**Civil Procedure
08.29.2013**

**Quick Review:**

Pleading standards set forth in 8(a) are very generous to the plaintiff.

**Rule 8(a)** refers to the requirements for a “Claim for Relief” – would apply apply to the **Complaint** (because it is a claim for relief), but not to the **Answer** (it is not a claim for relief), but would apply to a **Counterclaim.**

Why is 8(a) so generous? The usual reason given is that a complaint’s purpose is to provide notice to the defendant and notice requires little specificity. But a complaint serves many other purposes in the case – the standard in 8(a) needs to be justified in the light of those purposes too. There are arguments for greater and lesser specificity in the complaint.

E.g., the Complaint provides a “roadmap” for what is within scope of discovery and trial. This argues for more specificity, in order to make the costs of discovery and trial narrower. But the more specific the complaint is, the more amendment would be necessary when new allegations are suggested by evidence uncovered in discovery and trial. That argues in favor of generality.

The Complaint also allows for a case to be dismissed for failure to state a claim during the pleading period. That argues for more specificity – the more general the complaint is, the easier it is for the plaintiff to state a claim. By requiring the plaintiff to be specific about the facts, he might plead himself out of court.

Dismissal for failure to state a claim is, in federal court, with prejudice unless the court indicates it is without prejudice. If a case is **dismissed with prejudice**, it cannot be brought again- the plaintiff is precluded from suing again. Another way of putting this is that the dismissal is **on the** **merits.** A dismissal for **lack of jurisdiction** is not on the merits – the case can be brought again in a different jurisdiction.

In **The Answer**, the defendant has to admit or deny every factual allegation in the complaint. Everything he admits is “off the table,” and the jury has to accept that the admitted allegations are true. Greater specificity in the complaint would allow for more admissions.

The Complaint, with greater specificity requirements, might allow for the elimination of **Frivolous** lawsuits before discovery/trial. Here a “frivolous lawsuit” means are a lawsuit in which the plaintiff has insufficient evidence (or insufficient reason to believe that evidence will arise in discovery) to justify the burden of discovery and trial on the defendant. The question is not whether the plaintiff has enough evidence to win, but whether the plaintiff can justify proceeding into discovery. This is a fine line weighing efficiency against the absolute pursuit of justice. On the one hand if the plaintiff is prohibited from proceeding to discovery, he will never find any evidence there might be of the defendant’s wrongdoing. On the other hand, if we always allow the plaintiff to proceed to discovery, there will be excessive costs upon defendants.

Under the Federal Rules, it is generally during the **Discovery** period when frivolous lawsuits can be identified and dismissed. It is not generally done during the pleading period. Recently, the Supreme Court has been interpreting the Federal Rules to allow for more lawsuits to be dismissed based on the wording of pleadings without getting to Discovery. Generally, Discovery is very expensive and it is usually good for defendants if suits can be dismissed without getting to Discovery.

Rule 8(a) does not solve the problem of frivolous actions. This problem is solved by **Rule 11**, which imposes **Sanctions** (usuallyon the counsel) for a frivolous complaint. The problem is that usually the defendant will move for Rule 11 sanctions only after discovery reveals that the plaintiff or his lawyer had insufficient evidence when filing the complaint. In addition, **Rule 56** allows for **Summary Judgment,** but normally summary judgment is moved for during the discovery period and not often during the pleading period.

Who bears the cost of discovery? The parties bear the cost of their own discovery – usually the costs are greater for the defendant than the plaintiff. The court itself has to bear the costs of resolving discovery disputes.

Very important to distinguish the following three things that can be wrong with a Complaint:

1. Legal sufficiency of allegations –failure to state a state a claim—**Rule 12(b)(6)**
2. Level of specificity in factual allegations—**Rule 8(a)**
3. Evidentiary support for factual allegations—**Rule 11(b)(3)** and **Rule 56(a)—**the drafters of the Federal Rules assumed you could not know based on words in a Complaint how much evidence is there, so they took care of this in Rules 11 and 56

**Legal Sufficiency of Factual Allegations**

When do factual allegations state a claim?

 For instance, the elements of a cause of action in Negligence:

1. Duty
2. Breach
3. Cause
4. Damages

A Complaint will state a claim even if it fails to mention facts that would lead to an affirmative defense. E.g. a complaint that alleges duty, breach, causation and damages states a claim for negligence even in in fact the plaintiff was contributorily negligent.

**Important to distinguish an affirmative defense from a Negative Defense**. In a negative defense, the defendant denies in the answer one of the factual allegations that are an element of the plaintiff’s cause of action. E.g., you deny the plaintiff’s allegation that his damages were the result of your negligence or you deny his allegation that he sustained damages.

**Burden of Allegation**. This is the burden of introducing a matter in the pleadings. If you do not satisfy this burden the matter will not be addressed. The defendant has the burden of allegation concerning affirmative defenses. The defendant has to bring it up in a pleading, usually an answer. The plaintiff has the burden of allegation concerning the cause of action in the Complaint.

**Burden of Proof.** The party (plaintiff or defendant) responsible for furnishing evidence. If no evidence is offered by either side, the party with the burden of proof loses concerning the matter. Usually the party with the burden of allegation also has the burden of proof. E.g. the defendant has the burden of proof concerning the affirmative defense of contributory negligence – the defendant has the obligation to offer evidence of the plaintiff’s contributory negligence.

**Standard of Proof.** In civil cases usually “preponderance of the evidence” – although sometimes “clear and convincing evidence.” In criminal law, “beyond a reasonable doubt.” This is the standard that the party with the burden of proof must satisfy.

**Case Example of What Constitutes a Sufficient Complaint:**

*Sierocinski v E.I. Du Pont De Nemours & Co.*

Facts: Plaintiff sustained catastrophic injuries when, while crimping a blasting cap in the customary manner, blasting cap exploded. Blasting cap was manufactured and distributed by defendant.

Procedural History:

1. Eastern District of Pennsylvania was the trial court.
2. The defendant moved under Rule 12(e) for a more definite statement of the plaintiff’s allegation of negligence.
3. Plaintiff amended the complaint.
4. Defendant moved to strike the amended statement as still insufficiently specific. Judge granted the motion and dismissed the action. It is possible that the dismissal was for failure to state a claim, since the complaint now lacked an allegation of negligence (that allegation having been stricken). But Rule 12(e) also allows for a dismissal for failing to satisfy Rule 8(a).
5. Appealed by plaintiff to 3rd Circuit Court of Appeals. Decision of district court was reversed and case remanded.
6. District court trial before jury.
7. Defendant moved for a **directed verdict,** which was denied.
8. Jury returned a verdict for the plaintiff.
9. Defendant moved for a **judgment notwithstanding the verdict.** Denied.
10. Appeal by defendant. Appellate court reversed district court’s refusal to grant directed verdict/judgment notwithstanding verdict. In other words, appellate court concluded that P lacked lack sufficient evidence of negligence to convince a reasonable jury.

Note that there was never a motion for Summary Judgment by the defendant. This was a mistake on the part of the defendant because there should never have been a trial of this case.

Holding in first appeal: Biddle, the judge writing the opinion for the panel, notes that under Rule 8(a), P’s complaint is sufficiently specific. A statement of the specific act of negligence need not be alleged – the P need not say how the manufacture of the cap was negligent (e.g. use of improper ingredients, or improper construction...) All that need be alleged is “a short and plain statement of the claim showing that the pleader is entitled to relief.” As an example, Biddle offers Form 11, which states only that the defendant “negligently drove a motor vehicle against plaintiff,” without saying how the defendant was negligent.

Biddle also says that evidenceis not required in the complaint (although Rule 11 requires the plaintiff should have evidence or a reasonable belief that evidence will arise in discovery). Green: But the D was not asking for evidence – it was asking for greater specificity about how the P thought it was negligent. The complaint could have satisfied the D without mentioning any evidence.

“If the defendant needs further information to prepare its defense it can obtain it by interrogatories” (Rule 33) during the Discovery period.

In their first appellate brief (on the issue of failing to satisfy Rule 8(a)), the appellee (Du Pont) also objects to *the multiplicity of causes of action* the plaintiff is stating (breach of warranty—a contract action—misrepresentation—a tort action—use of improper ingredients—a tort action concerning negligent manufacturing). Notice that this is a different objection to the complaint than the objection that it is insufficiently specific about the act of negligent manufacturing. It used to be true that you could not state multiple causes of action concerning the same facts. But that’s not so under the Federal Rules – multiple causes of action can be alleged.

Prior to the Federal Rules of Civil Procedure, federal courts used the procedural rules of the forum state for actions at law. For actions at equity, they used their own federal equity rules. (The FRCP are to some extent modeled after the federal equity rules.) Under the FRCP, you can allege multiple causes of action from the same facts.