FRCP 12(b)(6) “Failure to State a Claim for which Relief can be Granted”

21 Oct

For years, I’ve watched pro se plaintiff after pro se plaintiff have their complaints dismissed by federal courts based on a defendant’s pre-trial, Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) “for failure to state a claim for which relief can be granted.” Although the federal courts’ repeatedly grant of 12(b)(6) Motions to Dismiss, the meaning of the phrase “failure to state a claim for which relief can be granted” has remained almost as obscure as that of a magical incantation (“*abra cadabra!*”). Everyone has heard the words but no one seems to understand what they really mean.

Over the years, I’ve speculated on several possible explanations for what “failure to state a claim for which relief can be granted” might truly mean. What follows are several case excerpts plus more of my bracketed speculation. This speculation is somewhat “stream of consciousness” but nevertheless expresses my “theory de jure” as to what that mysterious phrase might really mean. I can’t say this current speculation is true, but it’s probably my best to date.

"The **general rule** in appraising the sufficiency of a complaint for failure to state a claim is that a **complaint should not be dismissed** '***unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' CONLEY VS. GIBSON (1957), 355 U.S. 41, 45, 46, 78 S.Ct. 99, 102, 2LEd 2d 80; SEYMOUR VS. UNION NEWS COMPANY, 7 Cir., 1954, 217 F.2d 168; and see rule 54c, demand for judgment, FEDERAL RULES OF CIVIL PROCEDURE, 28 USCA: "***every **final judgment shall grant the relief** to which the **party** in whose favor it is rendered is **entitled**, **even if the party has not demanded such relief** in his pleadings." U.S. V. WHITE COUNTY BRIDGE COMMISSION (1960), 2 Fr Serv 2d 107, 275 F2d 529, 535

[The plaintiff must expressly show his "title" to whatever relief is requested. I.e., the plaintiff must show that it's *possible* for him to prove a "set of facts" in court (and probably to a jury) that proves he has "title" to the relief requested.

The "relief" might be at law, but is probably equitable. If so, the plaintiff must show that he could possibly prove a set of facts that proved he had EQUITABLE TITLE to the "relief" (benefit) requested. This, in turn, implies that the plaintiff must allege 1) facts sufficient to prove the existence of a fiduciary relationship between himself and the defendants wherein he is the beneficiary and the defendants are fiduciaries; and 2) a breach by the defendants of their fiduciary obligations relative to the plaintiff.

The problem for the plaintiff is alleging that government employees owed him a fiduciary obligation. Under the Constitution and de jure government, the government officer has a fiduciary obligation to each of the People. However, under the employer-employee doctrine, an employee has a fiduciary obligation to the employer—but not the "customer". Thus, as gov-co employees (and only "de facto officers"), the government "official" would have no fiduciary obligation to the injured plaintiff and could not be charged with a breach of such non-existent fiduciary obligation.

This implies that the proper defendant would be the employer rather than any of the employees. The employer would presumably have fiduciary obligations (or perhaps even an obligations at law) to the customer.

Of course, if the plaintiff tried to sue a government employer as defendant for breach, that "employer" would claim "sovereign immunity". To prevail, the plaintiff would have to disprove that the governmental "employer" was truly a sovereign entity by proving the governmental employers was 1) an independent corporation with its own EIN; 2) an independent administrative agency that worked for government but was not part of government; 3) conducting its affairs in legal tender so it could not be a State of the Union; 4) acting "within The State" rather than "in this state"; . . . .

Ideally the plaintiff would charge both 1) the governmental employer; and 2) the

governmental employees ("officials") in multiple causes of action structured as "double-edged strategies" wherein both sets of defendants can only avoid liability by implicating the other.

I.e., sue the governmental employer for breach based on the allegation that the agency-employer had a fiduciary obligation to the "customer" (plaintiff). But even this might be a stretch if the government employer was an independent administrative agency that was hired (employed) by whatever passes for government. If the independent administrative agency is not part of government, but merely an "employee," then the agency owes its fiduciary duty to its employer—the government—rather than to the "customer". Even so, a cause of action against the independent agency employer must be devised for the purpose of "inviting" that employer to claim "sovereignty".

Then, once the employer claims "sovereign immunity," it employees would be deemed to be "officers" with fiduciary obligations to the People rather than employees with fiduciary obligations only to the employer.

Also, the employees can be charged with breach of fiduciary obligations based on their OATHS OF OFFICE.

But it's important to recognize the "chain" of employment links that cause 1) the "officials" to have fiduciary obligations to their employer (rather than the customer-plaintiff), and 2) that employer (if an independent administrative agency) to have fiduciary obligations only to whatever "governmental" entity hired it (rather than to the customer-plaintiff). There might even be a third employment link if the entity that hired the independent administrative agency was itself an "employee" of The State or of this state.

However, the money issue should be useful to "prove" that the varies "employers" cannot claim sovereign immunity. Insofar as any of the employees, officials and employers are transacting in legal tender, they can't be or represent a State of the Union and therefore can't claim sovereign immunity—*provided* that the plaintiff-customer show that all activities took place "within The State". If the plaintiff admit he was voluntarily acting "in this state," he's probably waived any complaint based on fiduciary obligations of the employees and/or employers.

This is a complex and subtle process that might be implemented somewhat as follows:

First, allege that you are a man.

Second, allege that all acts (and especially injuries) took place on the soil within the actual boundaries of The State.

Third, charge the perpetrators (employees) as "officers" under the Constitution for breach

of their fiduciary obligations to the People. If they claim sovereign immunity, defeat that claim with the money issue (or others) and demand a default judgment.

Fourth, charge the perpetrators (employees) as "employees" who nevertheless have fiduciary obligations to the People based on their Oaths of Office.

Fifth, charge the perpetrators (employees) with fraud for masquerading as if they were "officers" of The State and therefore only a pretense of authority when they knew or should've known that they had no authority (this depends on the plaintiff having challenged their authority from the beginning and precluding the de facto officer doctrine immunity.

Sixth, charge the employer for breach of fiduciary obligations to the plaintiff under the Constitution.

Seventh, charge the employer for breach of fiduciary obligations under the EMPLOYER'S CHARTER! DEMAND THEY PRODUCE the corporate charter! If they have no corporate charter, they must be either 1) government or 2) fraudulent. If they are government, they have fiduciary obligations to the People. If they are fraudulent, they are subject to criminal prosecution, RICO, etc.

Eighth, go after the attorney's allegedly representing the independent agency (employer) under a Rule 12 (?) challenge which (according to Fox) requires them to "have the law" with them when they appear at court. "The law" is the corporate charter. If they don't produce the corporate charter, then either the agency is not "independent" and does have fiduciary obligations under the Constitution, or the agency and/or attorney is engaged fraudulent misrepresentation.

Etc.

(Got to create a "double-edged strategy" with the objective of making them admit, heads, they have a fiduciary obligation as officers to the plaintiff or, tails, the employer has a fiduciary obligation to the plaintiff.)

To beat the 12(b)(6) motion, plaintiff must show facts that would prove his "title" to the (equitable?) relief against the defendant fiduciaries.

But there is one other point: If the 12(b)(6) is all about equitable relief, what happens if the plaintiff not only makes a claim under equity, but also alleges a "legal" or "perfect" title AT LAW? Maybe they can dismiss your equitable claim no matter what you say. But if you can create a claim AT COMMON LAW or perhaps IN ADMIRALTY, can 12(b)(6) even be considered?

That's a very good point.

Create claims both in equity (in this state?) and AT LAW ("within The State"?)

The previous court's decision alleges that the plaintiff can proves "no set of facts" sufficient to entitle him. The phrase "no set of facts" implies that there may be several alternative "sets of facts" which might be alleged and possibly proved by the plaintiff. (This is where the "double-edged strategy" applies.) Plaintiff should allege several "sets of facts" (causes? Claims?) under which he might be entitled to "relief". These sets of facts should be carefully devised so the defendants cannot deny one set without confessing another.]

"A **complaint** may **not be dismissed** on motion **if it states some sort of claim**, baseless though it may eventually prove to be, and inartistically as the complaint may be drawn. Therefore, under our rules, the plaintiff's allegations that he is suing in 'criminal libel' should not be literally construed. [3] The complaint is hard to understand but this, with nothing more, should not bring about a dismissal of the complaint, **particularly is this true where a defendant is not represented by counsel**, and in view of rule 8{f} of the rules of civil procedure, 28 U.S.C., which requires that **all pleadings shall be construed as to do substantial justice** BURT VS. CITY OF NEW YORK, 2Cir., (1946) 156 F.2d 791. Accordingly, the complaint will not be dismissed for insufficiency. [4,5] Since the **Federal Courts are courts of limited jurisdiction**, a **plaintiff must always show in his complaint the grounds upon which that jurisdiction depends**." STEIN VS. BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPER HANGERS OF AMERICA, DCCDJ (**1950**), 11 F.R.D. 153.

[First, the court declares that no true "complaint" can be dismissed IF that complaint is supported by a valid "CLAIM" (to equitable or legal right?). This implies that we must learn all of the elements required to create a valid claim and proof of TITLE and ensure that each of those elements is present in each of the plaintiff's claims.

Second, the plaintiff's petition and/or claim should be expressly written for the purpose of seeking "SUBSTANTIAL JUSTICE" (whatever that is) as compared to whatever alternative forms of "justice" might exist. I suspect that "substantial" justice may be AT LAW while the alternatives may be in equity—but this requires research.

Third, plaintiff's complaint (not claim) must show grounds for the federal court's jurisdiction. This requirement (referenced in A.D. 1950) might or might not have been imposed relative to Article III courts. (Needs research) As a precaution, perhaps every CLAIM should also include proof of the federal court's JURISDICTION. If the jurisdiction is in the claim, then the jurisdiction is surely in the complaint . . . ??]

"A complaint will not be dismissed for failure to state a claim, even though **inartistically** drawn and **lacking in allegations of essential facts**, it cannot be said that under no circumstances will the party be able to recover." JOHN EDWARD CROCKARD VS. PUBLISHERS, SATURDAY EVENING

POST MAGAZINE OF PHILADELPHIA, PA (1956) Fr Serv 29, 19 F.R.D. 511, DCED Pa 19 (1958)

[First, the reference to "essential facts" is ambiguous in that it might refer to facts "essential" to the "claim" or it might refer to facts "essential" to the complaint. That's two different sets of facts. Close reading suggests that this reference to "facts" concerns those "essential" to the *claim* rather than the complaint.

Clearly, 12(b)(6) is all about the validity of the "claim" rather than the complaint.

Therefore, if a "lack of allegations of essential facts" in a "claim" is insufficient to cause a 12(b)(6) dismissal a plaintiff's *complaint*, then the issue of "facts" essential to the validity of the *claim* is not central to 12(b)(6). That tells me that a *claim* sufficient to ensure a complaint will be heard must be based on the relevant LAW rather than the FACTS.

A valid claim must include reference to the valid LAW which entitles the plaintiff to seek "relief". Is that "LAW" the USC, common law, State or federal ORGANIC law, or private law under some private fiduciary relationship between plaintiff and defendant?

The valid claim must be based on and expressly reference (and perhaps even prove) some LAW which can be proven by one or more sets of facts. This suggests that a valid claim should include certified copies of the relevant law under which the claim is made.

More, I am beginning to suspect that the valid claim must be sent to the defendant BEFORE a lawsuit is filed. I.e., first you present a valid CLAIM to the defendants (probably by means of certified or registered mail for evidence). Yes, yes YES! I'll bet that's it! I'll bet we have to implement a standard (administrative?) debt collection process—perhaps with three or more "notices" of "claim" sent to the defendants. I'll bet the mysterious "claim" that the plaintiff has "failed to state" under 12(b)(6) is some sort of collection process or demand letter(s) that must be sent before the lawsuit.

The "claim" is probably not the text that's included within the "complaint". The "claim" is probably a series of notices and/or demands sent to the defendants which inform the defendants of the law and factual basis of the claim. The "claim" is not the text, it's the EXHIBITS of the several Notices and/or Demands that constitute collectively a valid "claim".

The pro se's just sue people without ever making a proper "claim" prior to the lawsuit. I'll bet that's why the pro se suits are routinely dismissed on 12(b)(6). It's not about the quality of the "claim" within the body of the "complaint". It's about the totality of the "claim process" implemented before the suit is filed.

First, the plaintiff must present his "claims" to the defendants. Then, after the total claim

process has been implemented by the plaintiff and rejected by the defendants, THEN the plaintiff will have "stated a claim" for which relief can be granted.

The deception is in the term "a claim" as in "failure to state a claim for which relief can be granted." I read the indefinite adjective "a" to imply the existence of a single "claim". Likewise, I read the word "claim" to be singular. I have presumed this singular claim must be the "claim" asserted in the text of the complaint. Maybe that presumption is false. Maybe "a claim" is not a singular claim, but rather the singular *result* of having properly taken all of the several steps required to make a complete administrative claims.

The whole 12(b)(6) process might simply be a variation on "failure to exhaust your administrative remedies". I'll bet I don't have a valid "claim" to take to court until I've first given the defendants several "notices of claim" that conform to the Debt Collection Process laws.

I give them Notice of my claim and thereby create their opportunity for discovery (inquiry). They get to ask questions. If they do anything other than ASK QUESTIONS, they are presumed to have adequate Notice and then I can take them to the "hearing". I can't take the defendants to court (the "hearing") until I've first "stated" (given *notice* of) the claim to the defendants.

The 12(b)(6) motion for dismissal may be a function of the rules of procedural due process —the minimum due process afforded to all: 1) Notice; and 2) Opportunity to be heard (courtroom hearing). I'll bet that "stating a claim" is synonymous with giving them sufficient NOTICE. I can't take them to court until they've had adequate Notice. Failure to "state a claim" means failure to "give adequate Notice" prior to the hearing.

I'm about 90% certain that a "failure to state a claim" is ultimately about "failure to provide adequate notice (and opportunity to inquire) of a claim" to the defendants PRIOR to taking them to court.

If so, then 12(b)(6) "failure to state a claim" (at the federal level and some equivalent at your state level) would be the way to attack any INSUFFICIENT NOTICE—including those sent by the gov-co. I.e., if gov-co sent me a notice and I responded with proper questions, and they refused to answer, I'd have grounds to make a 12(b)(6) motion for "failure to state a claim".

Interesting. You start trying to understand 12(b)(6) motions and wind up understanding (maybe) how to attack gov-co Notices. Without sufficient Notice (*of claim*) we can't take them to court and they can't take us to court.

If the essence of a valid claim is the LAW rather than the FACTS, then that's what must be inquired about in response to notice. This is consistent with court determinations that an adequate

notice need not provide a full litany of FACTS. Instead, the sufficient notice must only give sufficient information to put the recipient "on inquiry". I have presumed (until now) that the proper inquiry would be to discover all of the relevant or material FACTS. I'm beginning to suspect that primary inquiry is not about FACTS, but about the LAW underlying the CLAIM.

This conclusion may be mistaken but, for now and for me, it makes almost perfect sense.

The first opportunity provided by the Notice is the recipient's opportunity to inquire into and then deny the LAW on which the ENTITLEMENT to make the CLAIM is based. In essence the primary question in response to a Notice of Claim is "Under what LAW do you make this claim?" The second question would probably be, "Under what authority do you deem me to be subject to said LAW?" Third, "Under what FACTS do you deem me to subject to said LAW?" Fourth, "In what PLACE (The State or this state) do you deem me subject to this LAW?" Fifth, "If the alleged LAW is private in nature, what facts exist to show that I consented to be bound by this law?" "Is this private law based on contract or trust?" "If so, where is my signature voluntarily agreeing to be bound by such private law?" "If there is no signature, what are all the specific instances of my personal conduct which you believe gives rise to your TITLE under PRIVATE LAW to make claim against me?" "Is this claim against me—a living man made in God's image and endowed by his Creator with certain unalienable Rights and properly named "Alfred Adask?" "Is this claim made against an entity named "ALFRED ADASK" which might be a fictional entity, person or capacity other than the living man named 'Alfred Adask'?" "Are the names "Alfred Adask" and "ALFRED ADASK" synonymous?" "Do the names "Alfred Adask" and "ALFRED ADASK" both signify a man made in God's image and endowed by his Creator with certain unalienable Rights?" "If your claim is based on PUBLIC law, do you represent the government "The State of Texas"—a member-State of the perpetual Union styled "The United States of America"?" "If your claim is based on PUBLIC law, are you an officer under "The Constitution of The State of Texas"—"The State of Texas" being a member-State of the perpetual Union styled "The United States of America"? "If your claim is based on title under PUBLIC law of The State, why isn't your claim denominated in lawful money (gold and silver coin as required by Article 1 Section 10 Clause 1 of The Constitution of the United States adopted on or about A.D. 1789?" "What is your authority to make a claim in terms of legal tender on the soil within the boundaries if The State of Texas—a member-State of the perpetual Union styled "The United States of America"?"

"Are you cognizant of the fact that the minimum due process available to all defendants is "procedural due process"?" "Are you cognizant of the fact that "procedural due process" consists of 1) Notice and 2) Opportunity to be heard?" "Are you cognizant of the fact that Notice creates a right and sometimes duty of inquiry for the Notice recipient and/or agent or fiduciary acting on behalf of the Notice recipient?" "Are you aware that the Notice recipient's right to make inquiry

entitles the Notice recipient to claim answers from the Notice author?" Are you cognizant of the fact that no Notice is complete so long as reasonable and relevant inquiry by the Notice recipient remain unanswered?" "Are you cognizant of the fact that without sufficient Notice, plaintiff cannot lawfully proceed to a hearing?" "Are you cognizant of the fact that a refusal to fully answer questions posed by a Notice recipient is grounds to have a case dismissed for failure to state a claim for which relief can be granted?" ADD AUTHORITIES.

Etc., etc.

"FRCP 8f: CONSTRUCTION OF pleadings. All pleadings shall be so construed as to do **substantial** justice." DIOGUARDI VS. DURNING, 2 CIR., (1944) 139 F2d 774

[Again, the concept of "substantial justice" is crucial. What exactly does it mean or imply?]

"**Counterclaims will not be dismissed for failure to state a claim**, even though inartistically drawn and lacking in allegations of essential facts, **it cannot be said that under no circumstances** will the party be able to recover." LYNN VS VALENTINE VS. LEVY, 23 Fr 46, 19 FDR, DSCDNY (1956)

[This implies that while an original plaintiff's suit can be dismissed for "failure to state a claim," that option does not exist for a counter-claim. If the foregoing analysis and conclusions are roughly correct, then there is no requirement to provide NOTICE of Claim to the Plaintiff as prerequisite for the COUNTER-Claim. A valid lawsuit filed by a plaintiff creates opportunity for inquiry for both the plaintiff and the defendant. Therefore, there is no reason for the defendant to create further right of inquiry by filing his NOTICE of Claim as 1) the first step in procedural due process; and 2) condition prerequisite for proceeding to the hearing.]

JUDICIARY ACT OF 1789, suit cannot be dismissed because of errors in service

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38 Comments

Posted by Adask on October 21, 2008 in Due Process, Notice

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38 responses to “*FRCP 12(b)(6) “Failure to State a Claim for which Relief can be Granted”*”

1. 

   MaxxNY

   November 17, 2008 at 3:03 AM

   Yup I was arrested about 11 months ago for not having a “license” , I knew the day would come at some point . . . so i was always mentally preparing and scripting in my head for just this day. So when I did I bought Dr Graves jurisdictionary.com knowing they would foist a lawyer on me, and they did. There were about 10 hearings and then the trial if they didnt dismiss –
   Me – “Judge where is the plaintiff?” and some guy to my left in the ugliest brown suit with a smug smirk on his face, pointed to himself . . .
   ” I motion the court to put him under oath if he is going to testify against me , ive never seen this man before in my life . . .”
   ” Whats your name ?”
   Silence . . .
   “judge whats his name?”
   Silence . . .
   I turned to the apparent ADA and said “You need to bring my accuser before me and the facts in evidence. . .” then the shyster motioned to have me arrested, in which the judge denied him.
   You see I filed tons of paperwork, motions and objections and hoped that I had to be the biggest pain in the ass, as they “invited” me to court via handcuff. THEY probably felt that I wasn’t doing the paperwork right but my poetry spoke the Truth.
   Now I knew they weren’t listening so I used psychological warfare, because I wasn’t going away and I dont run, from anybody . . . my motto,
   “When in Hell do as the satanist do . . .” I started showing up in court with upside down pentagrams and an attitude problem armed with the Truth and evidence you do NOT need a drivers license; a 1909 letter from the NY state attorney generals office stating I did not need a license to operate a motor vehicle in my private capacity . . . the judges and the DA’s oath , their contract , remember now Im Lucifer . Funny how things are worded because in their oath is says “to faithfully discharge their duties…” Discharge means to throw out, dismiss from obligation, this is where dictionaries are very handy, and I called them on that too . . . their contract to the public is VOID. So to make a very long interesting story short,the trial came,the lawyer whose ass I ripped in the courtroom and letter; he violated our confidentiality by talking to the DA WITHOUT MY PERMISSION and my mother and threatened me with arrest, “malicious prosecution” via my

mother if I didnt show up to a court date that I personally adjourned because of other commitment. The judge told the lawyer to “get rid of this guy…” I told the lawyer “throw it all out,no fines ,surcharges so called points NOTHING . . . and they finally did. Im leaving out details. But I got what I wanted , pretty much with a bit capitulation. Now the reason I say this is because there are many things one can do without taking the “revolution to the next level” according to what certain shortwave radio hosts state . . . and that is do not quit, stick to your “guns” and fight win or lose. Also bring witnesses. They couldn’t wait to get me out of that courtroom, as I would stand when they called my name and state ,”For the record, Im here under threat duress and coercion” and what I was teaching the people in the courtroom is you can be verbal and take a stand and start to wake people up . . . break the hypnosis of the hocus pocus of these bogus courts if you arm yourself with knowledge of your Rights, manifest your destiny and move cosmic will. Then I would just go home pray and repent for my “symbolic” attempts to our Good Lord, Jesus for my poetic license :-) along with a good dose of theater and drama.
Win or lose I was being extremely disruptive to their psyche.
“judge is this a court of record?” as courts of non record have NO power to fine and imprison.
There is more ill tell in next post . . .

Reply

- 

  Bill

  May 30, 2011 at 10:33 PM

  I would love to have the copy of the AG’s opinion that a driver’s license is not necessary in NY.

  Would you be so kind as to email it to me please or give me a proper citation to find it somewhere.

  Thanks

  Bill

  Reply

  - 

    Adask

    May 31, 2011 at 9:40 AM

    That article was written 3 years ago. I don’t recall having an AG’s opinion from NY. But if I did have such opinion, I have since moved my domicile on two occasions. I

doubt that I could find that opinion if you put a gun to my head.

Christopher

September 30, 2012 at 12:42 PM

would you please email me a copy of AG’s opinion that driver’s license is not necessary in NY please? or its proper citation so I can find it?

ida

February 16, 2012 at 2:56 AM

Thumbs up! I’m rather intrigued by your comment about a court of record not having the power to fine or imprison. Do you have documentation on that? I’m in a similar legal tussel with a judge who refuses to recognize any law; he seems to think he is the law. I’m ever on the lookout for ammo to crumble his throne. Please respond if you can. I sure could use the info. Thank you.

Reply

EarlatOregon

March 25, 2014 at 5:10 PM

If he says he is the law,
then I think it is a “Court of Equity”.

Christopher

September 30, 2012 at 12:35 PM

ok you are clearly right! what else and other direction?

Reply

2. 

MaxxNY

November 17, 2008 at 10:01 AM

… so I hope not to offend , yet I hope to offend those who need to be offended . . . but we are in a spiritual psychological war – “Evil shall slay the wicked and those who hate the righteous, will be desolate” Psalms 34:21 This is Rock and Roll to my ears.

Reply

3. 

Andrew May

November 19, 2008 at 6:45 AM

Nice artical, i have filed an appeal to securities class action pro se and have a docket # , I’m having a difficult time finding an appelate brief where one is actually fighting the compromised settlement made and ordered with finial judgement. The case involves a biotech company making numerous false and misleading statements so im fighting lead counsel and the defendants together. Do you have any briefs like this in your file that you could email me to study? Most briefs invole patents and this is not working for me. thanks,andy

Reply

4. 

adask

November 19, 2008 at 7:20 AM

Hi Andy,
Your request seems fairly “exotic”. I have nothing along the lines you’ve requested.
Thanks for reading my article.
Good luck

Al

Reply

5. 

Gregory Heins

November 14, 2009 at 5:30 PM

Thanks, bookmarked this blog.

Reply

6. Pingback: Best « Adask's law
7. 

Jason

August 15, 2011 at 3:05 AM

I need to contact you…

I am about to file a suit against the USPTO and found your article very interesting.

Reply

8. 

ROBERT MORGAN (@ROBMOR12)

September 23, 2011 at 5:42 PM

I just got wipe out by the Federal court for a case against a housing authority and hud wish i had saw this before i file the suit.The court had proof of me been violated and they dismiss pursuant to 12(b)(6).now i know what to do now that why banks send you that first notice when they going to foreclose on you that,s their Claim so when they go to court it is easy for them.
If you do not have money for attorney you do not get your Rights ,to me it kinder like slavery it put you in a different class you got money no problem. no money no rights i all way though that if some one did you wrong show the court proof and the court would correct this boy i was wrong This Is worst than the USSR over their they do not beat around the bush as the old say goes.

Reply

Adask

September 24, 2011 at 5:29 AM

It’s not necessarily true that, having read the article on “Failure to State a Claim” that you absolutely know “what to do now”. What you know is a THEORY that’s been presented on this blog. That theory remains to be proven. More, even if the theory is true, as in all legal conflicts, anything can happen. You can be absolutely right in everything you do and still lose. You can be absolutely wrong, and still win. Litigation is always a street fight. Anyone can lose at any time. Anyone can win. You can never rely on any strategy or theory to absolutely prevail in court.

Reply

Carol Knapp

November 4, 2011 at 10:17 PM

Here’s MY “theory”:

The judges want full discretion to determine whether a case is “worthwhile” enough to waste the Court’s precious time giving the plaintiff their “day in court”. The problem is, too much discretion encourages the judge to allow his/her own emotions to influence what he/she deems “worthwhile”.

FRCP 12(b)(6) is intentionally vague, open-ended and impossible to understand so that the judge can use it according to his/her whim and the sheeple (the “commoners”) are too stupid to see through their tricks.

LaTonya Jackson

August 27, 2013 at 11:57 AM

tisk tisk you say this as though it is as it as and should be, the law should win no hocus pocus. Street fights should be left on the street, law needs to be exercised and we need

to force the exercise to happen. And of course you have totally self absorbed judges who make up unlawful game plans as he sees fit, but should we always go with the flow?

- 

  James Bedard

  October 17, 2012 at 10:41 PM

  Robert said it all. No money, no justice. These judges twist everything you say. I’ve never seen anything like it. What can the average person telling the truth do?

  Reply

9. 

   Amos Hason

   December 23, 2011 at 7:15 PM

   I SEE THAT THE AUTHORS IN HERE KNOWS WHAT THEY ARE TALKING ABOUT !!! and therefore I am asking for help .
   I spent 17 months in jail for criminal threats MADE FROM PUBLIC PHONES which I never made .
   I impeached the witnesses stupidly in the course of trial (I decided to become proper since my public pretender couldn’t stop asking me “why did you do it?” and pushed me to plea bargain)

   I got hung juries after the judge’s allmost instructing the juries to come back and convict me… (through more judicial misconduct such as refusing to hear a 1538.5 motion to suppress and return of property,as un timely filed. though this kind of motion can be filed in the course of trial it self. and the “commissioner on judicial performence” (yeah right) found my complaint insufficiant to investigate…)

   the next stage was to force me into a “plea bargain” which I vehemently denied !
   and in pursuant to this refusal the “jail” decided to put me in “psychiatric evaluation” claiming that I told the jail psychiatrist (which I have never talked to before) that ” I want to hurt others” and stop my visits in pro per library, due to my transfer to psychiatric evaluation.

   I called a 13 days of hunger strike and “magically” the court dismiss my case”!

   in these days I am trying to sue the LAPD and the LASD and about to write my second amended complaint as the magical lines of: ” failiure to state a claim for which relief can be granted” is staring in the court order to reamend the complaint.

it is clear to me that this complaint is to be dissmissed.

I was beatten in jail twice by sheriff deputies. I have hernia as result and my entire left side is numb two years after my release.and I lost all my property and money to a situation where I am home less

if any one of Los Angeles area can help me in getting legal help I would apreciate it very much and willing to hire on contingency basis since I have nothing left after this arrest and I am not able to work in the same work I did before with my new physical condition.
if you are able to help please contact me on abashelor@yahoo.com
thank you.

Reply

10. 

akismet-13df16f51b0d7e6b0bfbd685b4815da4

January 7, 2012 at 5:49 PM

I beg to disagree, The lack of copy of written contract or significant papers to prove set of facts, adequate notices before the complaint doesn’t prove the claim.

Reply

- 

  roee

  January 7, 2012 at 7:17 PM

  what are you talking about man?

  Reply

  - 

    davidhemsath@gmail.com

    June 21, 2012 at 1:13 AM

    Your answer is he doesn’t know what he is talking about.

11. 

    roee

    June 21, 2012 at 6:15 PM

    yeap, unfortunately no one can prevent baboons as such from jumping for a visit in these sights.

    Reply

12. 

    Zeke

    July 12, 2012 at 12:14 PM

    In UNITED STATES ex rel. BROOKFIELD CONSTRUCTION CO., Inc., and Baylor Construction Corporation, the court said, “The officer may be sued only if he acts in excess of his statutory authority or in violation of the Constitution for then he ceases to represent the Government.”

    Reply

13. 

    STACEY SIMEON HALL

    February 23, 2013 at 10:48 PM

    What shall l do -Stacey Simeon Hall vs Ann McCarthy, case #2:2012-cv-12064,federal court Detroit,Judge Zatkoff.

    Reply

    - 

      Adask

      February 24, 2013 at 1:59 AM

I have no idea. I can’t tell from just the style of a case, and I’m answering comments on my blog at 11PM (my time) on Saturday night. That should tell you that I’m already working more hours than I can stand. Of course, I’m not a licensed attorney and I can’t give legal advice. But even if I could, I don’t have any “cookie cutter” solutions. I’d have to read most, maybe all of your case file before I could even dream of offering an opinion on what you should or shouldn’t do. I’ll bet reading the entire case file would be a chore–and, like I said, I’m already over-worked. Good luck to you.

Reply

- 

  James Bedard

  February 24, 2013 at 1:50 PM

  I have already filed my case with the U. S. Supreme Court and it was put on the docket on Feb 11, 2013. So I hope to get the answers to all those questions.

- 

  Amos

  February 27, 2013 at 1:32 PM

  GOOD LUCK !

  Reply

  - 

    James Bedard

    February 27, 2013 at 7:51 PM

    Let me know, I would be glad to help you. I might have to talk to you about your case. I have answered all those issues in my writ to the U. S. Supreme Court. That is where you will probably end up and filing there is very, very different.

14. 

Twill

September 9, 2013 at 2:41 PM

“A claim on which relief can be granted” just means that you have alleged all the elements of the particular claim, against a proper party, and you are a proper party yourself for that kind of claim. If it’s a violation of law to take candy from a child, and the child is entitled by statute to double the candy in recompense, plus any incidental expenses, then compare these two:

“Billy was mean to me and I’m a citizen of Texas but not the US and he took my lollipop and he’s a butt head and give me 12 cents because the guy on the Internet says Billy owes double.”

“I am a child. I bought a lollipop for 5 cents. Billy stole my lollipop. I had the right to enjoy my lollipop. Billy had no right to take the lollipop. I have been harmed in the amount of 5 cents for the lollipop, plus 1 cent I had to pay my brother to get a replacement lollipop because I was babysitting. I am entitled by the Texas Child Candy Act to double my cost of candy plus consequential damages. Please order Billy to give me two lollipops plus 1 cent, or 11 cents.”

Reply

- 

  Adask

  September 9, 2013 at 8:04 PM

  Were you a member of the Chordettes back in the 1950s?

  Reply

15. 

Magnus Regnant

September 20, 2013 at 2:18 PM

Has anyone been provided a copy of the this: 1909 letter from the NY state attorney generals office stating I did not need a license to operate a motor vehicle in my private capacity”…and if so, could this be eMail to me?

Reply

16. 

    Douglas Kimzey

    December 13, 2013 at 8:48 PM

    13 Dec 2013 San Francisco / Seattle
    Kimzey v. Yelp Inc.
    Case # 2:13-01734-RAJ
    Date of response due by Yelp Inc. 13 Dec. 2013
    Kimzey (Pro Se)
    Request for legal representation by Adask

    Reply

    - 

      Adask

      December 14, 2013 at 4:10 AM

      I’m not a licensed attorney and probably can’t represent anyone in any current court. However, after 12 years of editing and publishing a magazine, I am a half-way decent editor and I occasionally provide editing services for other people’s legal documents. If you were interested in editing services, you could reach me by email at alfredadask@yahoo.com.

      Reply

17. 

    Another Pro Se Litigant

    February 25, 2014 at 8:21 PM

    Failure to state a claim is a common tactic employed for the other side to dismiss your claim(s) on summary judgment. You can avoid it by knowing what you can and cannot recover damages for, understanding proper pleading, learning relevant case law, and by arguing in legal fiction.

    Relief can mean monetary damages or injunctive relief. You can claim anything in a lawsuit but there must be a common law or statute under which you can be granted some type of civil remedy. If there isn’t then your claim will be dismissed. Know your local court rules and not just the federal

ones. A judge also has discretionary review at the initial hearing to allow your case to proceed based on the initial merits.

Be aware of and anticipate all tactics allowable by law to dismiss on summary and be prepared to fend them off with Supreme Court decisions made in your state regarding similar claims. Never rely too heavily on statutes. Just because it’s on the books doesn’t mean it’s still enforced.

Reply

18. 

Vincent Cataldi

March 25, 2014 at 2:20 PM

Reblogged this on Vincent J Cataldi.

Reply

19. 

Mel

June 16, 2014 at 11:26 AM

You’ve definitely given me a strategy and a ‘best practice’ plan. I am filing a federal Lawsuit against American Girl Dolls and Mattel Toys for copyright infringement. I’ve sent them letters and a ‘cease & desist’ … I’m going to make sure I state the law, approach this from several legal aspects, and try as best I can to cover my bases and dot the ‘i’s and cross the ‘t’s … this is an incredible amount of work to do to prove someone has stolen something from you … and to me it becomes a theft when they deny infringement. They have 25 same and similar names as in my book and well over 100 plots, scenes, dialogue, etc. And we speaking of children’s books that are about 70 pages in child sized font … I have a Cecile Honore, they have Cecile Rey … I have a search for a hidden necklace in New Orleans in the 1800s they have a search for a lost necklace in New Orleans in the 1800s. So much more to it … Thanks for your site/blog … this ‘failure to make a claim … ‘ thing is really tough.

Reply

- 

  Adask

June 16, 2014 at 11:53 AM

Hi Melva,

I skimmed over the first eight pages of the text you sent me by email. I can see that there’s an enormous financial potential in your allegations–millions of dollars. That financial potential justifies the work you’ve put into your complaint and will also justify an extensive, aggressive and expensive defense from your opponents.

You’ll be fighting the “big battalions” in a lawsuit that may require years of litigation before it is concluded.

As you must surely realize, you’ll need substantial legal and emotional resources to wage this battle.

As I said, I haven’t read you entire document, so perhaps you’ve already thought of the following idea and incorporated it into your complaint: Have you looked for evidence of other instances of similar claims of copyright violations filed by other authors? It appears to me that if there’s a legitimate copyright violation of your book(s), that violation was concealed with a fairly standard set of “tricks” whereby names are changed, plots and other details are also subtly changed so as to create some plausible deniability to any potential charges of copyright violation.

Plagiarism (especially for significant pay) must be a skill set that is learned and which relies on a fairly fixed “formula”. If the author (not just Mattel) of the offending work has plagiarized one of your books using these “tricks,” he or she has probably also plagiarized several other books using a virtually identical series of “tricks”. If you could: 1) identify the actual “author” (not just a pseudonym) of the book that plagiarized your work (or perhaps his agent); 2) thoroughly investigate any and all other books written by this “author”–even if published under other pseudonyms–and, 3) if you could find even one other book that appeared to have been plagiarized by the same “author,” you’d have evidence of a **pattern** of copyright violations.

Arguing that one of your books has been plagiarized will be hard to prove. But if you’re able to find evidence that your books and other authors’ books have been plagiarized by the same “author” in a **pattern** of similar conduct, your allegations would be far more powerful, likely to succeed and perhaps even cause your defendants to offer an acceptable out-of-court settlement.

If you’ve already thought of this possible strategy, I apologize for wasting your time. If you haven’t yet thought of it, it’s something you may want to consider. This strategy would depend on precisely identifying the actual “author” (or agent) who plagiarized your book and then conducting a very thorough investigation of that particular author to see if he’d also plagiarized other books.

As you may know from reading parts of my blog, I’m not a licensed attorney and I don’t provide legal advice. But I am a student of the legal system and I offer theories that may or may not have some practical application.

I suggest that you to take everything I’ve written with salt. I offer theories for people’s consideration. I don’t advance any theory as absolutely true for people’s automatic belief. I present my theories only as plausible and possibly true and leave it up to my readers to make

their own decisions to attempt to apply or reject those theories.

Good luck with your lawsuit and, perhaps more importantly, with your preliminary investigation.

Al

Reply

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