



ICLG

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2017

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A practical cross-border insight into litigation and dispute resolution work

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

Pennsylvania is a common law jurisdiction and case law is developed according to the doctrine of *stare decisis*. The Pennsylvania Rules of Civil Procedure govern civil matters at the trial court level. The Pennsylvania Rules of Appellate Procedure govern appeals.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

Courts are organised under a Unified Judicial System. The Supreme Court of Pennsylvania, the highest court, hears certain cases as of right and has discretion to hear other cases. The Supreme Court has original jurisdiction in limited instances. The two state-wide intermediate appellate courts are the Superior Court and the Commonwealth Court. The Superior Court hears appeals from final decisions of the Court of Common Pleas. Direct appeals from certain Commonwealth administrative agencies and cases involving the Commonwealth and the public sector are heard by the Commonwealth Court. The Courts of Common Pleas are the trial courts and are organised into 60 judicial districts. In certain circumstances, the Commonwealth Court has original jurisdiction.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

- Pleadings: a civil action is initiated by filing either (1) a praecipe for a writ of summons, or (2) a complaint. All pleadings after the complaint must be filed within 20 days of service of the previous pleading. If a pleading does not contain a “notice to plead”, no response is required. Pennsylvania is a “fact pleading” state. Allegations contained in a complaint or answer must be made specifically.
- Discovery: discovery methods include depositions, written interrogatories, and production of documents.
- Motion Practice: a party may file a motion seeking a rule to show cause or other decision from the court.

- Trial: a civil jury consists of at least six or as many as 12 persons. A party must demand a trial by jury within 20 days after service of the last pleading.
- Judgment: a judgment is the final decision of the court which determines the parties’ rights and obligations. Question 9.3 describes how judgments may be enforced.
- Appeal: a party only has a right to appeal where it is given by statute. The scope of appeals is discussed in question 9.4.
- Although one of the federal district courts in Pennsylvania has instituted a voluntary expedited civil litigation programme, Pennsylvania state courts have not yet adopted such procedures.

1.4 What is your jurisdiction’s local judiciary’s approach to exclusive jurisdiction clauses?

A contract’s forum selection clause is enforceable where it is clear and unambiguous. *See Cent. Contracting Co. v. C.E. Youngdahl & Co.*, 209 A.2d 810 (Pa. 1965). A forum selection clause in a commercial contract is presumptively valid and will be deemed unenforceable only when: (1) the clause itself was induced by fraud or overreaching; (2) the forum selected is so unfair or inconvenient that a party will be deprived of an opportunity to be heard; or (3) the clause violates public policy. *See Patriot Com. Leasing Co. v. Kremer Rest. Enters., LLC*, 915 A.2d 647 (Pa. Super. 2006).

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The fee for filing a complaint can run upwards of \$300. Pennsylvania courts follow the American Rule under which each party assumes responsibility for its attorneys’ fees and costs unless a statute provides otherwise.

The court may impose costs on a party who seeks a continuance after the preliminary call of the trial list. The opposing party may receive costs incurred which would not have been incurred if the request for a continuance had been made at or prior to the trial call. Pa. R.C.P. 217. The Rules of Appellate Procedure provide for the recovery of costs by a successful party. Pa. R.A.P. 2741, 2742, 2743, 2744.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

The Pennsylvania Rules of Professional Conduct permit contingent fees. Pa. R.P.C. 1.5(c). The fee is evaluated based on factors

including the time and labour involved, the complexity of the work, and the fee customarily charged. Pa. R.P.C. 1.5(a). Contingent fee arrangements are not permitted in domestic relations matters and criminal cases.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

The principle of champerty restricts the assignment of claims. “An assignment is champertous when the party involved: (1) has no legitimate interest in the suit, but for the agreement; (2) expends his own money in prosecuting the suit; and (3) is entitled by the bargain to share in the proceeds of the suit”. *Frank v. TeWinkle*, 45 A.3d 434, 438-39 (Pa. Super. Ct. 2012); *see also Dougherty v. Carlisle Trans. Prods., Inc.*, 610 F. App’x 91 (3d Cir. May 15, 2015) (predicting that Pennsylvania Supreme Court would agree that champerty remains a viable defence); *WFIC, LLC v. Labarre*, -- A.2d --, 2016 WL 4769436, at * (Pa. Super. Ct. Sept. 13, 2016) (invalidating fee agreement based on champerty).

A lawyer shall not provide financial assistance to a client, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client. Pa. R.P.C. 1.8(e).

1.8 Can a party obtain security for/a guarantee over its legal costs?

Security for costs may be required in certain situations, including in some shareholder suits, *see* 15 Pa. C.S.A. § 1782(c), real property disputes, and actions involving non-resident plaintiffs. A bond is required by a plaintiff instituting an action to seize personal property. Pa. R. C. P. 1075.3(b). A preliminary injunction will only be granted if the plaintiff files a bond. Pa. R.C.P. 1531. The court may order a party seeking an appeal, a stay, or an injunction pending appeal to post a bond as security. Pa. R.A.P. 1731.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

For most claims, no notice is required prior to instituting a civil action. Certain claims, such as employment discrimination, require exhaustion of administrative remedies. Every pleading containing an averment of fact not appearing in the record or containing a denial of fact shall state that the averment or denial is true upon the signer’s personal knowledge and shall be verified. Pa. R.C.P. 1024. In any action based on professional liability, the plaintiff must file a certificate of merit within 60 days of filing the complaint. Pa. R.C.P. 1042.3.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

A four-year statute of limitations applies to contract actions. Personal injury actions must be brought within two years. An action

involving the possession of real property must be brought within 21 years. A two-year statute of limitation governs actions for waste and trespass. An action based on a construction defect must be filed within 12 years. Other civil actions that are not subject to a specific limitations period must be commenced within six years.

The statute of limitations begins to run when the plaintiff is able to maintain the elements of a cause of action. The statute of limitations may be tolled for certain claims by the discovery rule, that is, it begins to run when the plaintiff, by the exercise of reasonable diligence, knew or should have known of the injury and its cause.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

A civil action is commenced by filing either (1) a praecipe for a writ of summons, or (2) a complaint. Pa. R.C.P. 1007. If the plaintiff initiates the action by way of a praecipe for a writ of summons, but does not file a complaint, the prothonotary, upon praecipe by the defendant, will enter a rule upon the plaintiff to file a complaint. If the plaintiff fails to do so within 20 days after service of the rule, upon praecipe by the defendant, the prothonotary will enter a judgment of non pros. Pa. R.C.P. 1037(a).

Original process must be served within 30 days of the issuance of a writ of summons or the filing of a complaint. Pa. R.C.P. 401. If service is not made, upon praecipe by the plaintiff, the prothonotary will reissue the writ of summons or reinstate the complaint, providing an additional 30 days for service. Pa. R.C.P. 401. In all counties except Philadelphia, original process – except for limited categories of actions set forth in Pa. R.C.P. 400(b) and (c) – must be served by a sheriff. Pa. R.C.P. 400. In Philadelphia County, service of original process may be made by a sheriff or any competent adult. Pa. R.C.P. 400.1. Service of original process is made by handing a copy: i) to the defendant; ii) to an adult member of the defendant’s family at the residence or to another adult person in charge if no adult family member is found; iii) to the clerk or manager of a property in which the defendant resides; or iv) at any office or usual place of business of the defendant to the person in charge. Pa. R.C.P. 402. Original process may be served outside the Commonwealth by a competent adult, by mail, or in the manner prescribed by the law of the jurisdiction in which service is to be made. Pa. R.C.P. 404.

Outside Pennsylvania, original process must be served within 90 days of the issuance of the writ or filing the complaint by a competent adult, by mail, in any manner provided by the law of the jurisdiction in which the service is made, in the manner provided by treaty, or as directed by a foreign authority in response to a letter rogatory or request. Pa. R.C.P. 404.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

A plaintiff may seek a preliminary injunction or a temporary restraining order, which requires that the plaintiff’s right to relief be clear, the need for relief be immediate, and the injury be irreparable if the injunction is not granted.

3.3 What are the main elements of the claimant's pleadings?

The pleading must contain a caption, a notice to defend, numbered paragraphs each containing one material allegation, a claim for relief, and must be verified by a party. The claim for relief must be specific. The pleading must be signed by an attorney of record, or the party if not represented.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Pleadings may be amended at any time by filed consent of the adverse party or by leave of the court. Pa. R.C.P. 1033. A party may file an amended pleading as of course within 20 days after service of preliminary objections. If a party has filed an amended pleading, the preliminary objections to the original pleading are deemed moot. Pa. R.C.P. 1028(c)(1).

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

A plaintiff may withdraw a pleading voluntarily by filing a praecipe to discontinue. Pa. R. C. P. 229(a). This may be done any time before the commencement of trial. The case cannot be reopened unless the action is commenced anew and all filing fees are paid.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

Preliminary objections are limited to certain grounds, including lack of subject matter or personal jurisdiction, legal insufficiency of a pleading, and failure to exhaust a statutory remedy. Pa. R.C.P. 1028. If the defendant files an answer, he must specifically deny the plaintiff's averments; general denials have the effect of an admission. Pa. R.C.P. 1029.

The defendant's responsive pleading may contain "new matter", which include a number of affirmative defences that must be pleaded. Pa. R.C.P. 1030. The defendant may also bring a counterclaim or a cross-claim. Pa. R.C.P. 1031, 1031.1.

4.2 What is the time limit within which the statement of defence has to be served?

The defendant can file an answer or preliminary objections within 20 days of service of the complaint. Pa. R.C.P. 1026.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

A defendant may join as an additional defendant any person who may be solely liable or liable with the joining party. Pa. R.C.P. 2252. The joining party may file a praecipe for a writ or a complaint when joining the new defendant.

4.4 What happens if the defendant does not defend the claim?

If the defendant fails to file a response to a pleading, the plaintiff can file a request for a default judgment. Pa. R.C.P. 1037(a). If the prothonotary cannot assess damages, a trial will be held on the amount. Pa. R.C.P. 1037(b)(1).

4.5 Can the defendant dispute the court's jurisdiction?

A defendant can challenge the court's subject matter or personal jurisdiction by way of preliminary objections. Pa. R.C.P. 1028. Subject matter jurisdiction can be raised at any time. Personal jurisdiction must be raised by preliminary objection or the defence is waived.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

If a transaction or occurrence gives rise to more than one cause of action, the plaintiff must join all causes of action. Pa. R.C.P. 1020(d). If the claims do not arise out of the same transaction or occurrence, the plaintiff may still bring multiple claims. Counterclaims are permissive. If the defendant files a counterclaim, the defendant must assert all claims that arise from the same transaction or occurrence.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

If two or more actions in the same county involve a common question of law or fact or arise from the same transaction or occurrence, the court may order a joint hearing or trial, or may order the actions to be consolidated. Pa. R.C.P. 213. If two or more actions pending in different counties involve common questions of law or fact or arise from the same transaction or occurrence, a party can request the court to order coordination of the actions. Pa. R.C.P. 213.1.

5.3 Do you have split trials/bifurcation of proceedings?

The court has discretion to order trials of separate issues. Pa. R.C.P. 213(b).

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

The Court of Common Pleas of Philadelphia has a trial division, an orphans' court division, and a family court division. 42 Pa. C.S.A. § 951(a). It also has a Commerce Program where certain matters are heard, including corporate governance disputes, business disputes, actions related to trade secrets, non-compete agreements, intellectual property, and business torts. There are no separate courts of equity in Pennsylvania.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The court may order the attorneys for the parties to appear for a pre-trial conference to simplify the issues, enter a scheduling order, obtain admissions of fact, limit the number of expert witnesses, and settle the case. Pa. R.C.P. 212.3.

6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court’s orders or directions?

The court may use its contempt power to sanction parties for conduct that brings into disrespect the authority of the court or when a party fails to obey a court order compelling discovery. Pa. R.C.P. 4019. A party subject to sanctions may be required to pay the moving party’s expenses and attorneys’ fees.

6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

A party can file a preliminary objection based on inclusion of “scandalous or impertinent matter”. Pa. R.C.P. 1028(a)(2). A court may dismiss a case entirely by granting a defendant’s preliminary objections. Pa. R.C.P. 1028. Rule 230.2 permitted a court to terminate a case in which there had been no activity for two years. However, the Supreme Court of Pennsylvania recently suspended this rule. Trial courts retain the ability to terminate a matter that has been inactive for an unreasonable amount of time under Rule of Judicial Administration 1901.

6.5 Can the civil courts in your jurisdiction enter summary judgment?

Summary judgment may be granted: (1) where there is no genuine issue of any material fact as to a necessary element of the cause of action or defence; and (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defence which in a jury trial would require the issues to be submitted to a jury. Pa. R.C.P. 1035.2.

6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The court may stay execution on a judgment, order a stay of proceedings and compel arbitration, and order a stay pending appeal. A motion for a stay of a judgment pending appeal must establish that the petitioner is likely to prevail on the merits, that the petitioner will suffer irreparable injury, that the issuance of a stay will not substantially harm other interested parties, and that issuance of a stay will not adversely affect the public interest. *Pa. Pub. Util. Comm’n v. Process Gas Consumers Group*, 467 A.2d 805, 808-09 (Pa. 1983).

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

A party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Pa. R.C.P. 4003.1(a).

A plaintiff may obtain pre-complaint discovery where the information sought is material and necessary to the filing of the complaint. The discovery sought must not cause unreasonable annoyance, embarrassment, oppression, burden, or expense. Pa. R. C. P. 4003.8.

Pennsylvania Rule of Civil Procedure 4009.1(a) provides that a party may serve a request upon a party to produce electronically stored information. The rule further specifies that “[a] party requesting electronically stored information may specify the format in which it is to be produced”. Pa. R. C. P. 4009.1(b). Pennsylvania rules do not currently address specific methods of e-disclosure, such as predictive coding.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

A party may not obtain discovery regarding matters which are privileged. Communications subject to the attorney-client and accountant-client privilege are not discoverable. In Pennsylvania, “the attorney-client privilege operates in a two-way fashion to protect confidential client-to-attorney or attorney-to-client communications made for the purpose of obtaining or providing professional legal advice”. *Gillard v. AIG Ins. Co.*, 15 A.3d 44, 59 (Pa. 2011). A party may not obtain attorney work product. Pa. R.C.P. 4003.3.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

A subpoena requires a third party to attend and testify at a deposition, and may also require the person to produce documents. Pa. R.C.P. 234.1(a). A party may also obtain documents from a non-party by giving written notice of the intent to serve a subpoena at least 20 days before service. Pa. R.C.P. 4009.21.

7.4 What is the court’s role in disclosure in civil proceedings in your jurisdiction?

A party may seek to compel discovery responses. Pa. R.C.P. 4019. Upon motion to quash a subpoena, the court may make an order to protect the party, witness, or other person from unreasonable annoyance, embarrassment, oppression, burden, or expense. Pa. R.C.P. 234.4(b).

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

The court may prohibit a party from disclosing trade secrets, confidential research, or other commercial information. Pa. R.C.P. 4012.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

The Pennsylvania Rules of Evidence govern the admissibility of evidence.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

Evidence is admissible if it is competent and relevant. “Evidence is competent if it is material to the issues to be determined at trial, and relevant if it tends to prove or disprove a material fact in issue.” *McManamon v. Washko*, 906 A.2d 1259, 1274 (Pa. Super. Ct. 2006). Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or cumulative evidence. Pa. R. Evid. 403. The standard for qualification of an expert is liberal and considers “whether the witness has any reasonable pretension to specialised knowledge on the subject under investigation”. *Miller v. Brass Rail Tavern, Inc.*, 664 A.2d 525, 528 (Pa. 1995). Pennsylvania courts follow the *Frye* test, as set forth in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), which admits novel scientific evidence if the underlying methodology has gained general acceptance in the relevant scientific community.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

A witness can only testify to matters as to which he or she has personal knowledge. Pa. R. Evid. 601. Deposition testimony may be used at trial, such as for impeachment or if the witness is more than 100 miles from the place of trial or outside the Commonwealth. Pa. R.C.P. 4020.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

A party may propound interrogatories asking the other party to identify any expert witness, as well as the subject matter on which the expert is expected to testify. Pa. R.C.P. 4003.5. An expert is permitted to give an opinion on the ultimate issue. Pa. R. Evid. 704. However, experts may not testify on questions of law. The purpose of expert testimony is to assist the trier of fact in deciding complex factual issues.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

A final judgment is the final determination of the rights and obligations of the parties in a case. An interlocutory judgment determines a preliminary issue and does not adjudicate the parties’ ultimate rights. A preliminary injunction is an interlocutory judgment. The court may enter a final judgment ordering money damages. Under the Declaratory Judgments Act, 42 Pa. C.S.A. §

7532, courts have authority to issue declaratory judgments, which determine the rights of the parties with respect to certain legal issues.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Pennsylvania courts adhere to the “American Rule, which states that litigants are responsible for their own litigation costs and may not recover them from an adverse party unless there is express statutory authorisation, a clear agreement of the parties, or some other established exception”. *In re Farnese*, 17 A.3d 357, 370 (Pa. 2011). An award of damages is subject to post-judgment interest from the date on which the judgment is finally entered. The legal rate of interest in Pennsylvania is 6%. Pre-judgment interest is only awarded where it is necessary to prevent injustice.

9.3 How can a domestic/foreign judgment be recognised and enforced?

Execution of a judgment is commenced by filing a writ of execution with the prothonotary of any county in which the judgment has been entered. Pa. R.C.P. 3103(a). The writ of execution can be enforced by a variety of means including sale of real property, garnishment, execution against contents of a safety deposit box, and sale of securities. In special actions, enforcement of a judgment occurs through an action of ejectment (to obtain possession of real property), an action of replevin (to obtain possession of personal property), and mortgage foreclosures.

Full Faith and Credit Clause of the United States Constitution requires courts to recognise judgments from other states. Pennsylvania law contains a Uniform Enforcement of Foreign Judgments Act, which governs enforcement of judgments of other states. *See* 42 Pa. C.S.A. § 4306. The Uniform Foreign Money Judgment Recognition Act provides for enforcement of money judgments obtained in another country. *See* 42 Pa. C.S.A. § 22001 *et seq.*; *see also Louis Dreyfus Commodities Suisse SA v. Fin. Software Sys., Inc.*, 99 A.3d 79 (Pa. Super. Ct. 2014) (instructing that judgments of other countries must first be recognised under the Recognition Act).

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

There are two intermediate appellate courts in Pennsylvania: the Commonwealth Court; and the Superior Court. The Pennsylvania Rules of Appellate Procedure provide for appeals of right from final orders, from collateral orders, and from certain interlocutory orders. If an order is not appealable of right, a petition for permission to appeal may be filed, or a determination of finality sought. Pa. R.A.P. 341(c); Pa. R.A.P. 1311.

Depending on the case and the order, the Pennsylvania Supreme Court hears appeals from the Court of Common Pleas, the Superior Court, and the Commonwealth Court. Some appeals to the Supreme Court are as of right. *E.g.*, 42 Pa. C.S.A. § 9711(h); Pa. R.A.P. 1101. Most appeals are discretionary and are initiated by a petition for allowance of appeal from a final order of the Commonwealth Court or the Superior Court. Pa. R.A.P. 1112(c). The criteria that the Supreme Court uses to grant allowance of appeal are set forth in Pa. R.A.P. 1114. The Supreme Court has extraordinary jurisdiction and King’s Bench powers, which can be sought by application. Pa. R.A.P. 3309. Where post-trial motions are required, the issues must be raised in timely post-trial motions in the trial court before they can be raised on appeal.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Under 42 Pa. Cons. Stat. Ann. § 7361, judicial districts are authorised to implement compulsory non-binding arbitration for disputes below a certain dollar amount. For example, all civil actions filed in the Philadelphia Court of Common Pleas with an amount in controversy of \$50,000 or less are subject to compulsory nonbinding arbitration.

II. ALTERNATIVE DISPUTE RESOLUTION

1 General

1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

An agreement to arbitrate is presumed to be an agreement for common law arbitration. 42 Pa. C.S.A. § 7302(a). Mediation is another commonly used method of dispute resolution.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Certain claims are subject to statutory arbitration, including collective bargaining agreements and disputes relating to government contracts. Pa. C.S.A. § 7302(b)-(c). The Pennsylvania Uniform Arbitration Act sets forth the rules governing witnesses, discovery, awards, and fees. A common law arbitration award “may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption, or other irregularity caused the rendition of an unjust, inequitable or unconscionable award”. 42 Pa. C.S.A. § 7341. Civil actions where the amount in controversy does not exceed a certain amount are subject to compulsory arbitration.

1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

An agreement to arbitrate a child custody dispute is permissible but may not be enforced where it is not in the best interests of the child. *Miller v. Miller*, 620 A.2d 1161 (Pa. Super. Ct. 1993). Arbitration clauses may be found unenforceable under extraordinary circumstances if they violate public policy. *See In re Fellman*, 604 A.2d 263 (Pa. Super. Ct. 1992).

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Where an arbitration clause governs a dispute between parties, a party may file a motion to compel arbitration. Courts address disputes over the scope of the arbitration clause, i.e. what issues may be arbitrated, unless the parties have agreed to submit such disputes to arbitration. A court may order litigation to be stayed pending arbitration.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

Appellate review is available of final arbitration orders, but the review is limited, as described in Section II, question 1.2. A court may enforce an arbitration award by ordering specific performance. In court-established custody mediation programmes, sanctions are available against a party who does not comply with the rules. Pa. R.C.P. 1940.8.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

Arbitration agreements often call for disputes to be arbitrated by the American Arbitration Association. JAMS, a well-known provider of arbitration and mediation services, has a location in Philadelphia, Pennsylvania. Pennsylvania’s Office of General Counsel offers a mediation programme for disputes involving Commonwealth employees or agencies. The Pennsylvania Council of Mediators provides mediation services in private disputes.



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Michael W. McTigue Jr. is a sought-after advocate with a track record of trying and winning complex litigation and arbitration proceedings throughout the U.S. and globally. As Chair of the Litigation Practice Group and Executive Partner, Michael oversees all of the firm's nationally recognised litigation practices.

Michael is trusted by global companies across a broad range of industries to be lead counsel in their most sophisticated and important legal disputes. His representative matters have included consumer, securities, product liability, bankruptcy, intellectual property, unfair trade practices, commercial and mergers and acquisitions arbitrations and litigations. He has particular experience in defending class actions.

Michael has been recognised by Benchmark Litigation as a Pennsylvania Litigation Star and been named to BTI's Client Service All-Star Team, singled out by in-house corporate counsel for delivering "unsurpassed excellence in client service". He also has served on the boards of several non-profit organisations. Currently, Michael serves as a Senior Hearing Committee Member for the Disciplinary Board of the Supreme Court of Pennsylvania.

For a full biography visit <http://www.drinkerbiddle.com/people/m/mctigue-jr-michael-w>.



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Jennifer B. Dempsey defends clients in U.S. federal and state courts in complex commercial litigation, SEC investigations, and white collar matters. Jennifer also defends against class action cases involving consumer fraud and products liability claims and counsels clients on potential litigation, factual discovery, dispositive motions, and appeals. She represents pharmaceutical manufacturers, financial service providers, automobile manufacturers, professional service providers, and chemical companies.

Jennifer maintains an active *pro bono* practice representing indigent clients in conjunction with the Homeless Advocacy Project, a nonprofit organisation that provides legal and advocacy needs for homeless individuals and families in Philadelphia.

Jennifer is also a contributor to the firm's SECurities Law Perspectives Blog (www.securitieslawperspectives.com), which provides reports, discussions, and analyses on noteworthy trends in enforcement and regulatory activity of the U.S. Securities and Exchange Commission (SEC) and other agencies, such as the U.S. Commodity Futures Trading Commission (CFTC).

For a full biography visit <http://www.drinkerbiddle.com/people/d/dempsey-jennifer-b>.

Drinker Biddle

Drinker Biddle is a national, full-service law firm providing litigation, regulatory and business solutions to public and private corporations, multinational Fortune 100 companies and start-ups. Building on a rich 167-year history, our more than 600 lawyers across 11 offices – including in Pennsylvania, New Jersey, New York and Illinois – uphold our firm's reputation for outstanding legal results and bring a sophisticated, forward-thinking approach to every client engagement.

Drinker Biddle's litigators successfully try cases to verdict, efficiently manage class action and multidistrict litigation, and win major victories through creative dispositive motions, well-crafted trial strategies, and focused and effective appeals. Whether it is a "bet-the-company" case, a complex financial dispute, or a more routine business conflict, our experienced litigators stand ready to serve the interests of our clients.