

I. Pleading

a. Types

i. Complaint

1. Rule 8: a short and plain statement showing entitlement to relief.
2. *Bell Atlantic v. Twombly* and *Connley v. Gibson*
3. Rule 9(b): fraud must be pleaded with particularity
4. Rule 9(g): special damages

ii. Answer

1. 20/60 days to answer

iii. Rule 12 motions

1. Rule 12(b)(6): motion to dismiss
2. Rule 12(c): motion for judgment on the pleadings
3. Rule 12(e): motion for a more definitive statement
4. Rule 12(f): motion to strike

iv. Counterclaims

1. Rule 7: all functioning complaints must be answered.
2. Rule 13(a): compulsory counterclaims
3. Rule 13(b): permissive counterclaims

v. Crossclaims

b. Amendments

i. Rule 15(a): amending the pleading

1. Courts consider
 - a. Delay
 - b. Prejudice
 - c. Good faith of the party
 - d. Repetitiveness

ii. Rule 15(b): amending to conform to the evidence

iii. Rule 15(c): relating back

1. relation back is allowable by statute
2. new claim arises from same transaction or occurrence
3. amendment changes the party within 120 days of the complaint

c. Rule 11

i. 21-day safe harbor period

II. Joinder

a. Rule 17(a): real parties in interest

b. Rule 18(a): all claims against adverse parties may be included

c. Permissive joinder of parties

- i. Rule 20(a): If right to relief arises out of the same transaction or occurrence, and if there is any common question of law or fact, parties may be joined.
- ii. Rule 20(b): Court may separate claims
- iii. Rule 21: misjoinder

d. Mandatory joinder of parties

- i. Rule 19(a): Court must add necessary parties if feasible
- ii. Rule 19(b): The case cannot proceed without indispensable parties.
 1. Can the case proceed? Consider:

- a. To what extent a judgment rendered in the person's absence might be prejudicial to the person or to those already parties.
- b. The extent to which, by protective provisions in the judgment, by shaping of relief, or other measures, the prejudice can be lessened or avoided.
- c. Whether a judgment rendered in the person's absence will be adequate.
- d. Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.
- e. Impleader (Rule 14)
- f. Interpleader (Rule 22)
- g. Intervention
 - i. Rule 24(a): intervention as of right
 - ii. Rule 24(b): permissive intervention

III. Class Actions

- a. Certification
 - i. Rule 23(a): prerequisites
 - 1. Numberosity
 - 2. Commonality
 - 3. Typicality
 - 4. Adequacy
 - ii. Rule 23(b): maintainable class actions
 - 1. Prejudice classes
 - 2. Discrimination classes
 - 3. Other classes. Courts consider (1) whether the class mechanism is the superior device, (2) the interest of the members litigating individually, (3) the extent of the litigation being prosecuted, (4) implications of concentrating litigation into a single forum, and (5) manageability difficulties.
 - iii. Rule 23(e): settlement
 - iv. Rule 23(f): appealing certification decisions

IV. Discovery

- a. Rule 26(b)(1): parties may discover any relevant non-privileged material.
- b. Rule 26(b)(2): Courts may limit scope of discovery if it's unreasonably cumulative or duplicative, or if it's obtainable from some other source less burdensome.
- c. Rule 26(c): protective orders
- d. Rule 26(e): duty to supplement
- e. Rule 26(f): discovery conference
- f. Mandatory disclosure (Rule 26(a)): 14 days after discovery conference
- g. Depositions (Rule 30): one day per witness, ten in all
- h. Rule 31: depositions upon written questions
- i. Interrogatories (Rule 33): 25 limit
- j. Discovery and Production of Property (Rule 34)
- k. Physical and mental examinations (Rule 35)

- l. Requests to Admit (Rule 36)
- m. Work product
 - i. Rule 26(b)(3) and *Hickman v. Taylor*
 - ii. *Upjohn Co. v. United States*
 - iii. Rule 26(b)(4): non-testifying experts
- n. Discovery abuse (Rule 37)
- V. Case Management
 - a. Rule 16(a): court may call pretrial conferences at its own discretion
 - b. Rule 16(b): scheduling order following Rule 26(f) conference.
 - c. Rule 16(d): final pretrial conference
 - d. Rule 16(e): pretrial orders guide the case
 - e. Rule 16(f): sanctions
 - f. Rule 53: masters
- VI. Adjudication Without Trial
 - a. Summary judgment
 - i. Rule 56(a): acting plaintiff cannot move for summary judgment until after 20 days after the beginning of proceedings or the defendant moves for summary judgment.
 - ii. Rule 56(b): defendant may move at any time
 - b. Voluntary dismissal
 - i. Rule 41(a)(1): As of right before summary judgment motion or answer is filed, or by consent of parties.
 - ii. Rule 41(a)(2): at order of the court
 - c. Involuntary dismissals (Rule 46(b)): failure to prosecute or noncompliance with court orders
 - d. Default
 - i. Rule 55(a): default
 - ii. Rule 55(b): judgment
 - iii. Rule 55(c): contention
- VII. Alternative Dispute Resolution
 - a. Rule 68: if the judgment obtained by the offeree is not more favorable than the offer.
- VIII. Trial
 - a. Trial by jury
 - i. Rule 38: jury demand 10 days within answer
 - ii. Rule 48: court determines jury size
 - iii. Rule 47: Voir dire
 - b. Judgment as a matter of law (Rule 50)
 - i. 10 days to move for a JNOV
 - c. Jury instructions
 - d. Verdicts
 - e. Rule 52(a): a judge in a bench trial must explain his decisions
 - f. New trials
 - i. Rule 59(a): judges can grant new trials for any reason
 - ii. Rule 59(b): motion for new trial must be filed within 10 days
 - iii. Rule 61: harmless errors

- iv. New trials can be granted for incoherent jury verdicts, jury misconduct, or if the verdict is against the clear weight of the evidence
- v. Rule 60(a): the court may correct clerical mistakes
- vi. Rule 60(b): motion for a new trial on the basis of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or fraud must be made within a reasonable time not to exceed one year.
- vii. Was neglect excusable? Consider:
 - 1. the danger of prejudice to the opposing party
 - 2. the length of the delay and its potential impact on the judicial proceedings
 - 3. the reason for the delay
 - 4. whether the moving party acted in good faith

IX. Big picture

- a. Pleading: 7, 8, 11, 15, 55
- b. Pre-discovery motions: 12, 15
- c. Joinder: 13, 14, 17-22, 24
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- e. Dismissal: 41
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- g. Discovery: 26-37
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- j. Summary judgment: 56
- k. Jury role/judge role: 39
- l. JML: 50
- m. Instructions: 51
- n. Verdict: 49, 52, 54, 58
- o. JNOV: 50
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