**Chapter 18 Defensive Pleadings**

1. After being served with a summons and a complaint, the defendant must file one or more defensive pleadings within a certain number of days from the date of service of the summons. If this is not done, the defendant may lose the case by default.

2. Grounds for a demurrer include (a) the complaint does not state facts sufficient to constitute a cause of action, (b) the court has no jurisdiction over the subject matter of the case, (c) the plaintiff has no legal capacity to sue, (d) another action is pending between the same parties for the same cause, and (e) a defect or misjoinder of the parties in the suit exists.

3. Usually the attorneys attend the hearing without their clients and argue for and against the demurrer.

4. Four important defense motions are: (a) motion to dismiss, (b) motion for a more definite statement, (c) motion to strike, and (d) motion for judgment on the pleadings.

5. The attorneys for each party attend the motion session and argue their viewpoint as to the merits of the motion. The judge makes a decision either to allow or deny the motion.

6. If the motion to dismiss is denied, the defendant is given a certain number of days to file an answer.

7. Three grounds for a motion to dismiss are: (a) lack of jurisdiction over the subject matter of the case, (b) lack of jurisdiction over the defendant personally, and (c) improper venue.

8. If a pleading is so vague that the other party cannot properly respond to it, a motion for a more definite statement may be made.

9. A motion to strike may be used by either party to have stricken from any pleading any insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter.

10. A motion for judgment on the pleadings may be made by a plaintiff on the ground that the defendant's answer does not set forth a legally sufficient defense. A defendant might make such a motion on the ground that the plaintiff's complaint does not state a claim on which relief can be granted.

11. The defendant's answer must state in short and plain terms the defenses he or she wishes to assert. In addition, each of the claims made by the plaintiff must be admitted or denied.

12. If the defendant fails to deny an allegation made in the plaintiff's complaint, it is automatically admitted.

13. If an affirmative defense is omitted from the answer, the defense is lost and cannot be used later.

14. Three affirmative defenses are: (a) accord and satisfaction, (b) contributory negligence, and (c) failure of consideration.

15. If the defendant wishes to bring a suit against the plaintiff, he or she will file a counterclaim. It is made part of the defendant's answer.

16. The plaintiff is required to file a reply to the defendant's counterclaim within a prescribed number of days after receiving the counterclaim.

17. A cross claim is brought by one defendant against another defendant in the same suit. The subject matter of the cross claim must arise out of the same transaction or occurrence as that of the original suit.

# Understanding Legal Concepts

1. F, 30 6. T

2. F, overrules 7. T

3. T 8. T

4. T 9. F, admits

5. F, either party 10. F, counterclaim

# Checking Terminology

1. n 6. w 11. y 16. p 21. bb 26. h

2. r 7. m 12. a, d 17. c 22. u 27. s

3. k 8. j 13. x 18. i 23. b 28. v

4. e 9. f 14. t 19. z 24. q

5. cc 10. o 15. g 20. l 25. aa

# Using Legal Language

After reading the **allegations** in the plaintiff's complaint and determining that they were not vague, the attorney for the defendant decided not to file a(n) **motion for a more definite statement**. Similarly, because the complaint contained nothing that was redundant, immaterial, impertinent, or scandalous, the attorney for the defendant did not file a(n) **motion to strike**. The attorney did, however, file a(n) **motion to dismiss** on the ground of **misnomer** (mistake in name) of a party. A(n) **dismissal** is an order disposing of an action without trial of the issues. When the defendant's motion was disallowed by the court, the defendant's attorney filed a(n) **answer** within the prescribed time, which contained the **affirmative defense** (called a(n) **confession and avoidance** under the common law) of the statute of frauds. Neither party filed a(n) **motion for judgment on the pleadings**, which may be filed only after the plaintiff's complaint and defendant's answer have been filed and which replaces the older **demurrer**. The defendant's attorney also filed a(n) **counterclaim** to bring a claim against the plaintiff, which arose out of the same transaction. In answer to this claim, the plaintiff filed a(n) **reply**. Because the case did not have two defendants, no **cross claim** was filed.

**Puzzling Over What You Learned**

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|  | *Caveat:* Do**not**allow squares for spaces between words and punctuation (apostrophes, hyphens, etc.) when | | | | | | | | | | | | | | | | | | | | | | | |  |
|  | filling in crossword. | | | | |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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2. To annul, make void, or refuse to sustain.

1. A claim that the defendant has against the plaintiff.

10. A clause in the U.S. Constitution that guarantees to all persons the right to publish and circulate their ideas without governmental interference.

1. A clause in the U.S. Constitution that guarantees to all persons the right to peaceably associate and assemble with others.
2. A statement or claim that the party making it expects to prove.
3. To support.
4. A clause in the U.S. Constitution that prohibits the government from establishing a state religion.
5. A clause in the U.S. Constitution that guarantees to all persons the right to speak, both orally and in writing.
6. A pleading used by the defendant to attack the plaintiff's complaint by raising a point of law.
7. A clause in the U.S. Constitution that guarantees to all persons the right to freely practice their religion.
8. An order disposing of an action without trial of the issues.
9. A defense that admits the plaintiff's allegations but introduces another factor that avoids liability.
10. A motion made by the defendant asking the court to dismiss the case.
11. A pleading used in California by a defendant to file a claim against another

defendant, a third party, and the plaintiff in the same action.

1. The plaintiff's answer to the defendant's counterclaim.
2. A claim brought by one defendant against another defendant in the same suit.
3. The main pleading filed by the defendant in a lawsuit in response to the plaintiff's complaint.
4. The termination of an action that did not adjudicate issues on the merits.