CHALLENGES TO THE COMPLAINT

Assume you are the defense attorney. How would you attack the following pleadings filed in Arkansas federal district court? What is your authority? Read Rules 7-12 and Forms 30, 40. Review pages 362-368, 563-567, 579, 584-586, 590-594, and 602-612.

1) Personal jurisdiction was not acquired according to International Shoe.

2) The suit was filed in the wrong district.

3) The summons was not stamped by the clerk.

4) The complaint was served upon a ten year old daughter of the defendant.

5) (A) The complaint seeking specific performance of a contract to convey Blackacre alleges a valid written contract and a breach of the contract by the seller, but does not allege that the buyer is ready, willing and able to pay the purchase price.

(B) The complaint seeks specific performance of an oral contract to convey Blackacre, alleges a breach of the contract by the seller, and alleges that the buyer is ready, willing and able to pay the purchase price.

(C) The plaintiff (a tenant) alleges that he was assaulted in his apartment by a trespasser and that the landlord is liable for failing to maintain a safe apartment.

6) The plaintiff is a citizen of Springdale and the defendant is a citizen of Fayetteville.

BONUS:

(A) If (1-6) were all in one lawsuit, how many documents would you file attacking the complaint? What is the minimum allowable? the maximum allowable?

(B) When should they be filed?

(C) Compare and contrast a pleading and a motion.

7) The slander complaint filed in November 2009 states that the slanderous comments were made in July 2008. (Hint: the statute of limitations in Arkansas for slander is one year).

8) The action seeking damages for the failure to convey Blackacre as called for in the contract alleges that the defendant had been convicted of drunken driving while driving home from a basketball game.

9) The assault complaint was filed on legal-size paper. (Hint: About ten years ago the courts switched to 8½ x 11 paper).

10) The fraud complaint was not signed by the attorney.

11) In a single count

(A) the wife seeks damages for personal injuries;

(B) she seeks damages for the damage to her automobile;

(C) she seeks punitive damages against the other driver;

(D) the husband seeks damages for the loss of consortium;

(E) the husband seeks damages because the defendant breached a real estate contract two years ago.

(Assume each of the separate five claims is correctly alleged.)

12) The fraud complaint is written in a style resembling James Joyce, William Faulkner and E.E. Cummings.

13) The complaint alleges that "the defendant physician committed acts of malpractice, causing injury to the plaintiff."

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