

# Content Outline for Intro/Module 1

## What are your objectives?

From a God's Eye view?

In hearing an individual case?

It's your courtroom. . .

If you said one of your objectives is "to be fair," what does that mean exactly? What does "fair" look like?

If you said one of your objectives is "to ascertain the truth," how will you do that?

Note that some objectives are in tension with others. Life is like that . . . . .

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## What are bench skills?

Bench skills are behaviors by a judicial official aimed at achieving the following goals:

- Maintaining control of the courtroom
- Causing participants to view the judge as ethical and professional, and the process as fair
- Articulating and enforcing expectations for the behavior of parties and attorneys
- Effectively communicating with participants
- Hearing and deciding cases efficiently
- Dealing with difficult people effectively
- Responding appropriately to unexpected events
- . . . And so on.

## What is judicial temperament?

For a deep (and fascinating) dive, see Terry A. Maroney, (What We Talk About When We Talk About) Judicial Temperament, 61 B.C.L. Rev. 2085 (2020),

<https://lawdigitalcommons.bc.edu/bclr/vol61/iss6/4>

*How well or poorly a particular judge lives up to the temperamental expectations of judicial office depends to no small degree on his or her tendencies toward particular patterns of emotional experience and regulation. These tendencies are deep. They are, by adulthood, only imperfectly malleable. They drive behavior, particularly in the stressful situations that typify most forms of judging. The behaviors we most want from our judges are rooted in a tendency to feel positive emotions such as satisfaction and joy; a strong disposition for empathy, compassion, and prosocial action; and facility with shaping emotions and their expression in service of the proximate and distal goals of judging. The behaviors we least want from our judges are rooted in a tendency to feel negative emotions such as anger and fear; low dispositional kindness; and a rigid, constrained regulatory repertoire.*

## Procedural Justice

**Watch:** What is Procedural Justice? at <https://www.youtube.com/watch?v=i8OgypRCEqY> by The Center for Court Innovation (under 3 minutes).

The main concepts:

1. Treating court users with dignity, courtesy, and respect
2. Being sure that court participants understand court procedures, court decisions, and how decisions are made
3. Giving litigants a *voice*, that is, an opportunity to be heard in a way that causes them to feel you listened
4. Demonstrated neutrality manifested in the consistent application of legal principles and transparency in how decisions are made

Print out for your notebook: <https://civil.sog.unc.edu/procedural-fairness-how-to-do-it-and-why-it-matters/>

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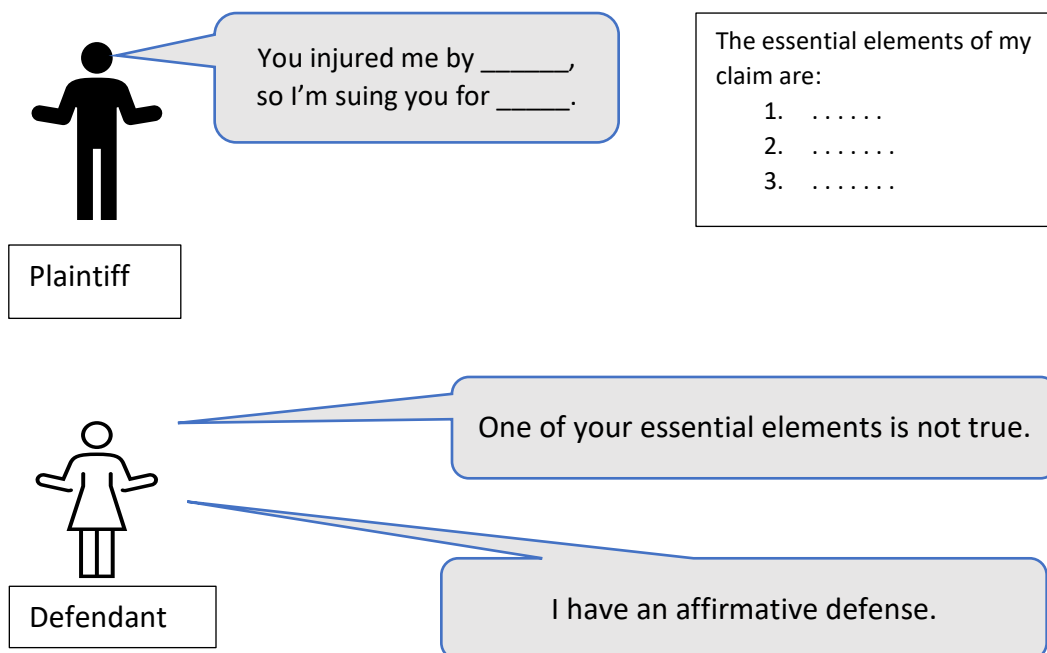
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## How Judicial Officials Make Decisions

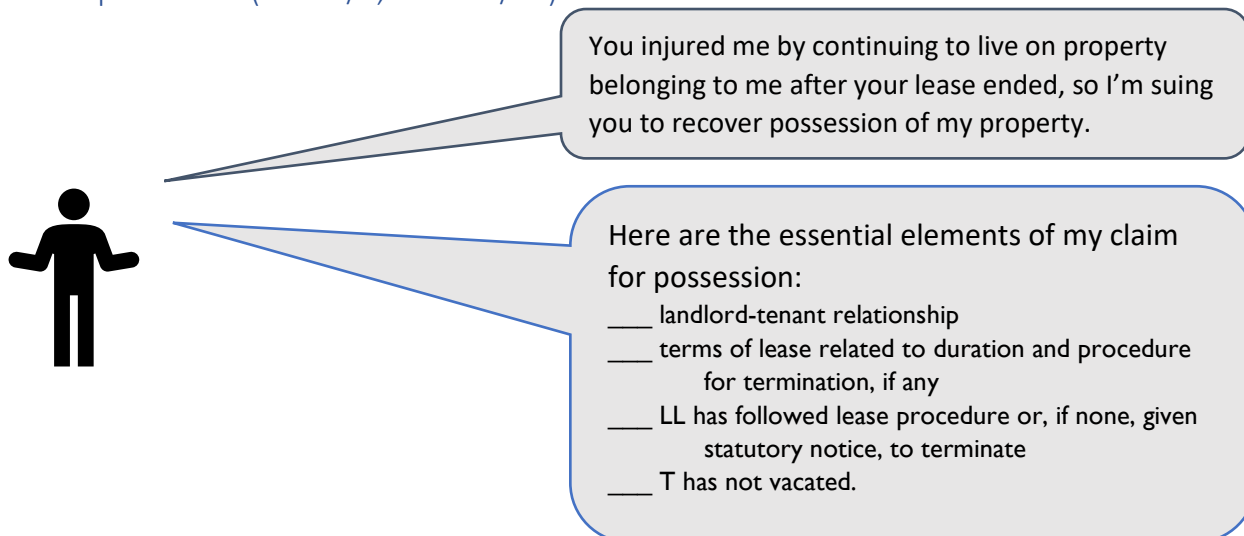
Before we allow a plaintiff to use the force of law to take away property belonging to another, we require every plaintiff to establish specific facts. We call these facts.

### Essential Elements

Only after a plaintiff has introduced sufficient evidence to prove each individual element do we require a defendant to either rebut the evidence against her, or introduce additional evidence establishing an affirmative defense.



An example: LL v. T (filed 4/1, heard 4/10)



#### Landlord's Testimony:

I rented this house to Terry Tenant back in September, for \$750 a month, due on the first. We just have an oral rental agreement – nothing in writing. And that was about it – we didn't talk much beyond that. I just said as long as you pay the rent on time and take good care of the place, we'll be fine. Turned out my daughter was coming home from college because of this pandemic and all, so when I ran into Terry at Thanksgiving, I told her she'd need to find another place to live by the end of the year. She says she hasn't been able to find a place, though, so she's still living there. And my daughter's staying with me in the meantime, which isn't working out too good, so I need Terry to vacate, one way or another.

#### Relevant law:

GS 42-14 establishes notice requirements for termination in the absence of a provision in the lease:

Year-to-year lease	30 days
Month-to-month	7 days
Week-to-week	2 days
MH space	60 days

#### Analysis (assuming defendant is not present)

Is there some evidence -- which would be sufficient if you found it credible, nothing else appearing -- on each essential element of the claim?

Is there additional information you need? If so, how would you phrase your question?

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Are there additional questions you might ask for other reasons? (For example, you might ask other questions to gauge credibility, to communicate that you're listening closely to the testimony, to clarify some part of the story even though it may well be irrelevant to the end result.)

#### Tenant's testimony:

Larry DID tell me I needed to move, back around Thanksgiving, but when I told him I was having trouble finding a place, he said to keep trying – that it might be easier after Christmas. Then, it looked for a while like his daughter might not be coming back after all, and he didn't say anything about it, so I thought he'd decided to just keep going like we were. Then, last week, all of the sudden he asked me when I figured on leaving, since the lease ended on December 31. I told him I thought he'd changed his mind. I mean, I've been paying rent all along, just like before. It was just a misunderstanding. I've already started looking around but I need a little more notice – he just told me I needed to leave last week!

Relevant law:

The most common defenses in a SE action based on holding over are:

- 1) Failure to provide proper notice of termination. In a month-to-month lease, assuming the lease is silent on the notice and method of termination, notice must be given at least 7 days prior to the end of the rental period.
- 2) Waiver. Even after giving proper notice, a landlord waives the right to recover possession on this ground by behaving inconsistently with an intention to terminate the lease (such as by accepting rent for periods falling after the lease has supposedly ended).

Analysis (defendant present, has presented possible defense)

Has the defendant offered evidence which, if you believed it, would negate an essential element of plaintiff's claim?

Has the defendant offered evidence in support of an affirmative defense, i.e., a reason defendant is entitled to prevail even if you believe the essential elements of plaintiff's case? (Hint: waiver is an affirmative defense.)

Do you have additional questions of plaintiff or defendant in light of defendant's testimony?  
If so, how would you phrase your question(s)?