the ways in which negligence and product liability are prosecuted and the purposes for each kind of claim.

Activity 1G: Show Me the Money

In order to inform their arguments for and against damages in the *Fremont* case, students analyze the concept and practice of damage awards and assess the level of damages appropriate in the *Liebeck* case.

Activity 1H: Settling for Justice?

Students discuss settlement as an alternative to civil trials and identify the advantages and disadvantages of settling in preparation for the *Fremont* case. Students discuss the role of litigation and settlements in cases of corporate wrongdoing and whether settling without an admission of wrongdoing achieves justice.

Part 2: Building a Case (5 sessions)

Legal teams for the plaintiff and defense develop a theory of the case and, as they prepare for trial, identify possible avenues for settlement in the *Fremont* case.

Activity 2A: Discovery

Legal team members read a variety of documents in the *Fremont* case, such as deposition transcripts, e-mails, and internal memoranda, in order to identify the relevant facts contained in each document. Teams share information and create a visual map of the key facts.

Activity 2B: Theory of the Case

Teams are introduced to the collaborative writing process and begin outlining confidential memos to the firm's senior partner identifying the claims to be made in the *Fremont* case, possible defenses, relevant facts supporting the team's case, and possible counterarguments that could be made by opposing counsel. Teams build on their understanding of the role of negotiation and settlement discussed in Part 1 to identify possible alternatives to trial in this case.



Activity 2C: Anticipating Arguments

Teams identify key arguments in their case and predict counterarguments. After identifying purposes and techniques for collaborative writing in the workplace, teams make writing assignments for a collaborative internal memo assessing the strength of each argument.

Activity 2D: Collaborative Writing

Teams continue writing their assigned components of the confidential internal memo.

Activity 2E: Internal Memo Submission

Teams complete and submit their internal memo to the firm's senior partner, a role played by the *Foundations in Law* teacher.

Part 3: Preparing for Trial (5 sessions)

Students practice the skills of trial argument and examination of witnesses and prepare assigned components of arguments and questions to be used at trial, while using the relative strengths and weaknesses of their case to decide what they might be able to gain from settlement negotiations with opposing counsel.

Activity 3A: Opening and Closing Statements

Students compare the purposes behind opening and closing statements, and outline key facts to include in the opening and closing statements for their case.

Activity 3B: Direct and Cross-Examination

Students compare the purposes of direct and cross-examination of witnesses, and practice writing questions in both direct and cross-examination format. Teams prepare a list of key facts they would like to get from each witness at the trial.

Activity 3C: Writing and Witness Preparation

Legal teams begin preparing their assigned mock trial components, such as opening and closing arguments, direct examination questions, and cross-examination questions.

Activity 3D: Trial Run

Students finish their assigned arguments and questions and conduct a team run-through for trial as they await feedback from the senior partner on the viability of a settlement.

Activity 3E: Need to Negotiate?

Teams receive feedback on their internal memo from the firm's senior partner indicating possible areas for settlement with opposing counsel, then meet with their clients and discuss



areas the client would and would not be willing to agree to if a settlement negotiation were to take place. Students complete an individual reflection on the ethical responsibilities lawyers have to their clients in a civil case and the dilemmas they might face when engaging in settlement negotiations.

Part 4: Trial and Reflection (5 sessions)

Students put their trial skills into practice as they participate in a civil mock trial, then assess the effectiveness of their legal arguments. After trial, students consider the strengths and weaknesses of the civil litigation process and the settlement process, then discuss the role that alternative processes might play in settling claims. Students assess their progress on the development of career skills and complete a unit exam.

Activity 4A: Opening Statements and Presentation of Evidence

Attorneys for the plaintiff and defense use legal arguments to persuade as they present opening arguments. The plaintiff's team invites its witnesses to the stand, and legal teams conduct direct and cross-examinations in order to establish facts that support their theory of the case.

Activity 4B: Presentation of Evidence and Closing Statements

Attorneys for the defense invite witnesses to the stand, and legal teams conduct direct and cross-examinations in order to establish facts that support their theory of the case. Attorneys for the defense and plaintiff incorporate evidence from the trial and synthesize their legal reasoning as they present closing arguments.

Activity 4C: Exploring Alternatives

Students reflect on how different kinds of civil litigation can impact individuals and companies, and consider how alternatives to litigation, such as Alternative Dispute Resolution and arbitration, may be used to meet the needs of different stakeholders.

Activity 4D: Final Reflections

Students participate in a round-robin reflection on the framing questions.

Activity 4E: Unit Exam

Students complete the unit exam, which assesses their understanding of the framing questions and unit content.