

DOWNLOAD PDF SPECIAL MULTIPARTY LITIGATION: INTERPLEADER AND THE CLASS ACTION

Chapter 1 : How To Handle Life Insurance Interpleaders - Law

5) superior - class action is superior to other available methods for the fair and effective adjudication of the controversy
Interpleader "hot potato" a person holding \$ or property and facing multiple liabilities as a result of conflicting claims to that \$ or property MAY join the adverse claimants in an interpleader action for a determination.

After the property, or res, is deposited, the court decides how to distribute the property and discharges the disinterested property holder from further claims against the res. Potential disputes over entitlement to life insurance proceeds frequently give rise to the need for life insurers to file interpleader actions and deposit the full policy benefits into the court. A typical fact pattern involves the uncertainty regarding distribution of life insurance benefits when the policyholder has been murdered and the primary beneficiary has not been ruled out as a person of interest. Interpleader is appropriate when the potential for a competing claim exists. In order to avoid paying the wrong party – a party barred from receipt of policy benefits under the slayer statute – and subjecting itself to unwanted litigation, the insurance company should initiate an interpleader action, naming the potentially competing beneficiaries and compelling them to litigate their claims. If the insurer were to pay the surviving spouse the policy benefits, it would risk violating the slayer statute and could be liable to the secondary or tertiary beneficiaries or to the estate to the policy benefits again. If the insurer does nothing, however, it runs the risk of claim for a bad faith delay in paying policy benefits. As discussed below, prompt interpleader generally poses the best option for the insurer. Legal Standard for Interpleader: Kentucky Central Life Ins. Actual claims need not have been filed against the stakeholder or reduced to judgment. It is sufficient if the stakeholder can demonstrate a real and reasonable fear of multiple liability. Cases in jurisdictions across the country hold that interpleader is appropriate when a beneficiary is a person of interest in the murder of the policyholder. Ordinary standards of claims handle obligate insurers to conduct active and thorough investigations before filing interpleader actions or denying claims. Filing an interpleader action and depositing the full policy benefits with interest does not constitute denying a claim: The insurer pays the full policy benefits and interest to the court, and the court determines the appropriate beneficiary. As such, the standard required for investigation of an interpleader claim is arguably less rigorous than were the insurer to deny payment of the claim in its entirety. If an insurer conducted an independent investigation in the spouse-murder suspect scenario even if the insurer could successfully conduct an investigation, given the lack of subpoena power and access to evidence, and paid the suspect because it incorrectly concluded that the suspect was innocent without interpleading the funds and that the suspect was later convicted, the insurer would likely have to pay twice. This is what occurred in *Glass v. Through its own investigation, the VA determined that the wife would not be brought to trial. It therefore paid her death benefits under the policy without notifying the secondary beneficiaries. The wife was later convicted of murdering her husband. The Tenth Circuit affirmed summary judgment for the contingent beneficiaries for the life insurance proceeds against the VA, making it pay twice. The Tenth Circuit reasoned that the secondary beneficiaries could not effectively have made a claim before the wife was convicted as their rights were subservient to the primary beneficiary and only vested once she was convicted. There is some limited risk in interpleading prematurely: See *United Investors Life Ins. July 8, unpublished. The death certificate indicated that George had died at his residence on May 30, , as a result of a gunshot wound to the head and described the death as a homicide. On June 22, , the detective told United Investors that no one had been ruled out as a suspect. On July 2, , United Investors wrote to Donna explaining that her claim would remain pending, given the ongoing investigation. District Court for the Eastern District of California. Donna requested declaratory relief, alleged breach of contract, breach of the implied covenant of good faith and fair dealing, fraud and claims for intentional and negligent infliction of emotional distress. The district court granted summary judgment for United Investors, holding that it had a right to interplead. The remaining claim of delay in interpleader went to the jury, which found the insurer liable for consequential damages based on bad faith delay in interpleader. If the policyholder does not provide**

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the final death certificate, the insurer may be able to obtain a copy of from state issuing agency. Consultation with both in-house and outside litigation counsel may be warranted at an early date in potential interpleader claims. Once it is determined that the potential for competing claims exist, the insurer may want to communicate directly with the primary beneficiary to provide an election option for interpleader or a disclaimer of benefits. Allowing the primary beneficiary to participate in the interpleader election could help avoid later claims that interpleader was premature or otherwise inappropriate. If the primary beneficiary disclaims benefits, then the secondary beneficiary could be paid directly and immediately without having to incur the cost and potential for disputes arising from an interpleader action. Finally, the interpleader action should be initiated shortly after the investigation and determination of competing claims. The case law discussed above supports such an action. As a practical matter, in most cases, to avoid allegations of bad faith delay, insurers would be wise to attempt to file an interpleader within a few months of notice of a claim for death benefits if the evidence of a potential competing claim for policy benefits exists. The opinions expressed are those of the authors and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc. This article is for general information purposes and is not intended to be and should not be taken as legal advice. *State Farm Life Ins. January 21, granting insurer summary judgment on breach of contract and bad faith claims based on failure to investigate and delay in filing interpleader action. Blue Cross of Northern California, Cal. Western States Life Ins.*

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Chapter 2 : Class Actions and Other Multi-party Litigation in a Nutshell - Robert H. Klonoff - Google Books

special, new jurisdiction for multiparty, multiform class and nonclass actions based on minimal diversity and with special requirements for amounts in controversy and number of claimants.

Usage[edit] In an interpleader action, the party initiating the litigation, normally the plaintiff, is termed the stakeholder. The money or other property in controversy is called the res. All defendants having a possible interest in the subject matter of the case are called claimants. In some jurisdictions, the plaintiff is referred to as the plaintiff-in-interpleader and each claimant a claimant-in-interpleader. An interpleader proceeding has two stages. The first stage determines if the stakeholder is entitled to an interpleader and if he should be discharged from liability. The second stage is like an action at law to determine which of the claimants is entitled to the res. However, the insurance company knows there will be a dispute over who should receive the proceeds. The insurance company can file an interpleader action. The insurance company is the stakeholder, the claimants are the persons who might be beneficiaries under the policy, and the cash value of the policy benefit is the res. Under the proceeding as originally developed, the stakeholder would deposit the res with the court, and then the defendants would have their claims adjudicated by the court. Statutory modifications to the procedure, which vary by jurisdiction, sometimes allow the stakeholder to retain the res pending final disposition of the case. Typically, once the stakeholder deposits the res into the court for example, the face value of the insurance policy , the stakeholder is released from the action and the claimants proceed against each other to determine which of them is legally entitled to the res. Except for the denominations of the parties, the action proceeds for the most part as other civil lawsuits in the same jurisdiction. In some jurisdictions, the res will earn interest at the legal rate until disbursed. The successful claimant is entitled to the interest as well as the principal. History[edit] Origins in common law and equity[edit] Interpleader had its origins as a civil procedure at common law , which was later adopted and expanded by the Court of Chancery in its equitable jurisprudence. The common law procedure became obsolete over time and fell into disuse, but it remained active in the courts of equity. The same thing, debt, or duty must be the res claimed by all the claimants; All the adverse titles or claims must be dependent or derived from a common source; The stakeholder must not have or claim any interest in the res, The stakeholder must have incurred no independent liability to any claimant, i. Statutory interpleader was extended by Common Law Procedure Act , [7] which allowed a defendant in Courts of Law to interplead claimants even if title of the claimants to the res have no common origin, but are adverse to and independent of one another. The statutory rules governing interpleader proceedings were replaced by rules of court that came into force upon the passage of the Supreme Court of Judicature Act as amended by the Supreme Court of Judicature Act , which came to be known as Order 17 of the Rules of the Supreme Court. Procedures are in effect for claims where: The amendments have proved to be problematic, in that they now fail to cover a situation where: For example, a person dies with a life insurance policy that excludes coverage for suicide. Two people come forward claiming to be the beneficiary named in the policy. The insurance company believes that the deceased committed suicide, but the claimants believe the death was by accident. The insurance company could interplead the two claimants and simultaneously deny the claims. Federal Interpleader Act of allowed an insurance company , or fraternal benefit society subject to multiple claims on the same policy to file a suit in equity by a bill of interpleader in United States District Courts and providing nationwide service of process. Federal Courts have held that because of the deposit of the res with the court an interpleader action is an action to determine the validity of competing claims to identified property that served may be under 28 U. Federal practice[edit] Statutory Interpleader[edit] 28 U. Diversity jurisdiction is satisfied as long as there are two claimants of different states 28 U. For example, if you have three claimants, two of which are residents of Florida, and one from California, diversity would be satisfied. The diversity of the stakeholder, however, is irrelevant to the rule. The venue for a Statutory Interpleader is in the Judicial District in which one of the claimants resides, 28 U. A Statutory Interpleader

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action is commenced by the stakeholder who must initially deposit with the court, the amount in controversy, or post a specific bond with the court, 28 U. Once the Statutory Interpleader action is commenced, the court may restrict all claimants from starting or continuing any action which would affect the stake, make such injunction permanent, and discharge the stakeholder from liability. The may claim language added in codification to Title 28 of the United States Code in the definitions of claim allow interpleader for unliquidated claims, such as multiple claimant to a liability insurance policy injured in an accident before they are reduced to judgment or settled, however the injunction may only restrain the claimants from suits making claims against the res not suits to liquidate the claim or against third parties. Rule 22 is known as rule interpleader. Rule interpleader provides a remedy for any person who is, or may be exposed to double or multiple liabilities. The stakeholder may invoke Rule 22 as a plaintiff, or by counter-claiming in an action already started against him by one, or more claimants. There are specific differences between Statutory Interpleader, and Rule Interpleader: Rule Interpleader does not provide a basis for jurisdiction in the United States District Court ; there must be an independent basis of jurisdiction under Title 28 of the United States Code , i. There is no nationwide service of process as in a statutory interpleader action. Service must be carried out within the state where the court sits, or according to the long-arm statute of the state, Rule 4 k 1. There is no deposit required to be made with the court for a Rule 22 interpleader action. The stakeholder may claim that they are not liable in whole, or part, to any or all the claimants, Rule 22 a 1 B. However for the stakeholder to be discharged he must deposit the money or property with the court pursuant to Rule

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Chapter 3 : Missouri's Reform of Interpleader Law

This casebook focuses on one of the most important and dynamic areas of modern federal civil practice—aggregate-party litigation, particularly class actions and multidistrict litigation.

The legal basis for representative actions is set out in the Rules of the Superior Courts,² which provide that where numerous persons have the same interest in a cause or matter, one or more persons may sue or be sued or may be authorised by the court to defend a matter on behalf of or for the benefit of all interested persons. In addition to this legal basis, various statutory provisions allow for a person or persons to sue in a representative capacity. By way of example, Section 28 of the Civil Liability Act allows an action for damages to be brought where death is caused by a wrongful act, neglect or default. Consequently, where a number of cases have similar issues it is possible for one case to be selected as a test case and the subsequent cases to be stayed pending resolution of the test case. Multiparty litigation commonly arises in financial services litigation, particularly in cases involving the mis-selling of a financial product to a large number of consumers. Cases involving latent defects in buildings caused by the use of pyrite in the construction process that involve multiple litigants have also been brought by way of representative actions or test cases. Other examples of multiparty litigation in Ireland include claims relating to army deafness, contaminated blood products and tobacco-related illnesses. However, such a structure is yet to be implemented. The question of shareholders or unitholders in collective investment vehicles having jurisdiction individually and collectively through representative actions was considered in the Thema Shareholder litigation in Ireland. The court held that the correct plaintiff was the company and dismissed the actions brought by the shareholders. It did so on a number of grounds, including the rule in *Foss v. A*. A copy of the ruling is available on courts. As the law currently stands in Ireland, professional third-party funding is prohibited on the basis that it offends the rules of maintenance and champerty that exist under the Maintenance and Embracery Act Ireland. While professional third-party funding arrangements are unlawful in this jurisdiction, the Irish courts have found that third parties who have a legitimate interest in proceedings, such as shareholders or creditors of a company involved in proceedings, can lawfully fund them, even when such funding may indirectly benefit them. Therefore, funding of representative actions by the class members does not offend the laws of maintenance and champerty, as the class has a pre-existing legitimate interest in the litigation. In that case an application was made to assess the legality of a third-party funding agreement. The plaintiff, Persona Digital Telephony Limited, was unable to fund the proceedings. A professional third-party funder from the UK was prepared to enter into a litigation funding arrangement. The plaintiff sought a declaration from the High Court that the litigation funding arrangement did not constitute an abuse of process or contravene the rules on maintenance and champerty. While the High Court had some sympathy for the plaintiff, it affirmed that both maintenance and champerty are part of Irish law and are torts and criminal offences. The High Court found that to permit a litigation funding arrangement by a third party with no legitimate interest in the proceedings would necessitate a change in legislation and this could not be done by the High Court. This decision was unexpected, given some obiter dicta comments from the High Court in a judgment approving ATE insurance to the effect that the laws have to be interpreted in the context of modern social realities *Greenclean Waste Management Ltd v. Leahy* [2011] IEHC. The decision of the Supreme Court is expected in *Greenclean Waste Management Ltd v. Leahy*. A finding by the Supreme Court that professional third-party litigation funding is lawful would have an impact on multiparty litigation where often the plaintiffs concerned lack the means to provide the funding required to maintain the representative action or test case. The decision in *SPV Osus Ltd*, referred to above, which addressed the issue of maintenance and champerty, came before the Court of Appeal in January for consideration of a related issue, litigation trafficking. *SPV Osus Ltd* then issued proceedings in Ireland against the custodian to the fund claiming an entitlement to the net asset value of the investments of *SUS* as at 30 November. The custodian challenged the standing of *SPV Osus Ltd* to bring proceedings on the basis that the assignment was contrary to public policy, and should not be enforced for

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reasons of maintenance and champerty. The Court of Appeal gave judgment on 2 March upholding the ruling of the High Court in full and dismissing the claim as trafficking in litigation. The Court confirmed that, under the rules of champerty, an assignment is unenforceable unless one or more of the exceptional circumstances apply that would grant it legality for example, an assignment of a bare cause of action that is incidental to the property transferred, or the assignment of a debt, none of which applied in this case. The Court further ruled that there was no requirement to prove an improper motive under the principles of maintenance and champerty. The judgment of the Court of Appeal acknowledged that public policy has to move with the times, and that commercial practices, which change with the times, must be taken into account. There is no formal class action procedure in Ireland. A representative action arises where one claimant or defendant, with the same interest as a group of claimants or defendants in an action, institutes or defends proceedings on behalf of that group of claimants or defendants. Representative actions will typically arise where the class either has a pre-existing relationship with the main party, or where the class is relatively small. Due to this, the more common approach to multiparty litigation in Ireland is usually the test case. A test case can arise where numerous separate claims arise out of the same circumstances. By way of example, in the Commercial Court was faced with more than 50 individual shareholder claims related to the fraudulent investment operations run by Bernard Madoff. The Commercial Court exercised its inherent jurisdiction in deciding to take forward a small number of cases initially, as test cases. In this instance, it was decided that two cases by shareholders and two cases by funds would be heard sequentially as a first step and the Court stayed the other claims pending the resolution of the four test cases. A similar approach was adopted by the Irish Commercial Court in relation to claims for the mis-selling of financial products that were initiated by over claimants against ACC Bank in In contrast, the courts have refused to extend the representative procedure to actions founded in tort, a point emphasised by the Supreme Court in *Moore v. Notwithstanding this pronouncement, courts have occasionally entertained representative actions founded in tort where the relief sought is injunctive. There is an analogous prohibition on representative actions against individuals for breach of constitutional rights. However, in practice these procedures are typically utilised in tort actions where a negligent act or misrepresentation has affected a number of people who wish to have their rights vindicated. For example, claims for the mis-selling of financial products will often involve an allegation that the financial service provider committed the torts of misrepresentation or negligent misstatement. The following limitation periods apply to the various causes of action: Claims for liquidated sums: Personal injuries under negligence, nuisance or breach of duty: Maritime and airline cases: The period during which mediation takes place in a cross-border dispute to which the Mediation Directive applies is excluded from the calculation of the limitation periods. It was proposed that this would run from the date of the act or omission giving rise to the cause of action and there would be statutory discretion to extend this limitation period. It should be noted, however, that the proposals put forward by the Law Reform Commission are not binding and to date none have been implemented. It is anticipated that the Financial Services and Pensions Ombudsman Bill will be enacted in Of particular significance for regulated financial service providers is that the Bill proposes to revise the limitation period for bringing complaints to the Financial Services Ombudsman FSO in certain circumstances. Currently, the FSO has no jurisdiction to investigate complaints where the conduct complained of occurred more than six years before the complaint is made. The FSO has no discretion to extend this limitation period. The definition of a long-term financial service captures products or services where the maturity or term extends beyond six years, and is not subject to annual renewal. The proposed revised limitation period for complaints in relation to long-term financial services is either: For other short-term financial services, the limitation period of six years is unchanged. It must be anticipated that multiparty litigation, by way of complaints made to the FSO, could arise as a result of the change to the limitation period. Provided a person has sufficient standing, that person may institute proceedings. Alternatively, in respect of representative actions, where a claimant or defendant has the same interest as a group of claimants or defendants in an action he or she may institute or defend proceedings on behalf of that group of claimants or defendants. In order to commence proceedings by*

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way of representative action, an application must be made to the court for an order permitting the claimant or defendant to bring or defend the proceedings on a representative basis. The application for such an order will be grounded by an affidavit that lists each of the interested parties who have agreed to be represented in the proceedings. Where the claimant or defendant sues in a representative capacity, the endorsement of claim is required to show the capacity in which the party is suing or being sued. Any judgment or order in the action will usually then bind all claimants or defendants represented. In order to commence proceedings by way of a test case, each party must institute its own case and then one party becomes the benchmark by which the remaining cases are resolved. Importantly, however, each case is judged on its own merits by a judge alone and the fact that causation is proved in the context of one case does not necessarily guarantee the same outcome in all subsequent cases unless the facts, liability issues and causation are identical. The Irish courts take great pains to ensure that each case is judged on its own merits, and this is seen to benefit defendants, as plaintiffs are put to the expense of having to fully prove their case despite the fact that numerous similar but not necessarily identical cases may have already been determined. In reality, however, if there has been a negative finding against a defendant in a test case and liability has been established, where there are numerous similar cases yet to be heard, a defendant or its insurers will attempt to settle the outstanding claims unless they can be distinguished in terms of liability, causation or fact from the test case. This can vary, however, depending on the complexity and urgency of the case. The High Court has a separate commercial division, known as the Commercial Court. This specialist court has extremely stringent case management procedures in place and judgment is generally delivered quite promptly. Damages can be compensatory or punitive, for example: Provided that court is also of the opinion that the action could have been taken in a lower court, it is permitted to award the typical costs of the lower court action. As noted previously, subsequent litigation following a test case is often settled on the basis of the test case outcome and, in such circumstances, an award of damages does not fall to be considered by the court. This means that the successful party is only entitled to recover the costs reasonably incurred by them in prosecuting or defending the litigation. Recoverable costs are usually anywhere between 50 and 75 per cent of the total costs incurred. Irish lawyers are expressly prohibited from charging fees by reference to a percentage of damages awarded. These are conditional arrangements with clients, where any payment made at all by the client to the solicitor is conditional on the success of the case. No fee, no fee arrangements are more common in individual personal injuries claims than in commercial cases. The FSO is a quasi-judicial body tasked with resolving disputes outside of litigation. While parties to complaints to the FSO are permitted to be legally represented at each stage of the complaints process, the costs of such representation are a matter for the party who incurs the costs to bear himself or herself and the FSO is not empowered to award costs. Where multiparty litigation is brought by way of a test case, the test case effectively becomes the benchmark by which the remaining cases are resolved. However, because the subsequent claimants and defendants, are not parties to the original litigation, they are not bound by the result of the test case and are not party to any settlement agreement entered into in the test case. Although not bound by the result, the test case has an effect by virtue of the doctrine of precedent. Therefore, the benefits of the original ruling may be extended to cases involving factual situations identical to those of the test case. As a result of this, subsequent litigation is often settled on the basis of the test case outcome. Where multiparty litigation is brought by way of a representative action, since representation extends to all aspects of the legal proceedings, including settlement, the representative has autonomy over the way in which the litigation is conducted, subject to the expectation that he or she will act in the interests of the class. Generally any judgment or order in the action will bind all persons represented at the direction of the court. Representative actions therefore presuppose a level of confidence between the representative and the members of the class. Court sanction is not required for a settlement save where the case is one in which money or damages are claimed by or on behalf of an infant or a person of unsound mind suing either alone or in conjunction with other parties. Other issues discussed in the Recommendation include: Although the Recommendation is not binding, it can be applied to shape future legislation in the area. When it comes to forum shopping, Ireland

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may be seen as a less attractive option for class actions due to the lack of a legal framework facilitating class actions; however, in numerous forum non conveniens challenges to jurisdiction in New York and Florida, the US courts have dismissed US class actions in favour of Ireland. The absence of a formal structure does not seem to have impeded multiparty litigation in this jurisdiction and, in the absence of legislative reform, it can be anticipated that multiparty litigation will continue to proceed on the basis of test cases for the foreseeable future. Multiparty litigation and litigation funding are issues that go hand in hand as plaintiff lawyers claim that the absence of rules permitting litigation funding restrict their clients ability to obtain access to justice. The authors would like to thank Valerie Sexton for her contribution to this chapter.

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Chapter 4 : Table of contents for Civil procedure

The firm's attorneys have represented clients in disputes in Florida and throughout the country in ERISA plan litigation, complex multiparty and class action litigation, prosecution of federal and state interpleader and policy rescission actions, coverage issues, pre-litigation dispute resolution and case strategy, as well as appeals in state.

Table of contents for Civil procedure: Freer, Wendy Collins Perdue. Bibliographic record and links to related information available from the Library of Congress catalog. Contents data are machine generated based on pre-publication provided by the publisher. Contents may have variations from the printed book or be incomplete or contain other coding. The Study of Procedure Overview of the Structure of a Court System Appellate Practice and the Doctrine of Precedent General Topics of Civil Procedure Selecting the Forum Chapters , Learning About the Opponent? Adjudication With or Without a Jury Chapter Preclusion, Joinder, and Supplemental Jurisdiction Chapters Litigation Alternatives Chapter A Quick Note on Materials Chapter 2 Personal Jurisdiction A. Constitutional Limits on Personal Jurisdiction Superior Court of California Consent and Forum Selection Provisions In Rem and Quasi-in-Rem Jurisdiction Personal Jurisdiction and the Internet The Purposes of Personal Jurisdiction Personal Jurisdiction in Other Countries Official Code of Georgia Annotated Statutory Limits on Personal Jurisdiction Opportunity to Be Heard The Constitutional Grants and Role of Congress Diversity of Citizenship and Alienage Jurisdiction The Complete Diversity Rule Determining Citizenship of Individuals Determining Citizenship of Entities Champaign Market Place L. Representative Suits and Assignments of Claims The Domestic Relations and Probate Exceptions The Amount in Controversy Requirement Narrow Interpretations of the Jurisdictional Grant The Well-Pleaded Complaint Rule Centrality of the Federal Issue to the Claim Darue Engineering and Manufacturing Local and Transitory Actions Venue in Federal Court Transfer of Civil Cases in State Courts Transfer of Civil Actions in Federal Court Where Can Cases Be Transferred Standard for Transfer Under?? Collateral and Direct Attacks on Personal Jurisdiction Iowa State Traveling Men? Challenging Federal Subject Matter Jurisdiction Historical Overview of the Evolution of Pleadings Elements of the Complaint The Debate Over Specificity Heightened Specificity Requirements in Certain Cases Pleading Inconsistent Facts and Alternative Theories Responses to the Plaintiff? Denials for Lack of Knowledge or Information Claims by the Defendant Default and Default Judgment Basic Principles Under Rule 15 a The Problem of Variance Under Rule 15 b Amendment and the Statute of Limitations Under Rule 15 c Amendment to Claims or Defenses Amendment Changing a Party Rule 11 and Other Devices Approved Federal Savings Bank. Overview of the Discovery Devices Required Initial Disclosures Rule 26 a Depositions Rules 30, Production of Documents and Things Rule Medical Examination Rule Requests for Admission Rule Discovery of Material in Electronic Form Relation to the Rules of Evidence State Farm Mutual Insurance Co Discovery in an International Context Timing and Pretrial Disclosures, Conferences, and Orders Pretrial Conferences and Orders The Right to a Jury Scope of the Constitutional Right Actions at Common Law? The Complications of Merger and the Federal Rules Juries in State Courts Selection and Size of the Jury The Venire and Voir Dire Jury Nullification and Its Limits Adjudication Without Trial or Jury Controlling and Second-Guessing Juries Other Techniques for Controlling Juries Form of the Verdict Motions to Set Aside the Judgment Determining What Law Applies Constitutional Bases of Erie The Federal Rules of Civil Procedure The Rules Enabling Act Prong The Rules of Decision Act Prong Center for Humanities, Inc Determining the Content of State Law Federal Law in State Court Scope of a Claim Parties or Persons in Privity

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Chapter 5 : Class Actions Law Review 1st Edition Ireland - Litigation, Mediation & Arbitration - Ireland

In addition to class actions, the text addresses joinder, consolidation, intervention, impleader, interpleader, multi-district litigation, and bankruptcy, among other topics. It includes rich theoretical materials, as well as practical discussions useful for a student contemplating a professional focus in class actions.

Table of contents for Civil procedure: Bibliographic record and links to related information available from the Library of Congress catalog. Contents data are machine generated based on pre-publication provided by the publisher. Contents may have variations from the printed book or be incomplete or contain other coding. Table of Contents Table of Cases The Study of Procedure Overview of the Structure of a Court System Appellate Practice and the Doctrine of Precedent General Topics of Civil Procedure Selecting the Forum Chapters 2- Adjudication With or Without a Jury Chapter Preclusion, Joinder, and Supplemental Jurisdiction Chapters Litigation Alternatives Chapter Constitutional Limits on Personal Jurisdiction Superior Court of California In Rem and Quasi-in-Rem Jurisdiction The Purposes of Personal Jurisdiction Personal Jurisdiction and the Internet Personal Jurisdiction in Other Countries Statutory Limits on Personal Jurisdiction Immunity, Evasion, and "Sewer Service" Opportunity to be Heard The Constitutional Grants and Role of Congress Diversity of Citizenship and Alienage Jurisdiction The Complete Diversity Rule Determining Citizenship of Individuals Determining Citizenship of Entities Representative Suits and Assignments of Claims The Domestic Relations and Probate Exceptions The Amount in Controversy Requirement Narrow Interpretations of the Jurisdictional Grant The Well-Pleaded Complaint Rule Centrality of the Federal Issue to the Claim Local and Transitory Actions Venue in Federal Court Transfer of Civil Cases in State Courts Transfer of Civil Actions in Federal Court Where Can Cases Be Transferred Standard for Transfer Under and Collateral and Direct Attacks on Personal Jurisdiction Challenging Federal Subject Matter Jurisdiction Historical Overview of the Evolution of Pleadings Elements of the Complaint A "short and plain statement of the claim showing that the pleader is entitled to relief " A "demand for judgment for the relief the pleader seeks" Factual or "Formal" Sufficiency: The Debate Over Specificity Heightened Specificity Requirements in Certain Cases Pleading Inconsistent Facts and Alternative Theories Denials for Lack of Knowledge or Information Claims by the Defendant Default and Default Judgment Basic Principles Under Rule 15 a The Problem of Variance Under Rule 15 b Amendment and the Statute of Limitations Under Rule 15 c Amendment to Claims or Defenses Amendment Changing a Party Rule 11 and Other Devices Overview of the Discovery Devices Required Initial Disclosures Rule 26 a Depositions Rules 30, Production of Documents and Things Rule Medical Examination Rule Requests for Admission Rule Relation to the Rules of Evidence State Farm Mutual Insurance Co. Timing and Pretrial Disclosures, Conferences, and Orders Pretrial Conferences and Orders The Right to a Jury Scope of the Constitutional Right The Complications of Merger and the Federal Rules Juries in State Courts Selection and Size of the Jury The Venire and Voir Dire Jury Nullification and Its Limits Controlling and Second-Guessing Juries Other Techniques for Controlling Juries Form of the Verdict Motions to Set Aside the Judgment Determining What Law Applies Constitutional Bases of Erie The Federal Rules of Civil Procedure Center for Humanities, Inc Determining the Content of State Law Federal Law in State Court Scope of a Claim Parties or Persons in Privity Who Can Be Bound? Configuration of the Parties Valid, Final Judgment, On the Merits Exceptions to the Operation of Claim Preclusion Same Issue Litigated and Determined Issue Determined Was Essential to the Judgment Rejection of Mutuality for Defensive Use Rejection of Mutuality for Offensive Use Exceptions to the Operation of Issue Preclusion Real Party in Interest, Capacity, and Standing Claim Joinder by Plaintiffs Permissive Party Joinder by Plaintiffs

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Chapter 6 : Interpleader Actions: Potential for Resolving Real Estate Escrow Disputes - GriswoldLAW

Also contains a special focus on securities, mass tort, and employment discrimination class actions, defendant class actions and shareholder derivative suits. Explores the latest cutting-edge issues in multi-party litigation and discusses numerous ground-breaking court decisions.

Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases, the decree shall be without prejudice to the rights and claims of all the absent parties. Modern developments[edit] A major revision of the FRCP in radically transformed Rule 23, made the opt-out class action the standard option, and gave birth to the modern class action. Entire treatises have been written since to summarize the huge mass of law that sprang up from the revision of Rule 23. The Advisory Committee that drafted the new Rule 23 in the mid-1990s was influenced by two major developments. First was the suggestion of Harry Kalven, Jr. For example, an environmental law treatise reprinted the entire text of Rule 23 and mentioned "class actions" 14 times in its index. In the 1990s, the U. Supreme Court issued a number of decisions which strengthened the "federal policy favoring arbitration". In *AT&T Intellectual Property v. Elcom*, the U. Supreme Court held that the Federal Arbitration Act preempts state laws that prohibit contracts from disallowing class-action lawsuits, which will make it more difficult for consumers to file class-action lawsuits. The dissent pointed to a saving clause in the federal act which allowed states to determine how a contract or its clauses may be revoked. *Dukes* and later in *Comcast Corp. v. Davis*. One study of federal settlements required the researcher to manually search databases of lawsuits for the relevant records, although state class actions were not included due to the difficulty in gathering the information. First, aggregation can increase the efficiency of the legal process, and lower the costs of litigation. Second, a class action may overcome "the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights". *Van Ru Credit Corp.* For example, thousands of shareholders of a public company may have losses too small to justify separate lawsuits, but a class action can be brought efficiently on behalf of all shareholders. Perhaps even more important than compensation is that class treatment of claims may be the only way to impose the costs of wrongdoing on the wrongdoer, thus deterring future wrongdoing. Third, class-action cases may be brought to purposely change behavior of a class of which the defendant is a member. *Flood* was a landmark case decided by the California Supreme Court that aimed at purposefully changing the behavior of doctors, encouraging them to report suspected child abuse. Otherwise, they would face the threat of civil action for damages in tort proximately flowing from the failure to report the suspected injuries. Previously, many physicians had remained reluctant to report cases of apparent child abuse, despite existing law that required it. Fourth, in "limited fund" cases, a class action ensures that all plaintiffs receive relief and that early-filing plaintiffs do not raid the fund. A class action in such a situation centralizes all claims into one venue where a court can equitably divide the assets amongst all the plaintiffs if they win the case. Finally, a class action avoids the situation where different court rulings could create "incompatible standards" of conduct for the defendant to follow. For example, a court might certify a case for class treatment where a number of individual bond-holders sue to determine whether they may convert their bonds to common stock. Refusing to litigate the case in one trial could result in different outcomes and inconsistent standards of conduct for the defendant corporation. Thus, courts will generally allow a class action in such a situation. The Advisory Committee Note to Rule 23, for example, states that mass torts are ordinarily "not appropriate" for class treatment. Class treatment may not improve the efficiency of a mass tort because the claims frequently involve individualized issues of law and fact that will have to be re-tried on an individual basis. Mass torts also involve high individual damage awards; thus, the absence of class treatment will not impede the ability of individual claimants to seek justice. Other cases, however, may be more conducive to class treatment.

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Class-action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm. Criticisms[edit] There are several criticisms of class actions. Class members often receive little or no benefit from class actions. These " coupon settlements " which usually allow the plaintiffs to receive a small benefit such as a small check or a coupon for future services or products with the defendant company are a way for a defendant to forestall major liability by precluding a large number of people from litigating their claims separately, to recover reasonable compensation for the damages. However, existing law requires judicial approval of all class-action settlements, and in most cases class members are given a chance to opt out of class settlement, though class members, despite opt-out notices, may be unaware of their right to opt out because they did not receive the notice, did not read it, or did not understand it. The Class Action Fairness Act of addresses these concerns. Coupon settlements may be scrutinized by an independent expert before judicial approval in order to ensure that the settlement will be of value to the class members 28 U. Ethics[edit] Class action cases present significant ethical challenges. Defendants can hold reverse auctions and any of several parties can engage in collusive settlement discussions. Subclasses may have interests that diverge greatly from the class but may be treated the same. Proposed settlements could offer some groups such as former customers much greater benefits than others. In one paper presented at an ABA conference on class actions in , authors commented that "competing cases can also provide opportunities for collusive settlement discussions and reverse auctions by defendants anxious to resolve their new exposure at the most economic cost". For example, in , the Roman Catholic Archdiocese of Portland in Oregon was sued as part of the Catholic priest sex-abuse scandal. This was done to include their assets local churches in any settlement. Mass actions[edit] In a class action, the plaintiff seeks court approval to litigate on behalf of a group of similarly situated persons. Not every plaintiff looks for, or could obtain, such approval. Because mass actions operate outside the detailed procedures laid out for class actions, they can pose special difficulties for both plaintiffs, defendants, and the court. For example, settlement of class actions follows a predictable path of negotiation with class counsel and representatives, court scrutiny, and notice. There may not be a way to uniformly settle all of the many claims brought via a mass action. Class action legislation[edit] Class actions were recognized in "Halabi" leading case Supreme Court , Australia and New Zealand[edit] Class actions became part of the Australian legal landscape only when the Federal Parliament amended the Federal Court of Australia Act "the FCAA" in to introduce the "representative proceedings", the equivalent of the American "class actions". However, a group can bring litigation through the action of a representative under the High Court Rules which provide that one or a multitude of persons may sue on behalf of, or for the benefit of, all persons "with the same interest in the subject matter of a proceeding". The presence and expansion of litigation funders have been playing a significant role in the emergence of class actions in New Zealand. For example, the "Fair Play on Fees" proceedings in relation to penalty fees charged by banks was funded by Litigation Lending Services LLS , a company specializing in the funding and management of litigation in Australia and New Zealand. It was the biggest class-action suit in New Zealand history. In these cases the individual consumers assigned their claims to one entity, who has then brought an ordinary two party lawsuit over the assigned claims. The monetary benefits were redistributed among the class. This technique, soon labelled as "class action Austrian style", allows for a significant reduction of overall costs. The Austrian Supreme Court, in a recent judgment, has confirmed the legal admissibility of these lawsuits under the condition that all claims are essentially based on the same grounds. The Austrian Parliament has unanimously requested the Austrian Federal Minister for Justice to examine the possibility of new legislation providing for a cost-effective and appropriate way to deal with mass claims. With the aid of a group of experts from many fields, the Justice Ministry began drafting the new law in September, With the individual positions varying greatly, a political consensus could not be reached. All provinces permit plaintiff classes and some permit defendant classes. Quebec was the first province to enact class proceedings legislation in Ontario was next with the Class Proceedings Act, As of , 9

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of 10 provinces have enacted comprehensive class actions legislation. Dutton, [] 2 S. Court rulings have determined that this permits a court in one province to include residents of other provinces in the class action on an "opt-out" basis. Recent judicial opinions have indicated that provincial legislative national opt-out powers should not be exercised to interfere with the ability of another province to certify a parallel class action for residents of other provinces. The first court to certify will generally exclude residents of provinces whose courts have certified a parallel class action. However, in the Vioxx litigation, two provincial courts recently certified overlapping class actions whereby Canadian residents are class members in two class actions in two provinces. This means that the class action is designed to declare the defendant generally liable with erga omnes effects if and only if the defendant is found liable, and the declaratory judgment can be used then to pursue damages in the same procedure or in individual ones in different jurisdictions. If the latter is the case, the liability cannot be discussed but only the damages. This is the case when defendants can identify and compensate consumer directly, i. In such cases the judge can skip the compensatory stage and order redress directly. Salient cases have been Condecus v. On January 4, , President Chirac urged changes that would provide greater consumer protection. A draft bill was proposed in April , but did not pass. Following the change of majority in France in , the new government proposed introducing class actions into French law. The project of "loi Hamon" of May aims to limit the class action to consumer and competition disputes. The law was passed on March 1, Please update this article to reflect recent events or newly available information. It does not apply to any other civil law proceeding. The effects of the new law will be monitored over the next five years. It contains a sunset clause, and it will automatically cease to have effect on November 1, , unless the legislature decides to prolong the law, or extend it to other mass civil case proceedings. Consumer associations can file claims on behalf of groups of consumers to obtain judicial orders against corporations that cause injury or damage to consumers. On November 19, , the Senato della Repubblica passed a class action law in Finanziaria , a financial document for the economy management of the government. Now from 10 December , in order of Italian legislation system, the law is before the House and has to be passed also by the Camera dei Deputati, the second house of Italian Parliament, to become an effective law. To date, no such law has been enacted, but scholars demonstrated that class actions azioni rappresentative do not contrast with Italian principles of civil procedure. Class action is regulated by art.

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Chapter 7 : Interpleader - Wikipedia

Individual Justice in Mass Tort Litigation: The Effect of Class Actions, Consolidations, and Other Multiparty Devices Jack B. Weinstein Northwestern University Press, - Law - pages.

Multi-Party Litigation In Germany: In the past 10 years, however, many European countries have developed unique approaches to collective redress. This article is the fourth in a series of articles that examine the development of multi-party litigation in specific jurisdictions outside North America¹. Until recently, German law granted very little in terms of collective redress. The KapMuG is a particularly unique approach to the collective litigation of securities claims. In theory, the KapMuG strikes a balance between the right to be heard and judicial economy and access to justice. **The Genesis of the KapMuG:** In its prospectus issued at the initial public offering, the company valued its real property holdings en bloc rather than on an individual basis. Between 2000 and 2001, over 13,000 individual claims against Deutsche Telekom alleging misrepresentation were filed with the Regional Court Frankfurt am Main, involving different attorneys. It was estimated that the resolution of these cases would take at least 15 years. Frustrated with the delay, 11 plaintiffs filed a complaint with the Federal Constitutional Court alleging that the delay constituted a denial of justice. The Court rejected the complaint but demanded an expedited hearing of the cases. The legislation applies strictly to: The basic premise of the KapMuG is that a model case is chosen from individual claims, the similar issues are decided and the outcome is then applied to all registered individual cases. The KapMuG contemplates three procedural stages: Either a plaintiff who has filed an individual claim, or a defendant, applies for the model case proceeding to the court of first instance by proposing model questions, which are similar to common issues in a North American class action. **TM In the Deutsche Telekom litigation,** for example, the Court selected the model claimant based on the large size of his claim¹. Once a decision on the model questions is rendered, those claimants who have opted in to the procedure are bound by the decision. Therefore, a claimant who opted in late into the trial may theoretically not be bound by the decision. At the third stage, the decision of the Appeals Court is applied by the trial courts to the stayed individual actions. Each case is determined on an individual basis. **The Devil Is in the Details** At first glance, the model proceedings approach bears some resemblance to an opt-in version of the North American class action. Upon closer examination, however, several details of the KapMuG pose significant challenges to its success. A principal challenge is the active role played by "interested parties" in the model proceedings. This special status has the potential to lengthen and complicate the model trial interminably. Another significant challenge is that settlement, which is the end result of most North American class actions, is virtually impossible under the KapMuG. Subsection 14 3 of the KapMuG provides that "if all interested parties do not consent to the settlement, conclusion of model case proceedings by way of settlement shall be inadmissible. Finally, there is little financial incentive for lawyers to take on the important role as counsel for the model claimant. While the Federal Supreme Court found in March of 2002 that this prohibition violated German constitutional law and gave the legislature one year to amend the law,²⁸ it appears that contingency fee arrangements will only be permitted in extremely limited circumstances. **The KapMuG in Practice** In light of the aforementioned "quirks" of the KapMuG, it is no surprise that the implementation of this legislation has encountered significant obstacles. The lack of progress in the Deutsche Telekom litigation is demonstrative. This litigation is ongoing, with 17,000 shareholders represented. The first week of the trial was held in a city hall that seated 1,000 people. As of 2002, only 53 applications had been registered in the electronic register of claims and the majority of these related to the Deutsche Telekom litigation. The plaintiff investors alleged that the company had breached its disclosure obligations by failing to inform them immediately of the resignation of its CEO, the announcement of which triggered a dramatic change in the stock price. On February 15, 2002, the Regional court in Stuttgart held that no such breach had occurred. This case is an example where the KapMuG has successfully resolved a multitude of claims in one trial, but it is a rare exception to the overall experience. In broad strokes, the determination of common issues and the subsequent application of

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that decision to individual cases bear some resemblance to a North American class action. However, the devil is in the details. The unanimous consent requirement for settlement, the role of the claimants as "interested parties" and the prohibition on contingency fees provide little incentive for would-be model claimant lawyers to utilize the KapMuG. In light of the fact that the European Commission in its White Paper has strongly advocated for European Union-wide legislation permitting opt-in securities class actions that more resemble North American class actions, the sun will likely set on the KapMuG in Footnotes 1 See James M. Moher and Donna A. Polgar, "Group Litigation in the United Kingdom: Moher and Jason W. Reynar, "A Touch of Dutch: Moher and Rosie J. Claimants may also assign their rights to a third party, who then pursues the claim on behalf of all those who have assigned claims. An Analysis Across Europe," June , online at <http://>

Chapter 8 : Insurance Litigation - Gibbons Neuman

(Multiparty Litigation) A defending party may implied a NONparty, but only if the nonparty is or may be liable to her for any part of the judgment that P might recover. (usually for indemnity (TPD has to cover the full claim) or contribution (TPD has to cover a pro-rata portion of the claim)).

Chapter 9 : Class action - Wikipedia

Law, New York (October 18, , PM EDT) -- Interpleader actions allow a disinterested holder of property to deposit money or property with a court when there is a potential for a.