Unit 05 Seminar

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There are two common defenses presented in case of negligence. One of them is contributory negligence which declares that the plaintiff also contributed to loss or injury to him. The other defense is assumption of risk according to which plaintiff was conscious of the risk and still performed a certain action. Most of the states have replaced contributory negligence by comparative negligence which is also known as comparative fault. However, the contributory negligence will not be accepted as an affirmative defense in case of battery. In the states where contributory negligence has been replaced, the defense to contributory negligence has been terminated. In the case of contributory negligence, the plaintiff will not receive any recovery amount. On the other hand, in a comparative negligence/ fault case, the recovery of the plaintiff is decreased by a percentage depending on the extent of the fault of the plaintiff.

Affirmative defenses to a criminal case or civil lawsuit, are those defenses in which the defendant does not deny the charges but justifies his/her actions. The burden of proof is on the defendant. These defenses require a preponderance of the evidence. If they are not raised in the defendant’s answer or during a motion, they are not accepted later. Thus, as many as possible affirmative defenses must be raised in the answer. For certain causes of action, limited affirmative defenses are available. The FRCP 8(c) rule states that any affirmative defense must be presented in response to the plea.

The statute of limitations starts from the time the cause of action takes place. The time depends on the nature of charges and the jurisdiction. In case of personal injury, the statute of limitations is one or two years. In cases against government actions, the time period may be shorter. Thus, different causes of action have specific statutes of limitations. In the defendant’s answer, a denial is presented in correspondence to a specific complaint paragraph. A counterclaim must be asserted with the answer.