Civil Procedure

27 August 2013

After deciding where to sue, the next step is to decide what information to put into the complaint (use rule 8).

To answer question of how specific one should be in a complaint one must look to the purposes the complaint serves

What purpose does service of a complaint on the defendant serve?

* Notifies the defendant that they are being summoned and if they (the defendant, D) don’t appear, they lose by default
* The factual allegations tell what the lawsuit is about so defendant can begin to organize his defense
* That suggests that complaint does not have to be very specific – “notice pleading”

What role might the complaint play in discovery and/or trial?

* Complaint limits the scope of discovery
* The narrower the scope, the less expensive the discovery
* The broader the scope, the more open to find more bad conduct and the more costs of discovery can fluctuate
* That suggests that greater specificity in complaint
* Complaint limits the scope of trial (including the type witnesses, issues, etc.)
* BUT specific complaint may give rise to more amendments later in process

How can a plaintiff get an action dismissed just on the basis of what is in the complaint?

* If the complaint does not give rise to the level of a cause (Failure to state a claim [federal] or demurer [some state courts])
	+ Facts alleged are assumed to be true, but D claims they do not add up to a violation of the law
* If dismissed with prejudice, it cannot be re-filed
* If dismissed without, it can be re-filed
* In federal court, a dismissal for failure to state a claim is with prejudice unless the dismissal says without prejudice
	+ BUT P will usually be allowed a chance to amend the complaint first before dismissal
* If dismissed with prejudice, suit can still be brought on a different claim
	+ That brings up delicate issues of preclusion – what is the same claim...?
* The possibility of dismissal for failure to state a claim suggests at least somewhat specific pleading standards: A specific complaint is more likely to reveal those allegations that fail to state a claim
	+ Requiring the P to be specific may lead him to plead himself out of court

What purpose does the answer to a complaint serve?

* In answer D must, with respect to each numbered factual allegation, admit or deny (including deny knowledge)
* If the D admits enough facts, P can win before discovery or trial
* Why would D admit facts that end the case against him?
	+ Maybe he was relying on an affirmative defense that turned out to be legally insufficient
	+ Maybe he though P’s allegations failed to state a claim, but the court disagrees
	+ Facts that are admitted don’t have to be discovered or tried in court, jury must assume them
	+ This makes discovery and trial cheaper
	+ That too is an argument for at least some specificity - Admissions are more likely the more specific the Ps factual allegations
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* What is a frivolous action?
* Often spoken of as a lawsuit that is won but shouldn’t have succeeded
	+ In that case the person saying the suit is frivolous has a beef with the law or with the way that juries apply the law
* But often refers to an action that not only will fail, but also should not have been brought
	+ The fact that the plaintiff lost is not enough on its own to say that the action should not have been brought
* What is a frivolous action in this sense - sometimes there is an action that is brought with no intent of winning – the plaintiff just wanted to settle outside of court - strike suits. These need to be deterred
* It is very difficult to know whether frivolous litigation is a problem – don’t trust claims made by an interested party (like the AMA in medical malpractice suits)
* The idea of a frivolous suit we will use here is \*\*The Plaintiff doesn’t even have enough evidence to justify getting to the point of discovery
	+ After all, discovery imposes burdens on the defendant, shouldn’t impose that without some cause to do so
	+ Plaintiff should not be able to simply slap together a complaint with any allegations an get to discovery, with the hope of finding evidence of wrongdoing
		- That’s known as a “fishing expedition”
* Prior to discovery, however, the plaintiff doesn’t have access to the evidence in the hands of the defendant (or unfriendly third parties)
	+ which creates a delicate balancing between setting strict enough requirements for evidentiary support for factual allegations to weed out frivolous lawsuits but still having lenient enough standards to allow legitimate lawsuits to proceed to discovery to obtain vital evidence.

Notice the distinction between factual allegations in a complaint and evidence of those allegations

* Evidence would include documents or testimony
* The allegations are just that – allegations

Is it possible to stop the frivolous action before it gets to discovery through *stricter pleading standards?*

§ 8(a) does not help prevent frivolous actions this way – only need short plain statement

So how do the Federal Rules discourage frivolous litigation?

Rule 11 lists the base requirements for evidentiary support of factual allegations; if allegations determined later to be frivolous, there are sanctions (usually against attorney)

* But that means that the sanctions generally come after discovery has revealed that the P has no evidentiary support
* The cost of discovery has already been borne by the D

FRCPs also rely on summary judgment

After discovery D can move for summary judgment - which can stop a trial from even starting

* But here too frivolous lawsuits are weeded out *after* discovery

So you can see why there is a desire to use requirements of specificity of pleading – which can be determined on the basis of the complaint alone, before discovery, to weed out frivolous suits

* As we shall see the SCt has moved in that direction

History of pleading:

* Common law pleading did not have a time for discovery; pleadings were held to stricter standards because of lack of discovery
* Reform through Field Code (called “fact” or “code” pleading) - still no discovery so stricter pleading standards persisted
* Modern approach: Notice pleading

Can you be conclusory in your pleading under 8(a)?

Yes, but it doesn’t have to be. (“Negligently” is a conclusory term) See Form 11.

To repeat: 3 things that can be wrong with a complaint:

* Legal sufficiency of factual allegations (FRCP 12(b)(6))
* Level of specificity in factual allegations (FRCP 8 (a))
* Evidentiary support for factual allegations (FRCP 11, 56)