

CIVIL PROCEDURE

RULE-STATEMENT CHECKLIST

I. JURISDICTION & VENUE

22.2% tested

A. FEDERAL SUBJECT-MATTER JURISDICTION

GENERAL RULE Federal courts are courts of limited jurisdiction, so every claim needs its own basis for subject-matter jurisdiction, either a federal question or diversity of citizenship, with supplemental jurisdiction available for related claims. The defense cannot be created by the parties' consent and may be raised at any time, even for the first time on appeal.

- ☐ **Federal question.** A federal court has federal-question jurisdiction when the plaintiff's well-pleaded complaint establishes that the claim arises under federal law; an anticipated federal defense or a federal counterclaim does not suffice.
- ☐ **Diversity.** A federal court has diversity jurisdiction where the action is between citizens of different states with complete diversity (no plaintiff is a citizen of the same state as any defendant) and the amount in controversy exceeds \$75,000. Citizenship is an individual's domicile, a corporation's every state of incorporation and its principal place of business, and an unincorporated association's every member; both requirements are measured when the action is filed. One plaintiff may aggregate all claims against one defendant, but claims against multiple defendants aggregate only where they are jointly liable.
- ☐ **Supplemental.** A court with original jurisdiction over an anchor claim may exercise supplemental jurisdiction over other claims arising from the same case or controversy (a common nucleus of operative fact); but in a diversity case Section 1367(b) bars supplemental jurisdiction over certain plaintiff claims that would defeat complete diversity, and the court may decline under Section 1367(c).
- ☐ **Removal.** A defendant may remove an action of which the federal courts have original jurisdiction; all defendants must consent and removal must occur within 30 days. A diversity action may not be removed if any defendant is a citizen of the forum state, nor more than one year after commencement absent bad faith.

B. PERSONAL JURISDICTION

GENERAL RULE A court has personal jurisdiction over a defendant only where a statutory basis (the forum's long-arm statute) authorizes it and the exercise satisfies due process, meaning either a traditional basis or minimum contacts with the forum such that jurisdiction does not offend traditional notions of fair play and substantial justice. The defense is waived if not raised in the defendant's first response.

- ☐ **Traditional bases.** A court has personal jurisdiction over a defendant who is domiciled in the forum, is served while present in the forum, consents, or waives the defense.
- ☐ **Minimum contacts.** Absent a traditional basis, a court has personal jurisdiction only if the defendant has such minimum contacts with the forum that jurisdiction does not offend traditional notions of fair play and substantial justice: the defendant must have purposefully availed itself of the forum, and either the claim arises from those contacts (specific) or the defendant is at home in the forum (general). A defendant is at home where an individual is domiciled or a corporation is incorporated or has its principal place of business.
- ☐ **Reasonableness.** Even where contacts exist, the court weighs the burden on the defendant, the forum state's interest, the plaintiff's interest in relief, the interstate system's efficiency, and shared substantive policies.
- ☐ **Notice.** Due process requires notice reasonably calculated, under all the circumstances, to apprise the defendant of the action and afford an opportunity to be heard.

C. SERVICE OF PROCESS & NOTICE

- ☐ **Service.** Process must be served within 90 days of filing by personal delivery, by leaving a copy at the defendant's dwelling with a resident of suitable age and discretion, by delivery to an authorized agent, or by a method permitted by state law; a defendant who waives formal service receives additional time to respond.

D. VENUE, FORUM NON CONVENIENS & TRANSFER

GENERAL RULE Venue fixes the proper judicial district, as distinct from whether the court has power over the case or the parties. In federal court it turns on where the defendants reside or where a substantial part of the events occurred, and an action laid in an improper or inconvenient district may be transferred or dismissed.

- ☐ **Venue.** Venue is proper in any district where any defendant resides if all defendants reside in the same state, or in a district where a substantial part of the events or omissions occurred or the property is situated; if neither applies, in any district where a defendant is subject to personal jurisdiction.
- ☐ **Transfer.** A court may transfer to any district where the action could have been brought for the convenience of parties and witnesses and in the interest of justice; a Section 1404 transfer from a proper venue carries the transferor's choice-of-law, while a Section 1406 transfer cures an improper venue.
- ☐ **Forum non conveniens.** A court may dismiss or stay where an adequate alternative forum, typically foreign, is far more appropriate under the private- and public-interest factors.

III. PRETRIAL PROCEDURES

22.2% tested

A. PRELIMINARY INJUNCTIONS & TEMPORARY RESTRAINING ORDERS

- ☐ **Preliminary injunction.** On notice and a hearing, a court may grant a preliminary injunction where the movant shows a likelihood of success on the merits, irreparable harm, that the balance of equities favors relief, and that an injunction serves the public interest.

- ☐ **Temporary restraining order.** A TRO may issue, even ex parte, on specific facts showing immediate and irreparable injury; it lasts no more than 14 days (extendable once for good cause) and requires the movant to post security.

B. PLEADINGS & AMENDED AND SUPPLEMENTAL PLEADINGS

- ☐ **Complaint.** A complaint must state the grounds for jurisdiction, a short and plain statement of the claim showing a plausible entitlement to relief, and a demand for relief; fraud and mistake must be pleaded with particularity.
- ☐ **Response.** A defendant must answer within 21 days (60 if service was waived), admitting or denying each allegation and stating any affirmative defenses, which are waived if omitted; a Rule 12 motion alters the time to answer.
- ☐ **Amendment & relation back.** A party may amend once as of right within 21 days, and thereafter only by leave, freely given when justice requires. An amendment relates back if it arises from the same conduct, transaction, or occurrence; an amendment changing a party relates back only if, within the service period, that party had notice and knew or should have known it would have been named but for a mistake.
- ☐ **Supplemental pleadings.** On leave, a party may serve a supplemental pleading setting out events that occurred after the pleading being supplemented.

C. RULE 11

- ☐ **Rule 11.** By presenting a paper, an attorney certifies that it is not for an improper purpose, that its legal contentions are warranted, and that its factual contentions have evidentiary support; sanctions require a 21-day safe harbor, and the rule does not apply to discovery papers.

D. JOINDER OF PARTIES AND CLAIMS (INCLUDING CLASS ACTIONS)

- ☐ **Compulsory joinder.** A party must be joined if feasible where, in its absence, the court cannot accord complete relief, or the absentee's interest would be impaired or would expose a party to inconsistent obligations; if joinder would destroy jurisdiction, the court decides whether the party is indispensable and the action must be dismissed.
- ☐ **Permissive joinder.** Plaintiffs may join, or defendants be joined, where the claims arise from the same transaction or occurrence and share a common question of law or fact.
- ☐ **Counterclaims.** A counterclaim is compulsory, and waived if omitted, when it arises from the same transaction or occurrence as the opposing party's claim; any other counterclaim is permissive and needs an independent jurisdictional basis.
- ☐ **Crossclaims.** A party may assert a crossclaim against a co-party if it arises from the same transaction or occurrence as the original action or relates to property at issue; crossclaims are never compulsory.
- ☐ **Impleader.** A defending party may implead a nonparty who is or may be liable to it for all or part of the claim against it, as by indemnity or contribution.
- ☐ **Intervention.** A nonparty may intervene of right where it has an interest that may be impaired and is not adequately represented, or permissively where its claim shares a common question.
- ☐ **Interpleader.** A stakeholder may join adverse claimants to a single fund to litigate their competing claims among themselves; statutory interpleader requires only minimal diversity between claimants and \$500 in controversy.
- ☐ **Class action.** A class may be certified only if it is so numerous that joinder is impracticable, there are common questions, the representative's claims are typical, and the representative will fairly and adequately protect the class, plus one of: a risk of inconsistent adjudications, injunctive relief appropriate to the class as a whole, or common questions predominate and a class action is superior.

E. DISCOVERY, DISCLOSURE & SANCTIONS

- ☐ **Required disclosures.** Without awaiting a request, parties must make initial disclosures, disclose expert testimony, and make pretrial disclosures.
- ☐ **Scope.** Parties may discover any nonprivileged matter relevant to a claim or defense and proportional to the needs of the case; information need not be admissible to be discoverable.
- ☐ **Devices.** The devices are depositions, interrogatories, requests for production, requests for admission, and physical or mental examinations, the last available only on a showing of good cause where the condition is in controversy.
- ☐ **Privilege & work product.** Privileged matter is protected; material prepared in anticipation of litigation is discoverable only on a showing of substantial need and an inability to obtain the substantial equivalent without undue hardship, and an attorney's mental impressions receive near-absolute protection.
- ☐ **ESI & spoliation.** A party must take reasonable steps to preserve relevant electronically stored information once litigation is reasonably anticipated; where lost ESI cannot be restored and the party acted with intent to deprive, the court may presume it unfavorable, so instruct the jury, or dismiss or enter default.
- ☐ **Sanctions.** A party that fails to disclose, supplement, or obey a discovery order is subject to sanctions ranging from fee-shifting to establishing facts, precluding evidence, striking pleadings, dismissal, or default.

F. ADJUDICATION WITHOUT A TRIAL

- ☐ **Summary judgment.** A court shall grant summary judgment where the movant shows, on the record, that there is no genuine dispute of material fact and it is entitled to judgment as a matter of law; the court views the evidence in the light most favorable to the nonmovant, who must come forward with specific facts rather than mere allegations.
- ☐ **Judgment on the pleadings.** After the pleadings close, a party may obtain judgment on the pleadings where the pleadings alone show it is entitled to judgment.

G. PRETRIAL CONFERENCE & ORDER

- ☐ **Pretrial order.** The final pretrial order supersedes the pleadings and controls the subsequent course of the action, and may be modified only to prevent manifest injustice.

V. MOTIONS

22.2% tested

A. PRETRIAL MOTIONS (PLEADINGS, DISMISS, SUMMARY JUDGMENT)

- ☐ **Rule 12(b) defenses.** A defendant may move to dismiss for lack of subject-matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient process, insufficient service, failure to state a claim, or failure to join a required party; the personal-jurisdiction, venue, process, and service defenses are waived if not raised in the first Rule 12 response, while subject-matter jurisdiction may be raised at any time, even on appeal.
- ☐ **Failure to state a claim.** On a Rule 12(b)(6) motion the court accepts the well-pleaded facts as true and dismisses only where they fail to state a plausible claim for relief.
- ☐ **Other pleading motions.** A party may move for judgment on the pleadings, for a more definite statement of an unintelligible pleading, or to strike redundant, immaterial, or scandalous matter.
- ☐ **Summary judgment motion.** A party may move for summary judgment at any time until 30 days after the close of discovery; for the governing standard see Adjudication without a trial (III.F).

B. JUDGMENT AS A MATTER OF LAW

- ☐ **Rule 50(a).** After a party has been fully heard, the court may grant judgment as a matter of law where no reasonable jury would have a legally sufficient basis to find for that party; the motion must be made before the case is submitted to the jury.
- ☐ **Renewed motion.** A renewed motion for judgment as a matter of law must be filed within 28 days after entry of judgment and lies only if a Rule 50(a) motion was made before submission.

C. POSTTRIAL MOTIONS

- ☐ **New trial.** A court may grant a new trial within 28 days of judgment for prejudicial legal error, a verdict against the clear weight of the evidence, or excessive or inadequate damages, and may condition denial on the plaintiff's acceptance of remittitur; additur is unavailable in federal court.
- ☐ **Relief from judgment.** On motion within a reasonable time, a court may relieve a party from a final judgment for mistake, newly discovered evidence, fraud, a void judgment, or satisfaction; the first three grounds must be raised within one year.

II. LAW APPLIED BY FEDERAL COURTS

8.3% tested

A. STATE LAW IN FEDERAL COURT (ERIE)

GENERAL RULE A federal court sitting in diversity applies federal procedural law but the substantive law of the state in which it sits. The recurring problem is classifying an issue as substantive or procedural when a Federal Rule, a federal statute, or federal judicial practice conflicts with state law.

- ☐ **Erie doctrine.** A federal court sitting in diversity applies federal procedural law and state substantive law; where a valid Federal Rule or federal statute is on point and is arguably procedural, it governs.
- ☐ **No rule on point.** Absent a controlling federal rule, the court applies state law where the issue is outcome-determinative in light of the twin aims of discouraging forum-shopping and avoiding inequitable administration of the laws, balancing the federal and state interests. Statutes of limitations and tolling, choice-of-law rules, the elements of claims and defenses, and the standard of care are substantive.
- ☐ **Choice of law.** A federal court sitting in diversity applies the conflict-of-laws rules of the state in which it sits.

B. FEDERAL COMMON LAW

- ☐ **Federal common law.** In the absence of a controlling statute, federal common law governs matters of uniquely federal interest, such as disputes between states, the rights and obligations of the United States, and admiralty.

IV. JURY TRIALS

8.3% tested

A. RIGHT TO JURY TRIAL

- ☐ **Seventh Amendment.** The Seventh Amendment preserves the right to a jury trial in civil actions at law but not in equity; where a case joins legal and equitable claims, the jury decides the common legal issues first.
- ☐ **Demand.** A party waives a jury trial unless it serves a written demand within 14 days after the last pleading directed to the triable issue.

B. SELECTION & COMPOSITION OF JURIES

- ☐ **Size & verdict.** A federal civil jury has 6 to 12 members, each of whom must participate, and the verdict must be unanimous unless the parties stipulate otherwise.
- ☐ **Challenges.** Each party has unlimited challenges for cause and a limited number of peremptory challenges, which may not be exercised on the basis of race or sex.

C. REQUESTS FOR AND OBJECTIONS TO INSTRUCTIONS

- ☐ **Instructions.** A party must object to an instruction, stating the grounds, on the record and before the jury retires, or the objection is not preserved absent plain error.

VI. VERDICTS & JUDGMENTS

8.3% tested

A. DEFAULTS & DISMISSALS

- ☐ **Default.** When a party against whom relief is sought fails to plead or defend, the clerk enters default and may enter a default judgment for a sum certain against a party who has not appeared; otherwise the court enters it, and the judgment may not exceed the amount demanded in the complaint.
- ☐ **Dismissals.** A plaintiff's first voluntary dismissal before an answer or summary judgment is without prejudice; an involuntary dismissal for failure to prosecute or to obey an order operates as an adjudication on the merits unless the court states otherwise.

B. JURY VERDICTS: TYPES AND CHALLENGES

- ☐ **Types.** The court may take a general verdict, a special verdict answering specific fact questions, or a general verdict accompanied by answers to written questions.
- ☐ **Inconsistency.** Where answers are inconsistent with one another or with the general verdict, the court may enter judgment on consistent answers, return the matter to the jury, or order a new trial.

C. JUDICIAL FINDINGS AND CONCLUSIONS

- ☐ **Bench trial.** In an action tried without a jury the court must find the facts specially and state its conclusions of law separately, and its factual findings stand unless clearly erroneous.

D. EFFECT: CLAIM AND ISSUE PRECLUSION

GENERAL RULE A valid final judgment has binding effect in later litigation: claim preclusion bars the same parties from relitigating the same claim, while issue preclusion bars relitigating any issue that was actually litigated and essential to the earlier judgment.

- ☐ **Claim preclusion (res judicata).** A valid final judgment on the merits bars the same parties from relitigating the same claim, including every ground of recovery or defense that was or could have been raised in the first action.
- ☐ **Issue preclusion (collateral estoppel).** A valid final judgment forecloses relitigation of an issue of fact or law that was actually litigated, determined, and essential to the judgment, against a party who had a full and fair opportunity to litigate it; nonmutual use may be allowed where fair.

VII. APPEALABILITY & REVIEW

8.3% tested

A. AVAILABILITY OF INTERLOCUTORY REVIEW

- ☐ **Interlocutory appeals.** As exceptions to the final-judgment rule, a party may appeal orders granting or denying injunctions, a controlling question of law the district court certifies and the court of appeals accepts, or a judgment on fewer than all claims or parties that the district court certifies as final.
- ☐ **Collateral order & mandamus.** The collateral-order doctrine permits immediate appeal of an order that conclusively determines an important question separate from the merits and effectively unreviewable on final appeal; mandamus lies only to confine a clear abuse of judicial power.

B. FINAL JUDGMENT RULE

- ☐ **Final judgment.** A court of appeals has jurisdiction over appeals from final decisions that end the litigation on the merits; the notice of appeal must be filed within 30 days of entry, or 60 days if the United States is a party.

C. SCOPE OF REVIEW FOR JUDGE AND JURY

- ☐ **Standards of review.** Questions of law are reviewed de novo, a judge's findings of fact for clear error, a jury's findings for substantial evidence, and discretionary rulings for abuse of discretion; an error that does not affect substantial rights is harmless.