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The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2013

6th Edition

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

Published by Global Legal Group, in association with CDR, with contributions from:

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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
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Printed by
Information Press Ltd
February 2013

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ISBN 978-1-908070-51-7
ISSN 1755-1889

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USA - Connecticut

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I. LITIGATION

1 Preliminaries

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

Connecticut adheres to the doctrine of *stare decisis*; once an issue has been adjudicated by the Connecticut Supreme Court -- the highest state court -- the decision controls precedent on all lower courts. Decisions rendered by the Connecticut Appellate Court are likewise binding on Connecticut Superior Courts (which are the state's trial level courts) until reversed by the Appellate Court or the Supreme Court.

At the trial court level, Connecticut civil procedure is governed by the Rules for the Superior Court, which includes general rules applicable to all trial courts, as well as rules pertaining specifically to civil matters, juvenile matters, family matters and criminal matters. At the Appellate and Supreme Court level, Connecticut civil procedure is governed by the Rules of Appellate Procedure. The probate courts are governed by the Probate Rules for Practice and Procedure. Collectively, those rules are known as the Connecticut Practice Book.

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

The Superior Courts constitute the trial courts in civil and criminal matters. There are 15 judicial districts throughout the state, with one Superior Court in each judicial district.

Adverse decisions rendered by the Superior Courts are generally appealed to the Appellate Court. A party adversely affected by a decision rendered by the Appellate Court may petition for *certiorari* to the Connecticut Supreme Court. The Supreme Court is not obligated to hear any case; rather, the granting of *certiorari* is discretionary.

In certain situations, a party may appeal a trial court decision directly to the Connecticut Supreme Court. See Conn. Gen. Stat. § 51-199(b). The Connecticut Supreme Court may also transfer to itself cases from the Appellate Court. Conn. Gen. Stat. § 51-199(c).

Specialised courts handle matters pertaining to: housing; small claims (if damages are not expected to exceed $5,000); juvenile matters; family matters; and probate.

1.3 What are the main stages in civil proceedings in Connecticut? What is their underlying timeframe?

To commence a civil action, a plaintiff must first serve a summons and complaint upon all defendants. See question 3.1. Once service is complete, the plaintiff must file the summons and complaint with the clerk of applicable trial court.

Typically, the plaintiff must include a "return date" on both the summons and complaint. The return date, which generally must be a Tuesday, is a date with no independent significance, but rather is a date by which other deadlines are keyed. Within 2 days after the return date, each defendant must file an appearance.

Generally, 30 days following the return date, each defendant must file a pleading responsive to the complaint. A defendant may respond by filing any of the following: motion to dismiss; request to revise; or motion to strike, or answer. However, pleadings may only be filed in the aforementioned order; by filing a subsequent pleading, a party waives its right to file one of the preceding pleadings.

Following the filing of defendant's response to the complaint, the plaintiff may file its objection or other response thereto within 15 days. Thereafter, pleadings typically advance one step every 15 days.

The trial court hears argument on motions (such as a motion to dismiss or motion to strike) on the short calendar (see question 6.1). Short calendar hearings typically take place every Monday, and a judge adjudicating the motion may rule from the bench or issue a written order within 120 days of the argument. Practice Book § 11-19.

Throughout the pendency of the litigation, parties may engage in discovery. At any time, either or both parties may move for summary judgment.

When the pleadings are closed, if the case has not been disposed of through interlocutory motions, either party may file a certificate of closed pleadings, which notifies the court that the matter is ready for trial. The court will then schedule the case for a pre-trial conference and a trial.

1.4 What is Connecticut local judiciary's approach to exclusive jurisdiction clauses?

Exclusive jurisdiction clauses, commonly referred to as forum selection clauses, are generally enforceable in Connecticut, absent a showing of "fraud or overreaching". *U.S. Trust Co. v. Bohart*, 197 Conn. 34, 42 (1985). In addition, an exclusive jurisdiction clause may not be enforced if it will make litigation "so gravely difficult

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and inconvenient that a party unfairly is at a severe disadvantage in comparison to his opponent". *Id.*

Matters involving title to real property generally must be adjudicated by a court in the state where the real property lies, rendering void forum selection clauses providing otherwise.

1.5 What are the costs of civil court proceedings in Connecticut? Who bears these costs?

The cost of civil litigation varies widely depending on the nature of the case and counsel selected. In general, the cost of filing a complaint with the court ranges from $90 to $350. Additional fees may be assessed throughout the litigation.

Connecticut follows the "American Rule" that each party bears its own attorneys' fees and costs of litigation. Generally, the prevailing party is not entitled to recover such costs and fees absent a statutory or contractual exception, or where one party has acted in bad faith.

1.6 Are there any particular rules about funding litigation in Connecticut? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

Contingent fee agreements are permitted except in criminal matters and domestic relations matters. CT R RPC Rule 1.5. Any contingent fee arrangements must be in writing signed by the client and must state how the fee is to be determined. CT R RPC Rule 1.5.

In certain limited cases, such as where a prevailing defendant would be entitled to receive costs or where a plaintiff seeks a prejudgment remedy, the court may order that plaintiff provide a bond. See, e.g., Conn. Gen. Stat. §§ 52-186, 52-278d. A party appealing a decision may also be required to provide a bond. See, e.g., Practice Book 63-5 (appellee may move for security for costs); Conn. Gen. Stat. §§ 52-542.

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

Connecticut courts have continued to evolve their position with respect to the assignability of particular claims. It is clear that contract claims are freely assignable (*Rumbin v. Utica Mut. Ins. Co.*, 254 Conn. 259 (2000)), while tort claims based on personal injury are not assignable. *Gurski v. Rosenblum & Filan, LLC,* 276 Conn. 257 (2005).

Beyond those two pronouncements, the law becomes less clear. Tort claims based on damage to property are generally assignable, although courts have noted that public policy considerations in a specific case may weigh against assignment.

The assignability of claims that may be asserted either under contract or tort law are generally determined on public policy grounds. *Gurski v. Rosenblum & Filan, LLC*, 276 Conn. 257 (2005) (legal malpractice claim not assignable); see also *Stearns & Wheeler, LLC v. Kowalsky Bros., Inc.*, 289 Conn. 1, 9, 11 (2008) (Connecticut Unfair Trade Practices Act claim not assignable).

Typically, a client is responsible for its own attorneys' fees. However, a lawyer may be paid from a source other than the client if the client provides informed consent and the payment arrangement does not interfere with the attorneys' duties to the client.

2 Before Commencing Proceedings

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

Generally, there are no formalities with which a plaintiff must comply prior to the commencement of litigation. However, there may be notice or demand requirements for particular statutory claims.

In addition, parties should review any governing contract to determine whether the contract provides for any pre-litigation notice or demand requirements. Such provisions will generally be enforced by the courts.

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

There are a wide range of limitations periods that apply to various statutory and/or common law claims. Set forth below are the limitations periods for the most common claims, however this does not constitute an exhaustive list.

- A claim for a breach of a written contract must be commenced within 6 years from the date the claim accrues. Conn. Gen. Stat. § 52-576. Generally, a claim accrues when the breach occurs or the injury is inflicted.
- There are two statutes in Connecticut that apply to oral contracts: Conn. Gen. Stat. § 52-581, which provides for a 3-year limitations period (and which applies only to executory contracts); and § 52-576 which provides for a 6-year limitations period.
- Most tort claims must be commenced within 3 years from the date of the act or omission complained of. Conn. Gen. Stat. § 52-577.
- Negligence claims must be asserted within 2 years from the date the injury is sustained or discovered, or with reasonable diligence should have been discovered. Conn. Gen. Stat. § 52-584.
- A claim for negligence or malpractice by a medical professional must be asserted within 2 years from the date when the injury is first sustained or discovered or in the exercise of reasonable care should have been discovered, except that no action may be brought more than 3 years from the date of the act or omission complained. Conn. Gen. Stat. § 52-584.
- Product liability claims must be commenced within 3 years from the date when the injury, death or property damage is first sustained or discovered or in the exercise of reasonable care should have been discovered, but in no event later than 10 years. Conn. Gen. Stat. § 52-577a.
- A claim for unpaid wages must be commenced within 2 years. Conn. Gen. Stat. § 52-596.
- A claim for libel or slander must be commenced within 2 years from the act complained of. Conn. Gen. Stat. § 52-596.

Certain tolling periods may also apply to the aforementioned limitations periods.

Ordinarily, statutes of limitations are considered procedural. However, if a claim did not exist at common law, and is merely a creature of statute, the time within which to bring a claim is considered a substantive element of the claim. *Baxter v. Sturm, Ruger & Co., Inc.*, 230 Conn. 335, 340 (1994).

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3 Commencing Proceedings

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

Most civil proceedings are commenced by serving a copy of the summons and complaint on each individual defendant or an agent of each defendant. Service must be made by a marshal, constable or disinterested person. In the case of an individual defendant, service may be made in hand (by literally handing the summons and complaint to the individual) or by leaving the summons and complaint at the individual's primary residence (abode service). In the case of a domestic corporate or municipal defendant, service may be made on the defendant's registered agent for service, or in accordance with the statute applicable to the specific corporate or municipal form of the defendant. Process is deemed served on the date the marshal provides the copy of the summons and complaint to the individual or agent.

Service on a foreign individual, foreign partnership or foreign voluntary association, may be made by serving the Secretary of the State with a copy of the summons and complaint at least 12 days before the return date, and by sending a copy of the summons and complaint to the defendant at the defendant's last-known address, by registered or certified mail and with a return receipt requested. Conn. Gen. Stat. § 52-59b.

To lawfully conduct business in Connecticut, foreign corporations must appoint a registered agent for service of process; therefore, service should be made on the registered agent, if any. If the foreign corporation: (1) has no registered agent or its registered agent cannot, with reasonable diligence, be served; (2) has withdrawn from transacting business in this state; or (3) has had its certificate of authority revoked, then the foreign corporation may be served by registered or certified mail with a return receipt requested, and addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report. Conn. Gen. Stat. § 33-929.

After the summons and complaint are served on all defendants, the individual who made service must attest to the manner in which such service was performed in a document called the return of service. The return of service, summons and complaint are then filed with the court.

The United States is party to both the Hague Service Convention and the Inter-American Service Convention. As a state within the United States, Connecticut is also bound by these conventions.

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

A party may apply for a pre-judgment remedy ("PJR") in Connecticut before commencement of the plenary action, by attaching a proposed unsigned summons and complaint to (1) an application for a PJR, (2) an affidavit showing that "there is probable cause that a judgment in the amount of the prejudgment remedy sought, or in an amount greater than the amount of the prejudgment remedy sought, taking into account any known defenses, counterclaims or set-offs, will be rendered in the matter in favor of the plaintiff", (3) a form of order that a hearing be held, and (4) a form of summons. Conn. Gen. Stat. 52-278c. A party also may seek a PJR at the same time it files a complaint, or anytime during the pendency of the action. A PJR is any remedy that enables a plaintiff by way of attachment, foreign attachment, garnishment or replevin to secure assets of the defendant(s) sufficient to satisfy a prospective judgment in favour of plaintiff. Conn. Gen. Stat. § 52-278a(d). Upon receipt of the application for PJR, the court will typically schedule the matter for an evidentiary hearing, although if certain statutorily enumerated exigent circumstances are present, a PJR may be granted without a hearing or notice to the defendant. The evidentiary standard at the hearing is "probable cause"; a plaintiff satisfying that low threshold is entitled to a PJR. Conn. Gen. Stat. § 52-278d.

A party may also apply for interim injunctive relief, in the form of a temporary injunction and/or temporary retraining order ("TRO") (which typically restrains the defendant for a brief period pending notice and hearing on an application for a temporary injunction). Conn. Gen. Stat. § 52-471. No temporary injunction may be granted without notice to the adverse party unless it clearly appears from the specific facts shown by affidavit or by verified complaint that irreparable loss or damage will result to the plaintiff before the matter can be heard on notice. Conn. Gen. Stat. §52-473. To be eligible for temporary injunctive relief, the party must demonstrate that he or she has no adequate remedy at law, and that he or she will suffer a substantial and irreparable injury if no injunction is granted.

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

The complaint is plaintiff's initial pleading. In the complaint, plaintiff must set forth the facts underlying the action and particular legal theories on which plaintiff relies. The complaint "shall contain a plain and concise statement of the material facts", "but not of the evidence by which they are to be proved". Conn. Practice Book § 10-1.

The allegations in the complaint should be set forth in numbered paragraphs and each distinct legal theory should be distinguished as a separate claim. On the final page of the complaint, the plaintiff must include a demand for relief, in which plaintiff articulates the remedy or remedies sought. The demand for relief should be on a page separate from the allegations in the claims. Where money damages are sought, a plaintiff must include, on a separate page, a statement of amount in demand. Conn. Gen. Stat. § 52-91.

The complaint must be accompanied by a summons which is appended to the front of the complaint. A summons is a court form, completed by plaintiff, that provides basic information about the lawsuit, including the names of all the parties, the return date, the address of the court house and the number of counts (claims) asserted against the defendant(s).

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

The plaintiff may amend its complaint once as of right within the first 30 days after the return date. At any time thereafter, either party may amend its pleading by either: (1) consent of the opposing party; (2) order of the judicial authority; or (3) filing a request to file an amendment, with the proposed amended pleading attached. However, if option (3) is utilised, the opposing party may object within 15 days of filing the request, and the court will determine whether the amendment will be allowed.

Amendments are liberally permitted, and may even be permitted after trial to conform to the proffered evidence. However, the court has discretion to prohibit proposed amendments that may unduly delay trial or prejudice the adverse party.

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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?

The defendant's statement of defence, known in Connecticut as the answer to the complaint, may be filed as an initial response to the complaint, or may be filed after other pre-answer motions have been exhausted.

In the answer, the defendant must respond to each allegation in the complaint, by admitting, denying, or denying information sufficient to form a belief as to the truth or falsity of the allegation. Legal conclusions do not require a response.

In the answer, the defendant must state any special defences, counterclaims and/or cross-claims that it intends to assert. A special defence is a defence that does not dispute the allegations of the complaint, but asserts that, even if plaintiff's allegations are true, plaintiff is not entitled to the full measure of relief requested.

Counterclaims (claims asserted against the plaintiff) and cross-claims (claims asserted against another defendant) must "arise[] out of the transaction or one of the transactions which is the subject of the plaintiff's complaint". Practice Book § 10-10.

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

In most civil actions, the first pleading on behalf of the defendant must be filed within 30 days after the return date. Practice Book 10-8. Please note that a motion to dismiss -- which may be the initial response filed by a defendant -- is due 30 days after filing an appearance (Practice Book 10-30) and an appearance is generally filed 2 days after the return date (Practice Book 3-2).

Motions for extension of time are generally granted, especially if plaintiff consents to the requested extension.

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

Yes. A defendant in any civil action may seek to implead a third party defendant by moving for permission to serve a summons and complaint upon a third party who is or may be liable to the original defendant for all or part of the plaintiff's claim against him or her. Practice Book § 10-11; Conn. Gen. Stat. § 52-110.

A motion to implead a third party may be filed at any time before trial. The court will grant the motion to implead the third party if the court, in its discretion, determines that the granting of the motion will not unduly delay the trial or work an injustice upon the plaintiff or the party sought to be impleaded.

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

If a defendant does not defend against an action, the court may default the defendant, and thereafter grant a default judgment in favour of the plaintiff. A defendant is typically defaulted for either failing to file an appearance or failing to plead.

If a party has been defaulted for failing to appear or failing to plead, and judgment enters based on said default, the judgmented party may move to open the judgment any time within 4 months after the notice of judgment was sent. In the motion to open the judgment, the moving party must show: (1) a good defence existed at the time judgment entered; and (2) the party was prevented by mistake, accident or other reasonable cause from pleading or appearing. Practice Book § 17-43. If the court grants said motion, the case is reinstated on the docket.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant may dispute the court's subject matter jurisdiction over the matter, that is, the court's authority to hear the case, and/or personal jurisdiction over the defendant.

A court may exercise personal jurisdiction over a foreign defendant only if the state's long-arm statute authorises assertion of jurisdiction over the defendant and the exercise of jurisdiction comports with constitutional principles of due process. A court will also lack jurisdiction over a foreign (or domestic) defendant if the defendant was not validly served with process.

Unlike subject matter jurisdiction, lack of personal jurisdiction may be waived. A motion to dismiss for lack of subject matter jurisdiction may be raised at any time.

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?

There are multiple mechanisms for adding a party to a pending action, depending on the purpose for adding said party. First, a defendant may seek to implead a third party who is or may be liable to the defendant.

Additionally, any party to the action -- or person who is not yet a party -- may also file a motion to cite in additional party if the party to be added: (1) has or claims an interest in the controversy, or any part thereof, adverse to the plaintiff; or (2) is necessary for a complete determination or settlement of any question involved therein. Conn. Gen. Stat. 52-102. If a complete determination cannot be had without the presence of other parties, the Court may direct that party to be joined. Conn. Gen. Stat. § 52-107. The Court has discretion to add a party to the case when it "deems the interests of justice require". Conn. Gen. Stat. § 52–108; Practice Book § 9-19.

A non-party itself may seek leave to intervene in an action and be made a party. If the court determines that the prospective party has an interest which a prospective judgment will affect, the court will order that person or entity to be made a party. Practice Book § 9-18; Conn. Gen. Stat. § 52-107.

New parties may be added at any time during the action. Practice Book 9-19; Conn. Gen. Stat. § 52-108. However, because the addition of parties is at the discretion of the Court, a Court may decline to permit the addition of a party where doing so would prejudice another party or unduly delay trial.

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?

Yes. Pursuant to Practice Book § 9-5, two or more separate actions may be tried together where doing so would expedite adjudication without causing injustice to any party. While the court has discretion to determine whether consolidation is appropriate, the

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primary considerations are whether the actions arise out of the same transaction or involve identical parties.

5.3 Do you have split trials/bifurcation of proceedings?

Yes. Pursuant to Conn. Gen. Stat. § 52-205 and Practice Book § 15-1, the court, in its discretion, may bifurcate the issues for trial, in either jury cases or court cases, where doing so would serve the interests of convenience, negation of prejudice and judicial efficiency.

6 Duties & Powers of the Courts

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

Most civil cases are not assigned to a particular judge until trial. Throughout the pendency of the case, when a motion, request or application is scheduled to be argued, or adjudicated without argument, the matter is decided by a particular judge assigned to short calendar that day. Practice Book § 11-13. It is only when the case is exposed for trial, and all pre-trial hearings have been concluded, that the court assigns a trial judge to hear the matter.

Certain civil cases with issues of complexity may be referred to the Complex Litigation Docket ("CLD"), where they are assigned to a particular judge throughout the life of the case. A party must apply for referral to the CLD, and the court has discretion to grant or deny the request.

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

The court has the authority to oversee the progression of the case, although in most cases the court will not take an active role until the matter is ready for trial. Often, the court's managerial role is limited to a trial management conference. At the trial management conference, counsel for all parties provide to the court a trial management report containing information regarding the dispute, stipulated facts, and evidence and testimony that may be proffered. The court may also try to mediate the dispute between the parties in an effort to settle the matter before trial.

In some cases, and in all matters on the Complex Litigation Docket, the court may require the parties to propose a scheduling order at the commencement of the case. The scheduling order, which when approved is entered as an order by the court, sets forth the timeframe for the case, and includes, for example, the deadlines for completing written discovery, depositions, and disclosures of expert witnesses.

On the Complex Litigation Docket, the court will also require the parties to appear periodically for case management conferences.

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

The trial court has the inherent power to impose reasonable sanctions to compel the observance of its rules. *Millbrook Owners Ass'n, Inc. v. Hamilton Standard,* 257 Conn. 1, 9 (2001). For example, if a party has acted in bad faith in the commencement or course of litigation, the court has inherent authority to award the adverse party its attorneys' fees. In addition to its inherent authority, numerous statutes and court rules permit the imposition of sanctions for specific conduct. For example, Practice Book § 13-14 provides that if a party fails to comply with certain discovery obligations, the court "may, on motion, make such order as the ends of justice require", including entry of an order establishing as a fact the matters in question, prohibiting the entry into evidence of designated matters, entry of a default, nonsuit or dismissal, and an award of costs and attorneys' fees. Additionally, Practice Book § 13-4 provides that if a party fails to disclose its intended expert witness, the court may preclude the proffered testimony. Sanctions must be proportional to the violation.

6.4 Do the courts in Connecticut have the power to strike out part of a statement of case? If so, in what circumstances?

Yes. Practice Book § 10-39 provides that a party may seek to strike part of an adversary's pleading if: (1) the allegations fail state a claim upon which relief can be granted; (2) any prayer for relief in any such complaint, counterclaim or cross complaint is legally insufficient; (3) any count of the pleading is legally insufficient due to the absence of any necessary party or the failure to join or give notice to any interested person; or (4) two or more causes of action are improperly joined.

6.5 Can the civil courts in Connecticut enter summary judgment?

Yes. The court may grant summary judgment "if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law". Practice Book § 17-49. To successfully oppose summary judgment, a party must specify facts that create a genuine issue of material fact.

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

Yes. A court may dismiss or stay an action in a number of circumstances. For example, court may dismiss a case as a sanction for egregious conduct. Additionally, a court may stay or dismiss a case where there is prior action pending of the same character between the same parties. A court also has discretion to stay the proceedings or postpone civil discovery where there is a parallel pending criminal prosecution, where the interests of justice so require. A court must stay litigation when a party files a petition for bankruptcy. Likewise, a court will stay litigation when the parties are required to arbitrate the disputed matter. Conn. Gen. Stat. § 52-409.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Connecticut? Are there any classes of documents that do not require disclosure?

Parties to a civil action are entitled to obtain a variety of discovery. A party must request such information in the form of interrogatories (questions seeking factual answers), requests for the production of documents, and/or requests for admission. A party may also depose another party, party representative, or third party. The information sought through these discovery tools does not have to be admissible, but merely has to be reasonably calculated to lead to the discovery of admissible evidence.

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The party responding to a discovery request does not have to provide information that is privileged, falls within the scope of the attorney work product doctrine, is not currently within its possession, or may be obtained as easily by the requesting party. Practice Book § 13-2. Materials prepared in anticipation of litigation must only be provided if a court determines that the requesting party "has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means". Practice Book § 13-3.

A party may object to certain interrogatories, requests for the production of documents, and/or requests for admission. The requesting party and the responding party must engage in a good faith dialogue regarding the objections, and, if agreement is not reached, the requesting party may seek judicial assistance in resolving the dispute.

Note that once litigation is anticipated, a party has an obligation to preserve all potentially relevant documents, including hard copy materials and electronic information.

7.2 What are the rules on privilege in civil proceedings in Connecticut?

Connecticut courts recognise a variety of categories of privileged communications. The most common is the attorney-client privilege, which is invoked when confidential communication between client and attorney is inextricably linked to giving of legal advice. The attorney-client privilege may be waived by voluntary disclosure of otherwise confidential communications, the presence of a third party during the communication, or if a party places the communications "at issue" in the case. The "at issue", or implied waiver, exception applies when a party specifically pleads reliance on an attorney's advice as an element of a claim or defence, or otherwise only when the contents of the legal advice is integral to the outcome of the legal claims of the action.

For public policy reasons, statements made by a client to his attorney with respect to the client's commission of a crime or civil fraud to be committed in the future are not privileged.

Connecticut also recognises a psychologist - patient communication privilege (Conn. Gen. Stat. § 52-146c); a psychiatrist - patient communication privilege (Conn. Gen. Stat. § 52-146d); a physician - patient communication privilege (Conn. Gen. Stat. § 52-146o); a clergy - penitent communication privilege (Conn. Gen. Stat. § 52-146b); a communications privilege for sexual assault counselor and a victim (Conn. Gen. Stat. § 52-146k); and a parent - child privilege, pursuant to which a parent may decline to testify for or against an accused child in juvenile proceedings (Conn. Gen. Stat. § 46b-138a).

There are two privileges that apply to married couples: a spousal testimony privilege (permitting the husband or wife of a criminal defendant to refuse to testify against his or her spouse in a criminal proceeding, provided that the couple is married at the time of trial); and the marital communications privilege (permitting an individual to refuse to testify as to any confidential communication made by the individual to the spouse during their marriage).

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

A party may direct discovery requests to a third party. Serving a subpoena on a third party is a commonly used process for procuring testimony and the production of documents relevant to the matter in dispute. Practice Book 13-28; *Three S. Dev. Co. v. Santore*, 193 Conn. 174, 179 (1984). The court however, may, upon motion, quash or modify the subpoena if it is unreasonable and oppressive or if it otherwise seeks materials not subject to production.

7.4 What is the court's role in disclosure in civil proceedings in Connecticut?

Discovery is primarily conducted by the parties to the litigation. Generally, the court will only become involved when the parties cannot reach an agreement regarding the scope of, or procedure for, permissible discovery. For example, the court will adjudicate objections to discovery requests, motions to quash subpoenas, and motions for a protective order. Courts are empowered to impose sanctions on parties who fail to abide by discovery rules or orders.

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

If a party wishes to keep a particular document or testimony from public disclosure, the party may move for an order that materials to be filed in connection with a court proceeding be sealed or their disclosure limited. Practice Book § 11-20A. The party wishing to seal the material bears the burden of demonstrating that sealing is necessary to preserve an interest which overrides the public's interest in viewing such materials.

Additionally, parties often enter into a confidentiality agreement pursuant to which they mutually agree to limit the use of materials obtained during discovery to the present litigation. Such an agreement may simply take the form of a bilateral agreement, or the parties may ask the court to enter it as an order.

8 Evidence

8.1 What are the basic rules of evidence in Connecticut?

The rules of evidence are set forth in the Connecticut Code of Evidence.

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

All evidence that is relevant is presumed to be admissible (CT R REV § 4-2), although the court may restrict evidence to be used for a particular purpose. CT R REV § 1-4. Evidence is relevant if it has "any tendency to make the existence of any fact that is material to the determination of the proceeding more probable or less probable than it would be without the evidence". CT R REV § 4-1. Evidence may be excluded if its "probative value is outweighed by the danger of unfair prejudice or surprise, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence". CT R REV § 4-3.

Expert evidence, typically in the form of testimony, is admissible in the form of an opinion if "(1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury in considering the issues". *Sullivan v. Metro-N. Commuter R. Co.*, 292 Conn. 150, 158 (2009); CT R REV § 7-2. However, an expert may not testify regarding the "ultimate" issue in a case, unless the trier of fact needs expert assistance in deciding the issue. CT R REV § 7-3.

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

All witnesses are presumed competent to testify and must declare that s/he will testify truthfully. CT R REV §§ 6-1, 6-2. Fact witnesses must testify on first-hand knowledge; although exceptions apply, generally hearsay is not permissible testimony.

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?

Connecticut courts require disclosure of the "factual basis" underlying an expert witness' opinion before the expert witness may render opinion. Connecticut courts have not addressed whether an expert's duties lie primarily with the court or the client on whose behalf the expert testifies.

8.5 What is the court's role in the parties' provision of evidence in civil proceedings in Connecticut?

The court determines what evidence is admissible, although the issue of admissibility is typically raised by a party.

9 Judgments & Orders

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

Courts are empowered to grant a wide range of legal and equitable relief. Conn. Gen. Stat. § 52-1. Most parties typically seek money damages, which a court may award in the form of compensatory and/or punitive damages. Where there is no adequate remedy at law, equitable remedies are available, which may include, but are not limited to: specific performance of a party's obligations under a contract; an accounting of certain monies received and/or expended; imposition of a constructive trust; disgorgement of profits; and/or injunctive relief. Finally, Connecticut courts are statutorily authorised to issue a declaratory judgment determining the parties' rights and legal relations. Conn. Gen. Stat. § 52-29.

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

Connecticut courts are empowered to make a determination of compensatory and/or punitive damages. The purpose of compensatory damages is to restore an injured party to the position he or she would have been in if the wrong had not been committed. Common law punitive damages are limited to the expense of litigation less taxable costs, and are awarded when the evidence shows a reckless indifference to the rights of others or an intentional and wanton violation of those rights. Certain statutes also permit punitive damages awards in the court's discretion. Courts are also empowered to award a prevailing party interest.

9.3 How can a domestic/foreign judgment be enforced?

Connecticut enacted a foreign judgment statute, which applies to "any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state except one obtained by default in appearance or by confession of judgment". Conn. Gen. Stat. § 52-604. Pursuant to the foreign judgment statute, the judgment creditor must file a certified copy of the foreign judgment along with a certification that the judgment was not obtained by default in appearance or by confession of judgment, that it is unsatisfied in whole or in part, the amount remaining unpaid, that the enforcement of such judgment has not been stayed, and the name and address of the judgment debtor. Within 30 days after the filing of the judgment and the certificate, the judgment creditor must mail notice of filing of the foreign judgment by registered or certified mail, return receipt requested, to the judgment debtor. A foreign judgment debtor may stay enforcement by showing to the court that an appeal of the foreign judgment will be taken, or that a stay of execution has been granted.

To enforce a money judgment, a prevailing party may obtain a bank execution from the court, which permits a state marshal to withdraw funds up to the amount of the judgment from the account of the judgmented party. A prevailing party may also file a judgment lien on assets of the judgmented party.

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

The Connecticut Rules of Appellate Procedure set forth the rules for appealing a civil court order.

II. ALTERNATIVE DISPUTE RESOLUTION

1 Preliminaries

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

Arbitration and mediation are the most commonly used methods of alternate dispute resolution in Connecticut. Parties are always free to utilise private mediators, arbitrators and experts.

The Connecticut Judicial Branch also provides litigants with access to a variety of court-annexed alternate dispute resolution programmes. For example, parties to a civil action in which a judgment is expected to be less than $50,000 may participate in the court-annexed non-binding arbitration programme. Conn. Gen. Stat. § 52-549u, *et seq.*

Parties to a civil action may also participate in a court-annexed mediation programme if settlement is feasible, but would take longer than a half day. Conn. Gen. Stat. § 51-5a.

Certain contract cases involving money damages of less than $50,000 may be eligible for referral to the court's fact-finding programme. Conn. Gen. Stat. § 52-549n, *et seq.* The court-appointed fact-finder determines the matters in controversy submitted to him, and prepares a finding of fact, which includes an award of damages, if applicable. The parties may object to the findings, and the court is free to accept or reject the fact-finder's determination.

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

The rules governing the court-annexed alternate dispute resolution

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programmes are set forth in the aforementioned statutes. Parties utilising private mediators and arbitrators – e.g., the American Arbitration Association or JAMS – must adhere to those servicers' rules.

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

By statute, agreements to arbitrate issues related to child support, visitation and custody are not enforceable. Conn. Gen. Stat. § 52-408. Additionally, the specific statutes governing the various court-annexed alternate dispute resolution programmes establish which cases may be referred to those programmes.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, with 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 any thing that is particular to Connecticut in this context?

If a party to an agreement to arbitrate fails and refuses to participate in arbitration, the party seeking to enforce the arbitration covenant may apply to the Superior Court for an order directing the non-compliant party to proceed with arbitration. Conn. Gen. Stat. § 52-410.

If a party to an arbitration agreement commences litigation, the party seeking to enforce the arbitration covenant may file a motion to stay the litigation proceedings. Conn. Gen. Stat. § 52-409. Pursuant to statute, if any issue involved in the litigation is referable to arbitration under the agreement, the court must stay the litigation until the parties have completed arbitration proceedings.

A party may also seek a PJR or injunction in aid of a pending arbitration. Conn. Gen. Stat. §§ 52-422, 52-278d(c), § 52-409. Pursuant to Conn. Gen. Stat. § 52-422, a court in an arbitration proceeding "may make forthwith such order or decree, issue such process and direct such proceedings as may be necessary to protect the rights of the parties pending the rendering of the award and to secure the satisfaction thereof when rendered and confirmed".

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 Connecticut in this context?

Arbitration awards must be approved, modified or vacated by the court to be enforced. Pursuant to Conn. Gen. Stat. § 52-417, a party has one year after an arbitration award has been rendered to apply to the Superior Court for confirmation of the arbitration award.

A party may also seek to vacate the arbitration award on one or more of the following grounds: (1) the award was procured by corruption, fraud or undue means; (2) there was evident partiality or corruption on the part of any arbitrator; (3) the arbitrators were guilty of misconduct; or (4) the arbitrators exceeded their powers or so imperfectly executed them that a final award upon the subject matter submitted was not made. Conn. Gen. Stat. § 52-418.

A party may also seek to modify an arbitration award on one or more of the following grounds: (1) there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award; (2) the arbitrators awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted; or (3) the award is imperfect in matter of form not affecting the merits of the controversy. Conn. Gen. Stat. § 52-419.

In most cases, agreements reached through mediation do not need to be approved by the court.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in Connecticut?

Many contracts containing arbitration or mediation provisions require reference national ADR institutions such as JAMS or the American Arbitration Association. The ADR Center and Litigation Alternatives are ADR institutions based in Connecticut.

2.2 Do any of the mentioned alternative dispute resolution mechanisms provide binding and enforceable solutions?

Arbitration awards are binding, although, as noted in question 1.5, *supra*, they must be approved by the court to be enforceable and are subject to challenge. Judicial review of arbitration awards, however, is narrowly confined, and the grounds on which to challenge an award are limited.

Settlement agreements, whether reached through mediation or otherwise, are also binding.

3 Trends & Developments

3.1 Are there any trends in the use of the different alternative dispute resolution methods?

In general, alternate dispute resolution methods are gaining favour, and Connecticut is continuing to expand the court-annexed alternate dispute resolution programmes.

While arbitration is favoured in Connecticut, two recent decisions by the Connecticut Supreme Court evidence that the courts will still require an explicit written agreement to arbitrate. In *Farrell v. Twenty-First Centruy Ins. Co.*, 301 Conn. 657 (2011) the court found that an oral agreement to arbitrate, even when coupled with multiple written correspondences regarding arbitration, was insufficient to constitute an agreement to arbitrate. In so holding, the court maintained that an agreement to arbitrate must be written to be enforceable, and must be "clear and direct and not depend on implication". Similarly, in *City of New Britain v. AFSCME, Council 4, Local 1186*, 304 Conn. 639 (2012), the court declined to enforce an arbitration agreement where it was questionable whether the parties had agreed to arbitrate the specific issue before the court.

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3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those alternative dispute resolution methods in Connecticut?

The Connecticut Supreme Court recently granted *certiorari* to hear a number of cases involving arbitration proceedings. In the cases below, the Supreme Court has not yet ruled, but intends to rule in the near future:

- In *MSO, LLC v. DeSimone*, 134 Conn. App. 821 (2012), the Appellate Court affirmed the Superior Court's decision to stay litigation and order arbitration, even though the parties had engaged in protracted litigation and discovery in the state court action. The Connecticut Supreme Court granted *certiorari* to determine whether the lower courts properly directed the parties to proceed to arbitration. *MSO, LLC v. Desimone*, 305 Conn. 911 (2012).
- In *Town of Malborough v. AFSCME, Council 4, Local 818-052*, 130 Conn. App. 556 (2011), the Appellate Court affirmed the Superior Court's decision denying the town's application to vacate the arbitration award based on the arbitrator's alleged "manifest disregard of the law", on grounds that a misapplication or misconstruction of a statute would not be sufficient to constitute a manifest disregard of the law. The Supreme Court granted *certiorari*. *Town of Marlborough v. AFSCME*, 302 Conn. 940 (2011).
- In *State v. AFSCME, Council 4, Local 391*, 125 Conn. App. 408 (2010), the Appellate Court affirmed the trial court's decision to vacate an arbitration award on the ground that the award violated a clear public policy, where the arbitrator had determined that the State improperly terminated an employee for engaging in sexually harassing conduct. The Connecticut Supreme Court granted *certiorari* to determine whether the arbitration award was correctly vacated on the ground that it violated the State's public policy against workplace sexual harassment. *State v. AFSCME, Council 4, Local 391*, 300 Conn. 912 (2011).

Acknowledgment

The authors wish to acknowledge the assistance of their colleague, Diane C. Polletta in the drafting of this chapter.

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