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TRIAL COURTS AND LAWSUITS IN THE UNITED STATES GENERAL OVERVIEW

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Trial Courts in the United States

Introduction

Broadly, there are two trial court systems in the United States: federal courts and state courts. In general, federal courts handle criminal and civil cases involving federal and constitutional law. Federal laws are laws enacted by the United States of America, which govern all the states. State courts handle cases that arise under state law. States all enact their own laws that are effective only in that state. For the most part, civil damage cases are in state courts. This is because most civil cases are governed by state law. Every state has its own rules, but generally, state rules of trial procedure and evidence are very similar to each other as well as to federal rules. The substantive law governing a civil case is *usually* the applicable state law. There are, of course, exceptions to this and the law of pharmaceutical liability is one such exception. In a minority of areas of civil liability law, federal law has preempted state law and, as discussed in other papers, pharmaceutical legal liability is one such area. This paper will discuss issues of trial procedure; first the rules that apply to federal court jurisdiction and, second, general lawsuit procedure.

1. Federal Court - Generally

There are three levels of federal courts in the United States. The trial court is called the district court and there are many of those “sitting” in each state. There is an automatic right of appeal to a circuit court of appeals. There are different circuit courts of appeal around the country and an appeal from a district court is heard by the circuit court of appeal that hears cases from the district courts of several geographically close states. Because of the high volume of federal cases arising in Washington D.C., there is a separate circuit of appeals that hears appeals from the district courts in Washington D.C. The highest court is the United States Supreme Court and, generally, it hears appeals of cases on a discretionary basis. All federal judges are appointed by the President of the United States with the majority vote of the United States Senate. Federal judges are appointed for life, but can be removed for misconduct by the United States Congress.

A. Jurisdiction in Federal Court

Jurisdiction refers to the power of a federal court to decide a particular case. The case must be of the type that the court is authorized to decide and the parties must be subject to the authority of the court. A federal court must have either diversity jurisdiction or federal question jurisdiction in order to hear a case. Diversity jurisdiction exists when the plaintiff and defendant are citizens of different states and the claim exceeds \$75,000. So, if an Oregon citizen sues a California citizen for more than \$75,000, a federal court has jurisdiction to hear the case, even though it arises under the laws of one of the states. Under federal question jurisdiction, a litigant, regardless of the value of the claim, may bring a claim in federal court if it arises under federal law, including the Constitution of the United States.

A court must also have personal jurisdiction over a defendant. A court has personal jurisdiction when the defendant has "minimum contacts" with the state in which the court sits. A citizen of one state – say New York – who has never been to Nevada, and never done business in Nevada, can expect that he will not be summoned to Nevada to defend a lawsuit. The citizen of New York must have done something that touched Nevada such that it is reasonable, under all the circumstances, to be called into Nevada to defend himself in a lawsuit.

B. Removal and Remand in Federal Court

Removal jurisdiction refers to the power of a defendant to take a lawsuit filed against him in state court to the federal district court. This is a general exception to the traditional American rule giving the plaintiff the authority to make the decision on the proper forum. Removal is governed by federal statute. With rare exceptions, a case may only be removed if, at the time of removal, the case could have been filed in federal court. There is no "reverse" removal. That is, there is no ability for a defendant to remove a case from federal court into state court.

A plaintiff's challenge to the removal of an action is called remand. If a federal court determines that it lacks the jurisdiction to hear the case it will be remanded back to state court. When a plaintiff moves to remand, it is the defendant that has the burden of proving that removal is proper. The defendant must establish both that jurisdiction exists and that the defendant complied with the procedural requirements. Once the federal court has remanded the case back to state court, the removal option is moot. If neither the federal nor state court has jurisdiction then the case will be dismissed – and presumably filed in another state or federal court.

C. Supplemental Jurisdiction

The doctrine of supplemental jurisdiction enables a court to hear additional claims asserted by a party in a pending action, even if those claims could not have been asserted independently in federal court due to lack of jurisdiction. However, the additional claim must arise out of the same event or transaction as the original claim. The rationale for this doctrine is that, since the court already has jurisdiction over all the parties involved, it is in the interest of judicial economy to adjudicate all related claims in one action.

2. State Court – Generally

Most cases are filed in state courts. Each state court systems uses different names for courts, but generally there is a trial court (usually called a district or circuit court), a state appellate court (often called a Court of Appeals) and a state Supreme Court. State courts ordinarily apply the laws of the state, but under extraordinary circumstances can apply the laws of other states or the federal law in some circumstances.

Procedure of a Lawsuit in the United States

A lawsuit proceeds in essentially the same fashion in both federal and state court.

1. Complaint and Summons

A lawsuit is begun by the filing of a Complaint by a plaintiff. A Complaint is a document which includes a short and plain statement of what occurred and why the plaintiff is entitled to money damages or other relief from the defendant. It generally also includes a demand for money or a request that the court take action. The Complaint and a summons (a document that tells the defendant she must appear in court) must normally be personally given to the defendant. The Complaint sets forth what the plaintiff intends to prove at trial. The defendant is given a set amount of time – generally twenty to thirty days – to respond to the Complaint.

2. Answer

The defendant must file an Answer to the plaintiff's Complaint. The Answer must either deny or admit the allegations in the Complaint and assert any defenses defendant has to the claim. An Answer can include a counterclaim, which states that the defendant also has a claim against the plaintiff. The plaintiff must then respond to the counterclaim. If a defendant does not file an Answer, the plaintiff can move for a default judgment against the defendant. This is a binding judgment in favor of the plaintiff.

3. Discovery

Discovery refers to the exchange of documents and information between the plaintiff and defendant so that each side can learn about all the relevant details of the case, assess the evidence that each side has and gather and organize the evidence to use at trial. Each side also has the opportunity to assess the credibility of the different witnesses as well as the skill and ability of their respective attorneys.

The principal discovery procedures are written discovery and oral depositions. Written discovery is generally comprised of interrogatories, requests for production and requests for admissions. Interrogatories are written questions that the party poses to the other party in order to clarify matters of evidence and help determine what facts will be presented at trial. Requests for Production are a means to obtain documents from the other party. Requests for Admissions are formal requests to the responding party that the responding party must admit or deny certain propositions of fact that are relevant to the case.

The most valuable discovery technique is depositions. The lawyer for one party is allowed to ask questions orally and directly to the other party or third party witnesses. The answers become testimony just as though the answers were given in open court. Generally, the answers of a party can be read to the jury during trial. The answers of a third party witnesses can be used to “impeach” or contradict the testimony given at trial.

4. Summary Judgment

At the end of discovery, the stage has been set for the ultimate resolution of the case. Generally, a judge decides the law and a jury decides the facts at trial. Frequently, prior to trial, a party will bring a motion contending that the facts and law – with respect to the entire case or parts of it – are not in dispute and the court can decide question(s) as a matter of law. This is called a motion for summary judgment. A party is required to oppose such a motion by showing that relevant facts remain in dispute. The filing of a compelling motion for summary judgment can lead to an early disposition of all or part of the case on the merits. It can also facilitate the parties' recognition of strengths or weakness in the party's case and lead to settlement.

5. Other Motions

A motion is simply a formal request that the court take a certain action in the case. Motions can be used to seek an order from the judge protecting certain documents from being revealed, sanctions for improper conduct by the opposing lawyer or to have issues bifurcated at trial. Motions *in limine* are motions made on the eve of trial, typically to exclude evidence or obtain certain legal rulings.

6. Trial

All cases involve two types of questions: questions of law and questions of fact. The judge decides the questions of law; that is, what is the law applicable to the case? Questions of law involve the determination of what the law is. These questions may be about procedural matters in the case or the substantive legal questions determining the rights and duties of the parties. The jury decides the questions of fact; what happened that gives rise to the parties' claims. The jury decides the facts and applies the law as instructed by the judge. Importantly, it is the judge's legal decisions that may be appealed, not the factual determinations made by the jury.

If a case does not settle during the pretrial discovery process, it will proceed to trial. The trial itself has different phases. First, the lawyers must select a jury. During

this process, depending on the court rules, the lawyers and/or the judge question potential jurors in an attempt to find an impartial jury. Generally, juries are of six or twelve people. Jury selection is appropriately named *Voir Dire*.

Depending on the procedure of the particular court, the judge may tell the jury something about the law and facts of the case. After jury selection, each lawyer is entitled to make an "opening statement." The rules and strategy of the opening statement will be discussed by the lawyers presenting the opening statements today.

After opening statements by each lawyer, the plaintiffs "call" or present the testimony of their witnesses. During the questioning of the witnesses, the lawyer may present photographs or other documents and ask the witnesses about those items. The parties are allowed to present expert witnesses. Experts are allowed to testify on scientific or technical issues. Experts are hired by the parties to examine evidence and provide testimony helpful to the jury's understanding of the evidence. When the plaintiff's lawyer is finished questioning a witness, then the defendant's lawyer is allowed to cross-examine the witness. The rules and strategy in each lawyers' examination are covered in the mock trial presentation.

After the plaintiff has presented all of her evidence, the defendant may file a motion for a "directed verdict." In such a motion, the defendant argues that the plaintiff has not presented evidence sufficient to entitle plaintiff to recovery against the defendant. Effectively, the defendant argues that taking all of plaintiff's evidence as true, the law does not provide a remedy. Generally, it is rare for a court to grant a motion for a directed verdict at the close of plaintiff's case. Judges prefer that juries reject a plaintiff's claim because errors of law are subject to appeal but factual decisions are not subject to review. A denial of a motion for directed verdict at the close of plaintiff's case can be renewed as a motion for Judgment Notwithstanding the Verdict after the jury has rendered its decision.

At the close of plaintiff's case, the defendant's lawyer can present defendant's witnesses and other evidence. The plaintiff's lawyer is entitled to cross-examine these witnesses. Normally, the plaintiff can present rebuttal evidence after the defendant has presented evidence.

After all of the evidence is presented by both sides, then each lawyer is entitled to give a "closing argument." As with the opening statement and presentation of the evidence, the plaintiff's lawyer goes first in the closing argument. Upon completion of closing arguments, the judge instructs the jury on the law. The jury then deliberates and renders its decision. In order to reach a decision in a civil case, the jury must determine

by a “preponderance of the evidence” that the plaintiff or defendant should prevail. Preponderance of the evidence is the standard for the burden of proof in a civil case: in a criminal case the jury must reach its verdict using the burden of proof of “beyond a reasonable doubt”. Depending on the jurisdiction, the jury may be required to reach a unanimous decision but usually in a civil case nine members of a twelve person jury must agree on the same verdict.

After the jury renders its decision, the judge will reduce the decision to a judgment either in favor of plaintiff for the amount of money allowed by the jury or in favor of defendant. Either party can appeal. However, the appeal is limited to contentions as to errors of law made by the judge. Barring evidence of misconduct by the jury, such as consideration of evidence outside the courtroom, the verdict of the jury will not be disturbed.