



# How the Law Works

A guide to the Oregon court system and civil cases

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THE  
**CORSON & JOHNSON**  
LAW FIRM

The Law and You  
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# How the Law Works



Simply stated, the law is divided into two major areas: Criminal and Civil. Criminal cases involve government prosecution of individuals charged with illegal conduct, such as robbery or murder. Civil cases are those dealing with family law, corporate law and civil actions brought by one individual against another person or against a corporation. Personal injury cases are civil cases. Although some cases settle before they are filed with the court, those that are filed follow the same basic phases.

## The Complaint

A civil action starts when a complaint is filed in court by the attorney representing the injured person or the family of a deceased person. The person bringing the claim is called the plaintiff. The court numbers each case, then each party named as a defendant is served with a summons and a copy of the complaint and is given a specified amount of time to file a formal response. The filing of a case does not always lead to a trial. Over 98% of all cases are settled out of court.

## Discovery

In the discovery process, attorneys gather information that will be used to support or dispute claims or defenses in the case. Attorneys for both sides have access to relevant information gathered during this phase. Discovery can involve oral depositions (testimony under oath) and sometimes written answers to questions. Each side usually requests extensive written documentation ranging from medical and personnel records to photographs and product design specifications. Discovery sometimes requires hundreds or even thousands of hours from attorneys, paralegals, private investigators, numerous other staff members and outside consultants.

## Pretrial Preparation

Each case is prepared for trial. During this stage, a settlement can often be reached, thereby eliminating the fourth phase of a civil case, in which the dispute is tried before a judge and jury. Mediation is a common approach to dispute resolution during the third phase of a case.

## The Trial

If the parties involved cannot agree on a negotiated settlement before the appointed court date, the case proceeds to trial. The jury selection process then begins, wherein members of the community are called at random to serve as juror candidates.

Attorneys from both sides question the potential jurors, with the right to excuse a certain number of individuals who appear to lack impartiality. When a jury is selected, the actual trial can begin.

Without detailing the intricacies of courtroom procedure, the process can be briefly summarized as follows: Attorneys from both sides present opening statements to the jury outlining the case and any supporting evidence that will be presented. After opening statements, the plaintiff's attorney presents evidence. Evidence is usually a combination of oral witness testimony and physical evidence such as documents, photographs, x-rays and medical records. The defense attorney then has the opportunity to present evidence that disputes the plaintiff's claims. Sometimes the plaintiff offers rebuttal evidence. Finally, each attorney delivers a closing argument in a last attempt to influence the jurors in favor of his or her client.

## The Verdict

After deliberating and reaching a decision in secrecy, the jury presents its verdict to the court. If the verdict is in favor of the plaintiff, the jury also specifies a dollar amount to be paid by the defendant. The jury may assess compensatory damages to compensate for the plaintiff's losses. Rarely, a jury may be allowed to assess separate punitive damages, which are intended to punish the defendant and make an example for others to deter particularly wrongful conduct.

# Jury Trial: Our Final Safeguard

*"I consider trial by jury as the only anchor yet devised by man, by which a government can be held to the principles of its constitution."—Thomas Jefferson*

Twelve people sit on a jury, reviewing the facts of a case and the laws. These twelve votes count like no others in the United States.

Twelve jurors can determine whether or not a multi-billion dollar corporation should be held accountable for its products, services or workplaces. Their decision can have

a domino effect, causing laws to change and dangerous products to be taken off the market. These products include everything from cars and trucks to children's toys to prescription drugs. All because of 12 jurors' votes.

## The History of Juries

The principle of a Common Law Jury was recognized on June 15, 1215 at Runnymede, England when King John signed the Magna Carta, or Great Charter of Freedoms. It created the basis for our constitutional system of justice. A right to a jury of our peers is clearly spelled out in two of the first ten amendments to the Constitution of the United States—The Bill of Rights.



## A Jury's Rights, Powers and Duties

Members of a jury sit as judges of their peers. Juries can take as long as they want to decide a case. They discuss the case. Jurors should never feel that they must agree with the majority. As a qualified judge, each must see that justice is done, and be secure in the knowledge that they have voted their conscience and convictions, not those of someone else.

Because of the power that a jury has, nine of twelve jurors must agree on the decision in most Oregon civil cases. In a criminal case, and in federal cases, the vote must be unanimous.

## Civil Trials and the Jury

In a civil case, such as a personal injury case, either side may request a jury trial. However, only about two percent of all civil cases in Oregon go to a jury. Most cases are settled outside of court, and some are tried by a judge.

It is not uncommon for a case to be settled minutes before the trial begins. Most jury trials do not last more than a few days. On the other hand, a complex trial that involves many witnesses may last for several weeks. Lengthy trials are rare in Oregon, and prospective jurors are generally advised of the expected length of the trial before they are actually selected.

## The Jury Selection Process: The Call to Jury Duty

In Oregon, a group of potential jurors is randomly selected from property tax records and voter registration lists. In some courts, drivers license records may also be used.

Potential jurors have to be:

- a resident of the geographical area served by that particular court,
- at least 18 years of age, and
- for criminal cases, never have been convicted of certain crimes.

Beyond that, every adult is given the opportunity to be a juror, regardless of age, race, color, creed or occupation.

A person may submit a written request for a postponement, disqualification or excuse from jury duty. While inconvenience to a prospective juror or an employer is not a legal reason to be excused from jury service, it will be considered for a one-time postponement. There are no “permanent” excuses from jury service (except as allowed by statute).

## The Jury Experience—Do I Want It?

Few people ever have to go to court as plaintiffs or defendants, but when they do they want good, honest people to listen to the evidence and decide cases fairly. Many people are apprehensive about being called for jury duty.

They may think that their time will be wasted or that the experience will be negative. However, when asked, the majority of jurors said:

- the experience was positive.
- they learned a great deal about the legal system as well as about the particular case.
- there was satisfaction in knowing they had contributed to our system of justice.

Jurors are treated courteously and professionally by court officials, who know how important jurors are to the task of achieving fair and just results for those who come before the court.

Next time you are called for jury duty, ask yourself who you would want to have on your jury. And what if they made an excuse not to serve?



## Your Regular Job and Compensation

Under Oregon state law, an employer cannot “discharge or threaten to discharge, intimidate, or coerce any employee by reason of the employee’s service or scheduled service as a juror on a grand jury, trial jury or jury of inquest.”

Jurors are compensated modestly for their time. The amount varies depending on the court and the case. Mileage and parking are sometimes also covered.

## The Trial: Selection of 12 Jurors for Trial

For some Oregon courts, a potential juror can call a recorded message the evening before the day of service to confirm the need for or the cancellation of the appearance, or request a call back at a later time.

For those who must appear, some are sent to each courtroom; the number depends on the expected needs of each case. The judge puts the potential jurors under oath and permits the jury selection process to begin.

Potential jurors are asked questions. In most Oregon state courts, the judge asks some preliminary questions, then allows the attorneys to question the prospective jurors.

In Oregon federal courts, the judge generally asks the questions.

Jurors are questioned to ensure that they will be fair and impartial, and to reveal possible biases they may have or information that may affect their decision. Some potential jurors may be dismissed if the judge believes there is a good, strong reason for doing so. The court also wants to make sure jurors will be available for the entire trial.

Each attorney wants jurors who would be more sympathetic to their client’s case, and to avoid jurors who may be unfavorable to their side. For that reason, each side’s attorney is allowed to remove some potential jurors without stating a reason. Attorneys use these “peremptory challenges” to remove jurors who, they suspect, will be unsympathetic to their client’s case due to their backgrounds, attitudes or beliefs. Because the attorneys for both sides can remove potentially biased or unsympathetic jurors, the result is, in theory, a fair, reasonably balanced and more impartial jury.



## Expectations of Jurors During the Trial

At the beginning of the trial, the selected jurors take an oath or affirm that they will “well and truly” try the particular case for which they have been chosen. They will be instructed that they are to wait until all the evidence has been heard before making up their minds, and that they are to follow all of the judge’s instructions as to the law and procedures in arriving at a verdict.

Other rules include that jurors:

- must do their best to determine the credibility of each witness.
- are not permitted to discuss the case among themselves or with anyone else until all the evidence has been presented, the attorneys have made their closing arguments and the judge has instructed the jurors about the law that applies to the case.
- may not do any independent investigation of the matters involved in the case.
- may not discuss the case with anyone outside the courtroom until after they have deliberated in the jury room and arrived at a verdict.

## Reaching a Verdict

After the attorneys have presented their evidence and usually after they have made their closing arguments, the judge instructs the jurors about the laws that apply to the case. Jurors must decide cases based on the laws as they are and not as the jurors might like them to be.

After all closing arguments and instructions on the law, the jury goes to the deliberation room to consider the case and reach a verdict. The jury first elects a foreperson who sees to it that discussions are conducted in a logical and orderly fashion, that all issues are fully and fairly discussed, and that every juror is given a fair chance to participate. If the jurors have a question during their deliberation, they may write it down and ask the bailiff to deliver it to the judge.

When a verdict has been reached, the presiding juror signs the verdict form and notifies the bailiff. The verdict is read in open court. If there is a question about the vote, the judge may poll the jurors to ensure there were the proper number of votes on each question on the verdict form. Afterwards, the judge dismisses the jurors.

After a verdict is reached, as during the trial itself, attorneys are prohibited from contacting jurors.

## Making sure the law works for everyone.

The Corson & Johnson Law Firm specializes in handling cases for those who have suffered severe injuries or death caused by defective products or wrongful conduct.

One of the important services we provide our clients in the difficult time following an accident or injury is our expertise and guidance through the complex judicial process. The more insight we can provide into the workings of the system, the better prepared our clients are for the challenges of the legal process that will face them.

The attorneys of The Corson & Johnson Law Firm are dedicated to making sure that their clients not only receive fair compensation, but also to work for changes—sometimes through new laws and regulations—that will prevent further injuries and deaths.

Don Corson has been selected for American Board of Trial Advocates membership, is an American College of Trial Lawyers Fellow, is rated “AV” by LexisNexis Martindale-Hubbell’s rating system and listed in Best Lawyers in America.

Both Don Corson and Lara Johnson are members of the American Association for Justice (AAJ) and the Oregon Trial Lawyers Association (OTLA) and are admitted to the Oregon state and federal courts. Don is a past president of OTLA and is a frequent guest lecturer. Lara has written and lectured on nursing home neglect and abuse, and is also published on claims against government entities.

## Submit questions to The Law and You

The Law & You is a community service in Oregon, provided by The Corson & Johnson Law Firm. To hear the latest questions or to ask a question about how the law works or a specific case, visit [www.CorsonJohnsonLaw.com](http://www.CorsonJohnsonLaw.com).



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