

Friday, November 6, 2020 (Civ Pro class 10 of 15!)

Today:

- Summons & Complaint Assignment!
- Commencing the action!
- Summonses and pleadings!

For Mon. Nov. 9 (Intro):

- Read *Sussman v. Grado* on OL and "reply" with a thoughtful response or question by 10am!
- FYLC Collab. Assmt. #2 (legal source entry) on OL by end of day!
- Response to election news? *Post by end of day for HW credit, anytime for extra credit!*

Wed. Nov. 11 (Intro): QUIZ #3! *From midterm through Monday.*

For Fri. Nov. 13 (Civ Pro):

- QUIZ #3! *From midterm through today.*
- Qs in Summons & Complaint Assignment – *email by 1pm.*
- Read C&W chs. 9-11 (Venue; Personal Jurx; Prep, Service & Filing of Papers).

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From CPLR § 203 (statutes of limitations):

"The time within which an action must be **commenced**, except as otherwise expressly prescribed, shall be computed from the time the cause of action accrued to the time the claim is interposed."

CPLR § 304. Method of **commencing action or special proceeding.**

(a) An **action is commenced** by filing a summons and complaint **OR** summons with notice in accordance with rule twenty-one hundred two of this chapter. . . .

CPLR R. 2102. Filing of papers.

(a) Except where otherwise prescribed by law or order of court, papers required to be filed shall be filed **with the clerk of the court** in which the action is triable. In an action or proceeding **in supreme or county court** and in a proceeding not brought in a court, papers required to be filed shall be filed **with the clerk of the county** in which the proceeding is brought.

In most courts → "commencing an action" means:

- **filing** summons & complaint **OR** summons with notice (see CPLR § 304(a)) . . .
- **with** the clerk of the court in county where action brought (see CPLR R. 2102).
 - In Supreme or County Court → *the "County Clerk"!*
 - In other courts → *just the "clerk" of that court*

These are known as "filing courts."

Just FYI!! In Town and Village courts, "commencing an action" means **servicing** the summons & complaint **OR** summons with notice **on the defendant!** Filing can be done later. These are known as "service courts."

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?? What is (are?) a Summons & Complaint?

Summons = document notifying D that she is being sued

- She is being "summoned" to court!

Complaint = document informing D why she is being sued

➤ details wrongful act(s) P alleges against D, *and* relief P seeks → P's pleading!

CPLR R. 305. Summons; supplemental summons, amendment.

(a) Summons; supplemental summons. A summons shall specify **the basis of the venue designated** and if based upon the residence of the plaintiff it shall specify **the plaintiff's address**, and also shall bear the **index number** assigned and the **date of filing** with the clerk of the court. . . . The summons **in an action arising out of a consumer credit transaction shall prominently display at the top** of the summons **the words "consumer credit transaction"** and, where a purchaser, borrower or debtor is a defendant, shall specify **the county of residence of a defendant**, if one resides within the state, **and the county where the consumer credit transaction took place**, if it is within the state. . . .

Per CPLR R. 305(a), a summons must include:

- basis of venue (county in which case is filed) → *if it's P's residence, then include P's address*
- index number
- date of filing
- **PLUS in consumer credit transaction cases**, also include:
 - "CONSUMER CREDIT TRANSACTION" at top
 - county where D lives → *if D is purchaser, borrower or debtor, & lives in NY*
 - county where transaction took place → *if in NY*
- **also** (in all summonses) when and how to respond to the action!

For summons with notice → R. 305(b):

- ONE document—instead of (1) Summons **AND** (2) Complaint
- must include all information required by R.305(a) **PLUS** . . .
- a general statement of P's cause of action and remedy sought, including \$\$ amount.

Answer = D's pleading!

- document in which D responds to each allegation in P's complaint (usually denies)
- also "affirmative defenses" → reasons why, *even if* P's complaint is true, D is not liable → *like SOL!*

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Pleading requirements!!

CPLR R. 3016. Particularity in specific actions.

. . . (f) Sale and delivery of goods or performing of labor or services. **In an action involving the sale and delivery of goods**, or the performing of labor or services, or the furnishing of materials, the plaintiff may **set forth and number in his verified complaint the items of his claim and the** reasonable value or **agreed price** of each. . . .

In sum, **CPLR Article 30** pleading requirements (for P's complaint *and* D's answer):

- sufficiently particular to give notice (§ 3013)
- plain and concise statements (§ 3014)
- numbered paragraphs (§ 3014)
- one allegation per paragraph (§ 3014)
- causes of action separately stated & numbered (§ 3014)
- demand for relief (§ 3017)
- **also – for cases involving sale and delivery of goods** → verification, and numbered list of items & prices!! (§ 3016(f))