

Civil Procedure II Outline

Three Stages of Litigation

Pleading: Stating the Case	Discovery: Obtaining Information	Trial: Presentation to Jury
Plaintiff files a complaint and has it served on Defendant . Court must have proper SMJ, PJ, and Venue. Defendant must have proper SMJ, PJ, and Venue.	Required initial disclosures. Interrogatories Requires to Produce Depositions Requests to Admit Mental/Physical Examinations	The parties present their case to the jury. The Judge instructs the jury on the law. The jury decides the facts.
FAILURE TO STATE A CLAIM (demurrer): the court assumes all facts in the complaint to be true and determines whether P has stated a “plausible” claim.	SUMMARY JUDGEMENT: the court determines whether there is no genuine dispute as to any material fact and the movant is entitled to judgement as a matter of law.	JUDGMENT as a MATTER of LAW (directed verdict): the court determines whether a reasonable jury would have a legally sufficient evidentiary basis to find for that party.

At each stage of litigation, there is a procedural mechanism to put an end to legally or factually insufficient cases.

- **Motion to dismiss** (demurrer) assumes all facts to be true.
- **Summary Judgment** looks at whether there is a factual question OR whether the non-moving party can point to potential proof of each element.
- **Directed Verdict** looks at the evidence presented in the light most favorable to the non-moving party.

Each asks the same question:

- Is there a question of fact for the jury, or should the judge decide a question of law?
- What changes is how the court views the facts:

Article III §1 – “The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.”

Title 28 – Judiciary Act §2072 – “Rules Enabling Act” gives the Supreme Court “the power to prescribe rules of practice and procedure and ... evidence”

- Federal Rules of Civil Procedure
- Federal Rules of Evidence

28 U.S. Code § 2072 - Rules of procedure and evidence; power to prescribe.

- (a) **The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence** for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.
- (b) **Such rules shall not abridge, enlarge or modify any substantive right.** All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.
- (c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.

Federal Rulemaking: Title 28 – Judiciary Act

§2071 – Federal courts given authority by Congress to enact “rules for the conduct of their business.”

§2072 – Gives the **Supreme Court** “the power to prescribe rules of practice and procedure and ... evidence.”

§2073 – “The **Judicial Conference shall prescribe** and publish the procedures for consideration of proposed rules.”

§2074 – **Supreme Court transmits proposed rules to Congress** by May 1, to take effect Dec. 1, unless otherwise provided by law.

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties **to secure the just, speedy, and inexpensive determination** of every action and proceeding.

Remedies: A Closer Look

Specific relief:

An order to do (specific performance) or not do (injunction) something.

Declaratory relief (28 USC §2201 and FRCP 57)

- An order that determines the rights, duties, or obligations of the parties. It does not by itself order compensatory or specific relief, but it may be accompanied by a request for such remedies.

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction.

(1) Notice. The court may issue a preliminary injunction **only on NOTICE to the adverse party.**

(b) Temporary Restraining Order.

(1) Issuing Without Notice. The court may issue a temporary restraining order **WITHOUT written or oral NOTICE** to the adverse party or its attorney **only if:**

(A) specific facts in an affidavit or a verified complaint clearly show that **immediate and irreparable injury**, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

- Not to exceed 14 days.

Due Process

[no person shall be] “deprived of life, liberty, or property, without due process of law.”

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any state deprive any person of life, liberty, or property, without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 65. Injunctions and Restraining Orders

(b) Temporary Restraining Order.

(1) ...

(2) *Contents; Expiration.* Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued **without notice**; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—**not to exceed 14 days**—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction **must be set for hearing at the earliest possible time, taking precedence over all other matters** except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) *Motion to Dissolve.* On **2 days' notice** to the party who obtained the order without notice—or on shorter notice set by the court—**the adverse party may appear and move to dissolve or modify the order.** The court must then hear and decide the motion as promptly as justice requires.

SUMMARY

TRO's & Preliminary Injunctions

- Risk of Immediate & Irreparable injury
- No adequate remedy at law
- Likelihood of success on the merits
- Balance of hardships & Public Interest

Temporary Restraining Order

- Without Notice
- Not to exceed 14 days
- Motion to dissolve on 2 days notice

Preliminary Injunction

- With Notice

Complaint: The First Pleading

What purposes do each paragraph serve, pg. 21?

1. Establish subject matter jurisdiction
2. State plaintiff's claim
3. “ “ - law and facts
4. “ “ - law and facts

WHEREFORE ... Demand for relief

Rule 8. General Rules of Pleading

(a) Claim for Relief. A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the **grounds for the court's jurisdiction**, unless the court already has jurisdiction, and the claim needs no new jurisdictional support;
- (2) a **short and plain statement of the claim** showing that the pleader is entitled to relief; and
- (3) a **demand for the relief sought**, which may include relief in the alternative or different types of relief.

Rule 2. One Form of Action

There is one form of action—the civil action.

Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

Example of Stating a Claim

Law that provides relief for the alleged wrong

✓ “Defendant **negligently collided** with Plaintiff’s car, causing damage”

❑ Defendant gave Plaintiff the WTF look and honked

• *Facts* that show the alleged circumstance fits within the Law

✓ “Defendant negligently collided with Plaintiff’s car, causing **damage**”

❑ Defendant drove negligently, and Plaintiff’s car went off the road and crashed

Ending a case at the Pleading Stage: No Power to Hear the Case (procedural defect)

A **MOTION TO DISMISS** for

- 1) Lack of subject matter jurisdiction
- 2) Lack of personal jurisdiction
- 3) Improper venue
- 4) Insufficient process
- 5) Insufficient service of process

In ruling, the court does not consider the merits of the case.

A **MOTION TO DISMISS** for failure to state a claim (demurrer) challenges:

1) that the LAW on which P's complaint is based does not provide relief for the wrong claimed by P; and/or

2) that P has not stated FACTS that support recovery based on the invoked body of law.

In ruling, the court ASSUMES ALL FACTS STATED IN THE COMPLAINT TO BE TRUE and considers whether P has stated a claim, legally and factually.

42 U.S.C. §1985(2)

If **two or more persons** in any State or Territory **conspire** ...

... **to deter**, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or **from testifying** to any matter pending therein, freely, fully, and truthfully, ...

... or **to injure such party or witness in his person or property on account of his having so attended or testified** ...

... the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Haddle v. Garrison

Was an employee "injured in his property or person" when his employer was induced to terminate the employee's at-will employment as part of a conspiracy prohibited by § 1985(2)?
Yes.

The gist of the wrong at which 42 U.S.C.S. § 1985(2) is directed is not deprivation of property, but intimidation or retaliation against witnesses in federal-court proceedings. The terms "injured in his person or property" define the harm that the victim may suffer as a result of the conspiracy to intimidate or retaliate. Thus, the fact that employment at will is not "property" for purposes of the Due Process Clause, does not mean that loss of at-will employment may not injure a petitioner in his person or property for purposes of 42 U.S.C.S. § 1985(2).

The sort of the harm alleged by petitioner, essentially third-party interference with at-will employment relationships, stated a claim for relief under 42 U.S.C.S. § 1985(2). Even though a person's employment contract was at will, he had a valuable contract right. The fact that employment at will is not "property" for purposes of the Due Process Clause, does not mean that loss of at-will employment may not "injure [petitioner] in his person or property" for § 1985(2)'s purposes. Such harm has long been, and remains, a compensable injury under tort law, and there is no reason to ignore this tradition here. To the extent that the terms "injured in his person or property" refer to such tort principles, there is ample support for the Court's holding.

Ashcroft v. Iqbal

Under Fed. R. Civ. P. 8(a)(2), a pleading must contain a short and plain statement of the claim showing that the pleader is entitled to relief. The pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable and plausible inference that the defendant is liable for the misconduct alleged, and does not allege a mere possibility.

Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." "[D]etailed factual allegations" are not required, *Twombly*, 550 U.S., at 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929, but the Rule does call for sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Two working principles underlie *Twombly*. First, the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements. Second, determining whether a complaint states a plausible claim is context-specific, requiring the reviewing court to draw on its experience and common sense. A court considering a motion to dismiss may begin by identifying allegations that, because they are mere conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the complaint's framework, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Iqbal's pleadings do not comply with Rule 8 under *Twombly*. Several of his allegations--that petitioners agreed to subject him to harsh conditions as a matter of policy, solely on account of discriminatory factors and for no legitimate penological interest; that Ashcroft was that policy's "principal architect"; and that Mueller was "instrumental" in its adoption and execution--are conclusory and not entitled to be assumed true. Moreover, the factual allegations that the FBI, under Mueller, arrested and detained thousands of Arab Muslim men, and that he and Ashcroft approved the detention policy, do not plausibly suggest that petitioners purposefully discriminated on prohibited grounds. Given that the September 11 attacks were perpetrated by Arab Muslims, it is not surprising that a legitimate policy directing law enforcement to arrest and detain individuals because of their suspected link to the attacks would produce a disparate, incidental impact on Arab Muslims, even though the policy's purpose was to target neither Arabs nor Muslims. Even if the complaint's well-pleaded facts gave rise to a plausible inference that *Iqbal*'s arrest was the result of unconstitutional discrimination, that inference alone would not entitle him to relief: His claims against petitioners rest solely on their ostensible policy of holding detainees categorized as "of high interest," but the complaint does not contain facts plausibly showing that their policy was based on discriminatory factors.

Iqbal instructs courts facing a challenged complaint first to disregard “conclusory” allegations, then to decide whether the remaining non-conclusory allegations appear “plausible,” in “light of judicial experience and common sense.”

Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) (A)-(C) ...

(2)

(b) Fraud or Mistake; Conditions of Mind. In alleging **fraud or mistake**, a party **must state with particularity** the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other **conditions of a person's mind may be alleged generally**.

Stradford v. Zurich Insurance Co.

Is the counterclaim of the defendant sufficient to allege fraud? No.

The first sentence of Fed. R. Civ. P. 9(b) requires that the time, place, and nature of the alleged misrepresentations be disclosed to the party accused of fraud.

Here, defendants' counterclaims simply fail to identify the statement made by plaintiff that they claim to be false. Thus, it is unclear from the face of the counterclaims whether defendants assert that the claimed losses are improperly inflated, that the office never even flooded, or that the offices flooded, but not during the term of the Policy. In essence, defendants claim that plaintiff lied, but fail to identify the lie. Moreover, The "primary purpose" of Rule 9(b) is to afford a litigant accused of fraud "fair notice of the [] claim and the factual ground upon which it is based." *Id.* Here, defendants' counterclaims fail to provide fair notice of precisely which statement, or which aspect of his claim on the Policy, they allege to be false. The counterclaims are therefore insufficient under Rule 9(b), and must be dismissed.

Rule 8. General Rules of Pleading

(a) **Claim for Relief.** A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) *In General.* In responding to a pleading, a party must:

- (A) state in short and plain terms its defenses to each claim asserted against it; and
- (B) **admit or deny** the allegations asserted against it by an opposing party.

(c) Affirmative Defenses.

(1) *In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, **including**:

- accord and satisfaction;
- arbitration and award;
- assumption of risk;
- contributory negligence;
- duress;
- estoppel;
- failure of consideration;
- fraud;
- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

Rule 7. Pleadings Allowed; Form of Motions and Other Papers.

(a) **Pleadings.** Only these pleadings are allowed:

- (1) a **complaint**;
- (2) an **answer** to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

(b) **Motions** and Other Papers.

(1) *In General.* A request for a court order must be made by motion. The motion must:

- (A) be in writing unless made during a hearing or trial;
- (B) state with particularity the grounds for seeking the order; and
- (C) state the relief sought.

(2) *Form.* The rules governing captions and other matters of form in pleadings apply to motions and other papers.

Jones v. Bock

Did petitioners fail to exhaust all administrative remedies in accordance to PLRA? No.

To properly exhaust administrative remedies, prisoners must complete the administrative review process in accordance with the applicable procedural rules -- rules that are defined not by the Prison Litigation Reform Act of 1995 (PLRA); but, by the prison grievance process itself. Compliance with prison grievance procedures, therefore, is all that is required by the PLRA to "properly exhaust." The level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison's requirements, and not the PLRA, that define the boundaries of proper exhaustion.

The PLRA did not state exhaustion had to be pleaded by the inmate, thus evidencing that the usual practice which was to regard exhaustion as an affirmative defense should be followed. The screening requirement did not justify deviating from the usual procedure beyond that in the PLRA. There was no basis to conclude that Congress implicitly transformed exhaustion from an affirmative defense to a pleading requirement by specifying that courts should screen PLRA complaints and dismiss those that failed to state a claim. Section 1997e(g)(1) allowed defendants to waive responses without admitting the allegations notwithstanding any other law or procedural rule, thus showing that when Congress meant to depart from the usual procedure, it did so expressly. Failure to exhaust was an affirmative defense under the PLRA, and inmates were not required to plead exhaustion in their complaints. The rule that each defendant later sued had to have been named in initial grievances lacked a textual basis in the PLRA and prison policy did not specify who a grievance had to name. Dismissal under the total exhaustion rule was error as failure to exhaust one claim did not necessarily affect others.

Rule 8. General Rules of Pleading

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

- (1) *In General.* Each allegation must be simple, concise, and direct. No technical form is required.
- (2) *Alternative Statements of a Claim or Defense.* A party may set out 2 or more statements of a claim or defense **alternatively or hypothetically**, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.
- (3) *Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, **regardless of consistency**.