

## CIVIL PROCEDURE ISSUES CHECKLIST

### PERSONAL JURISDICTION

- Authorized by statute
  - Traditional bases (general jurisdiction)
  - Long-arm statute
- Constitutional limitations
  - Sufficient nexus
    - Minimum contacts
      - Purposeful availment
      - Foreseeability
    - Fairness
      - Relatedness
      - Convenience
      - State's interest
  - Notice to D

### SUBJECT MATTER JURISDICTION – DIVERSITY OF CITIZENSHIP

- Diversity among parties
  - Individuals
  - Class actions
  - Corporations
  - Alienage jurisdiction
- Jurisdictional amount >75k
  - Aggregation
    - Single P, single D
    - Single P, multiple D's
    - Multiple P's, single/multiple D's

### SUBJECT MATTER JURISDICTION – FEDERAL QUESTION

#### SUBJECT MATTER JURISDICTION – SUPPLEMENTAL JURISDICTION (ADDITIONAL CLAIMS)

- Original claim qualifies under federal question/diversity jurisdiction
- Additional claim does not qualify under federal question/diversity jurisdiction
- Common nucleus test
  - Multiple plaintiffs
    - Federal question jurisdiction
    - Diversity jurisdiction
  - Substitution of parties

### SUBJECT MATTER JURISDICTION – REMOVAL AND REMAND

- Was removal appropriate in the first place
  - Could case originally be filed in Fed Court
  - Diversity cases – D cannot be citizen of state where action filed
  - Time limit
  - Multiple D's
  - Cases where removal not allowed
- If requirements not met, case will be remanded to state court

### VENUE

- Is venue appropriate in original district where lawsuit was filed?
  - Judicial district in which D resides
    - Multiple D's
  - Judicial district in which substantial part of events/omissions occurred/property located
  - If neither of above: Judicial district where any D subject to personal jurisdiction
- Should case be transferred to a new venue?
  - Original venue not appropriate
    - Future court has PJ
    - Future court has SMJ
    - Transfer in interest of justice
    - If neither appropriate: dismiss case
    - Law applied: future district
  - Original venue appropriate
    - Parties consent
    - Convenience of parties/witnesses
    - Future court has PJ
    - Future court has SMJ
    - Transfer to new venue in interest of justice
    - Law applied: original district

### LAW APPLIED: ERIE DOCTRINE

- Federal question jurisdiction
- Diversity jurisdiction
  - Substantive or procedural?
    - Outcome determinative test
    - Balance of interest test
    - Forum shopping deterrence

### SERVICE OF PROCESS

- Who, how, time limit

### INJUNCTIONS

- Preliminary injunction
  - Irreparable harm
  - Weighing up harm to parties
  - Success on the merits
  - Enforceability
- TRO
  - Same test
  - Security to pay for damages

## PLEADINGS

- Complaints
  - Grounds for jurisdiction
  - Factual allegations
  - Relief sought
- Pre-answer motions
  - Motion to dismiss
    - Lack of SMJ
    - Lack of PJ
    - Improper venue
    - Insufficiency of process
    - Insufficiency of serve of process
    - Failure to state a claim
    - Failure to join a needed party
    - Time limits
  - Motion for a more definite statement
    - Time limit
  - Motion to strike
    - Time limit
- Answer
  - Specific denial/admission
  - General denial
  - Failure to deny
  - Affirmative defenses
  - Time limit
- Default and default judgement
  - Notice to D
    - D appeared
    - D not appeared
  - Ability to contest liability and damages
- Compulsory counterclaim
- Permissive counterclaim
- Amendments
  - Relation back
    - New claim
    - New party
- Rule 11
  - Sanctions by court
  - Motion for sanctions by party

## JOINDER OF PARTIES

- Compulsory joinder
  - Should absentee be joined
    - Complete relief cannot be accorded otherwise
    - Impaired ability to protect own interest/risk of multiple obligations
  - Can absentee be joined – jurisdiction and venue
  - Should action proceed without absentee
    - Extent of prejudice
    - Can prejudice be reduced/avoided
    - Adequacy of judgement

- Adequate remedy for excluded party

- Permissive joinder
  - Same T/O
  - Question of fact/law common to all parties

## JOINDER OF CLAIMS

- Class actions
  - Joinder of all parties impracticable
  - Common questions law/fact
  - Named parties' interests typical
  - Named parties will fairly and adequately represent class
  - Risk of inconsistent results otherwise
- Class action fairness act (removal to Federal court)
  - Diverse citizenship
  - Amount in controversy >\$5 million
  - At least 100 members
- Interpleader
  - Rule 22: Complete diversity and >75k or federal question claim
  - S 1335 (statutory interpleader): one claimant diverse and >\$500
- Intervention of right
  - Applicant has interest in property/transaction
  - Impaired ability to protect interest unless joined
  - Parties don't adequately represent intervenor's right
- Permissive intervention
  - Applicant's claim and main action have common question of fact or law
  - Claim supported by own jurisdictional ground
  - Court discretion
- Impleader/Third party practice
  - Federal jurisdiction/diversity jurisdiction
  - Supplemental jurisdiction
  - Venue need not be proper for TPD
- Cross-claims
  - Supplemental jurisdiction

## DISCOVERY

- Initial disclosures
- Privilege
  - Work product privilege
    - Exceptions
- Expert testimony
- Pretrial disclosures
- Electronically stored information
- Depositions
  - Failure to attend – sanctions
  - Use at trial
- Failure to disclose/supplement an earlier response

- Physical/mental exams
- Pretrial conferences
  - Conference of parties
  - Scheduling conference

#### **TRIAL PROCEDURE**

- Right to jury trial
  - Time, size, jury selection and instructions
- Summary judgement
- Judgement as a matter of law (directed verdict)
  - Reasonable person standard
- Renewed motion for judgement as a matter of law
  - Reasonably person standard
- Motion for new trial
  - Error/miscarriage of justice

#### **POST-TRIAL PROCEDURE**

- Motion for relief from judgement
  - Newly discovered evidence
- Appeals
  - Timing
  - Final judgement rule
  - Writ of mandamus
  - Interlocutory appeals
    - Injunctive relief
    - Failure to certify a class action
    - New law to consider
- Claim preclusion (res judicata)
  - Earlier judgement valid/final on merits
  - Same claimant against same defendant
  - Claimant asserting same claim as in lawsuit
- Issue preclusion (collateral estoppel)
  - Same issue litigated
  - Final judgement on merits
  - Issue essential to judgement
  - Mutuality – D was a party in earlier action or it is fair to use it against them