Litigation 2018

United States

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gar know-how

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Overview

1 Court system
of the court system for civil litigation.

The United States is a republic with a federal government and 50 state governments. Each state maintains a state court system within the framework of that state's Constitution. The federal, or national, government maintains a separate system of federal courts within the framework of the United States Constitution.

Some state courts systems include various first-instance courts with jurisdiction restricted to specific areas or limited in monetary value (eg,"small claims courts). In other states, a court of general jurisdiction may hear all first instance claims. Each state system provides for at least one level of appeal as a matter of right. The judges of state courts may be elected or appointed, depending on the state's laws and Constitution.

Broadly speaking, the first-instance court in the federal system is the US district court and there is at least one district court in each state. Also, there are federal bankruptcy courts and certain administrative courts and federal courts of appeal that handle appeals from the federal district courts. As in the state system, there is at least one level of appeal in all federal civil cases. In the federal court system, the Supreme Court of the United States is the highest court. With few exceptions, appeals to the Supreme Court are discretionary.

Four factors distinguish civil proceedings in US courts. First, under the US Constitution, civil litigants are entitled to trials by jury to the same extent they were entitled to jury trials at common law in 1789. Second, absent a contractual or statutory right, US courts are not able to award legal fees to prevailing parties. Third, US courts may award punitive or exemplary damages in tort cases. Fourth, the US allows relatively extensive and intrusive pretrial discovery.

2 The legal profession
Describe the general organisation of the legal profession.

The US legal profession is largely administered and regulated by the states. In some states, the courts oversee the profession, setting qualification and disciplinary requirements. In other states, these functions are exercised by legislatively created entities, typically known as "unified" state bars.

To qualify as a lawyer, an individual is generally required to obtain a degree from a law school, pass a state bar examination and pass a character review. Successfully meeting these requirements allows an individual to practice within that particular state and its courts. A separate "admission" process pertains to practicing in federal courts. It is typically necessary to be admitted to practise in the state in which the federal court sits and make a separate application to the federal court with supporting attestations by lawyers already admitted to practise before the court. It is common for federal courts and state courts to allow lawyers admitted in other US jurisdictions to practice on a pro hac vice basis.

Legal education in the United States is post-baccalaureate. Law schools are generally components of universities.

Foreign lawyers are allowed to practise in some states under supervision of locally qualified lawyers. An increasing number of states allow foreign lawyers to take a bar examination and become qualified to practise in those states. Generally, doing so requires an LLM degree from an accredited US law school and special course work within the LLM curriculum.

3 General
Give a brief overview of the political and social background as it relates to civil litigation.

Just as the federal government operates within the framework of the US Constitution, each state has a written constitution, which invariably includes provisions for courts.

Article III of the federal constitution establishes the Supreme Court and provides that its judges and the judges of the inferior federal courts (Circuit Courts of Appeal and District Courts) serve for "good behavior" (ie, for life unless impeached by the Congress). All article III judges in the federal system are appointed by the President with the advice and consent of the United States Senate. While the appointment process may be political, once appointed, federal judges are generally not able to engage in political activities.

State judges are, in most states, elected for terms of four, six or eight years. Some states have an appointment process for particular courts. Generally, state judges do not engage in political activities, but where they must stand for election or re-election, politics can intrude.

Jurisdiction

4 Jurisdiction and venue
What are the criteria for determining the jurisdiction and venue of the competent court for a civil matter?

Neither state courts nor federal courts may hear or decide a case unless they have (1) "subject matter jurisdiction" and (2) either "personal jurisdiction" or "in rem jurisdiction." Furthermore, a case may be dismissed if venue is not proper.

Subject matter jurisdiction refers to the court's power to hear and determine cases of a particular type. In state court, subject matter jurisdiction is often presumed.

Federal subject matter jurisdiction must be pled. It is limited to two types: diversity jurisdiction and federal question jurisdiction. Diversity jurisdiction exists where the parties are citizens of different states – or citizens of a particular state and citizens of a foreign county – and the amount in controversy exceeds $75,000. Federal question jurisdiction, which has no monetary requirement, exists if the case involves question of federal law.

Personal jurisdiction is the power of a court over the person of the defendant. There are two types: "general personal jurisdiction" and "specific personal jurisdiction". General personal jurisdiction exists when the party has engaged in continuous, systematic activity in the forum jurisdiction, even though the defendant's activity may not be related to the claim within the forum. Specific jurisdiction is established if the claim relates specifically to the defendant's actions within the forum.

In rem jurisdiction refers to the power of a court to exercise power over a particular personal or real property. In federal courts, in rem jurisdiction exists when the property at issue is within the federal judicial district in which the court sits. The state court rules for in rem jurisdiction vary from state to state but as a general rule, a state court will have in rem jurisdiction if the property is within the state and "venue" requirements are met.

Venue refers to the location in which proceedings may take place and is a distinctive requirement. State venue statutes vary and generally specify where within a state a suit may be brought. In federal court, the residence of foreign defendants is disregarded so that foreign nationals and business entities may be sued in any district where there is jurisdiction. As to US citizens, including business entities, the venue for a federal case is largely determined by where the defendant(s) resides or is subject to personal jurisdiction or where the claim occurred.

Contracts that specify venue and a particular forum's law are generally enforceable.

5 Forum shopping
Does your jurisdiction commonly attract disputes that have a nexus with other jurisdictions?

The US is known for its litigious environment, extensive discovery process, relatively high monetary awards, punitive damages, jury trials in civil cases and its allowance of "contingent fees" (ie, the payment of attorney's fees as a percentage of a damages award). These features of US jurisprudence probably both attract and repel cases. On the other hand, US law is generally well developed and its courts are known to be honest, and these features no doubt make the US an attractive jurisdiction.

6 Pendency in another forum
How will a court treat a request to hear a dispute that is already pending before another forum?

Generally, courts in the US decline to entertain cases when there is a prior suit pending. In addition, there are several abstention doctrines (ie, doctrines applied by courts in refusing to hear a case) that a federal court may use to decline jurisdiction when there is "parallel litigation".

7 Deference to arbitration
How will the courts treat a dispute that is, or could be, subject to an arbitration clause or an agreement to arbitrate, including in interim proceedings?

Courts in the United States indulge a strong presumption favouring agreements to arbitrate. "[A]ny doubts concerning the scope of arbitral issues should be resolved in favor of arbitration…" Moses H. Cone Mem'l Hosp v. Mercury Constr. Corp, 460 U.S. 1 (1983). If a matter comes to the court as a suit filed in court notwithstanding an agreement to arbitrate, the court may stay the case pending arbitration or may dismiss it. Subject to certain limitations, a court also has the power to order the parties to arbitrate.

Courts have the power to issue interim relief in the form of preliminary injunctions in aid of arbitration. Such injunctions are generally configured as orders designed to maintain the status quo pending arbitration and in circumstances in which the injunction "furthers the Congressional purpose behind the Federal Arbitration Act…" Performance Unlimited v. Questar Publications, 52 F.3dd 1373, 1380 (6th Cir. 1995).

8 Judicial review of arbitral awards on jurisdiction
May courts in your country review arbitral awards on jurisdiction?

Courts may review an arbitral award as to jurisdiction on a de novo basis unless the parties have, based on "clear and unmistakeable" evidence, delegated jurisdictional decisions to the arbitral tribunal. First Options of Chicago, Inc v Kaplan, 514 U.S. 938 (1995). Generally, if the parties designate institutional rules that delegate jurisdiction to decide the scope of an arbitration agreement to the arbitral tribunal, this designation is regarded as a "clear and unmistakable" delegation.

9 Anti-suit injunctions
Are anti-suit injunctions available?

Anti-suit injunctions are available in narrow circumstances. Generally, US courts consider whether the injunction sought will be effective to avoid delay, inconvenience, inconsistency or a race to judgment. Such injunctions are directed at parties, not foreign courts, and issues of comity must be weighed.

10 Sovereign immunity
Which entities are immune from being sued in your jurisdiction? In what circumstances? In what circumstances can creditors enforce a court judgment or arbitral award against a sovereign or a state entity?

In general, sovereign immunity applies to "protect" governments from certain types of litigation. This also includes foreign governments. The Federal Sovereign Immunities Act (FISA) 28 § 1330 et seq. is a federal statute that imposes certain limits and requirements pertaining to suits against foreign sovereigns.

Sovereign immunity may be waived. The Federal Tort Claims Act waives immunity for certain tort claims, and there are similar statutes in various states. Moreover, the doctrine of sovereign immunity has been gradually eroded over the course of the past century.

There is no general exception for creditors seeking to enforce judgments against sovereign bodies. That said, section 106 of the United States Bankruptcy Code limits sovereign immunity for specifically identified sections of the Bankruptcy Code.

Procedure

11 Commencement and conduct of proceedings in general
How are proceedings commenced? To what extent will a court actively lead the proceedings and to what extent will the court rely on the parties to further the proceedings?

Note: The following questions are answered with reference to procedure in federal courts. The procedure followed in state courts is generally similar to that followed in federal courts.

Outside of a limited number of statutory exceptions (eg, the Federal Tort Claims Act and certain other statutes pertaining to suits against sovereigns), there is no general requirement that notice of intent to file suit be given before proceedings are instituted.

Proceedings are commenced when the complaining party, designated as "plaintiff," files a "complaint" asserting claims against another party or parties, called "defendant(s)". See Federal Rule of Civil Procedure 3. A summons (which notifies the defendant of basic information about the lawsuit, including the name of the court and the parties), along with a copy of the complaint, is "served" upon the defendant. See Federal Rule of Civil Procedure 4.

Typically, courts schedule a case management conference soon after the responsive pleadings are filed. After the case management conference, or sometimes without a case management conference, a scheduling order is issued setting procedural deadlines. The scheduling order may include dates for pretrial conferences and for a trial. See Federal Rule of Civil Procedure 16.

12 Statement of claim

What are the requirements for filing a claim? What is the pleading standard?

There are few formal pleading requirements in most cases, and a statement of claim (typically called a "complaint") is generally sufficient if it contains allegations giving notice of the claim and its factual background, and contains factual allegations at least suggesting that the right to relief is plausible. See Federal Rule of Civil Procedure 8(a). Where a party alleges fraud or mistake, the complaint must contain factual allegations that state the circumstances with particularity. See Federal Rule of Civil Procedure 9(b).

Generally, pleadings are signed by lawyers and need not be sworn.

13 Statement of defence

What are the requirements for answering claims? What is the pleading standard?

Within specified time periods, a defendant must file either an answer or a motion setting forth a defense which excuses, at least temporarily, the filing of an answer. Certain matters of defense (including lack of personal jurisdiction, improper venue, insufficiency of process or insufficiency of service of process) must either be asserted in a pre-answer motion or, if no such motion is made, in the answer itself. See Federal Rules of Civil Procedure 12(b), (e), (h).

An answer should specifically admit or deny the allegations of the complaint, so that it is clear which matters will be contested; second, it should state matters of affirmative defense. If the party filing the answer is without information or belief sufficient to form a belief as to the truth of an allegation in the complaint, the answer may, and should, say so. If the answering party wishes to challenge the capacity or standing of the plaintiff, the answer should include specific facts supporting the challenge. In addition, it should "specifically and particularly" allege any failure by a plaintiff to perform any conditions precedent to the obligations sued upon. See Federal Rule of Civil Procedure 8.

14 Further briefs and submissions

What are the rules regarding further briefs and submissions?

Typically, the only pleadings permitted are the complaint, the answer to the complaint, answers to counterclaims and cross-claims, third-party complaints and answers thereto, and – where ordered by the court – a reply to an answer. See Federal Rule of Civil Procedure 7(a).

Amendments to pleadings are allowed as a matter of right where made within 21 days of service of the pleading, or within 21 days after service of a responsive pleading. After these time periods have passed, a party may amend its pleading with the opposing party's consent or leave of court, which is freely given "when justice so requires." See Federal Rule of Civil Procedure 15(a).

With leave of court, and after a motion and reasonable notice to other parties, pleadings may be supplemented to set out events occurring after the date of the earlier pleading. See Federal Rule of Civil Procedure 15(d).

Parties are also allowed to file applications in the form of motions seeking interim or other relief. Typically, these motions simply note in abbreviated form the reason for and nature of the relief sought and are supported by separate briefs (often denominated as memoranda).

15 Publicity

To what degree are civil proceedings made public?

Civil proceedings are presumptively open to the public. The courts will close a hearing to the public, or seal documents from public view, only where certain requirements are met. Courts may impose appropriate measures, for example, to protect trade secrets or other property protected by law, in consideration of the physical safety of a person participating in the proceeding, or to prevent exposure of grand jury investigative information.

Pretrial settlement and ADR

16 Advice and settlement proposals

Will a court render (interim) assessments about any factual or legal issues in dispute? What role and approach do courts typically take regarding settlement? Are there mandatory settlement conferences between the parties at the outset of or during the litigation?

Courts typically do not render interim assessments about factual or legal issues in dispute. Courts will, however, rule on dispositive motions, but they otherwise will leave merits determinations to trial.

There are often mandatory settlement conferences, though judges may ask other officers to conduct those conferences. Most judges are reluctant to express even provisional views on merits issues at settlement conferences, but some do.

17 Mediation

Is referral to mediation or another form of ADR an option, or even mandatory, before or during the litigation?

Few cases are tried without first being mediated or without the parties, and often the court, having discussed the possibility of mediation. Some courts will require that parties attend a judicial settlement conference or a mediation before allowing the case to proceed to trial.

Interim relief

18 Forms of interim relief

What are the forms of emergency or interim relief?

Emergency or interim relief typically takes the form of an injunction. There are three types: temporary restraining orders, preliminary injunctions and permanent injunctions.

Temporary restraining orders (TROs) are issued to preserve the status quo pending a hearing on a preliminary injunction. TROs are binding for no more than 10 days, unless extended by consent or by court order on motion made, before its expiration, upon a showing of good cause. Preliminary injunctions are issued to preserve the status quo pending a trial on the merits. Thus, preliminary injunctions are binding until the disposition of the suit. A permanent injunction endures permanently, or for such period as stated in the injunction.

19 Obtaining relief

What must a petitioner show to obtain interim relief?

To obtain a TRO, the petitioner must provide a sworn complaint or affidavit that must show:

- a substantial likelihood that the movant will succeed on the merits;
- the TRO is necessary to avoid irreparable harm to the movant;
- the threatened harm will result before the adverse party may be heard in opposition;
- the threatened harm to the movant outweighs any harm to the party to be enjoined; and
- the proposed TRO is in the public interest.

A preliminary injunction can be issued only after notice to the affected party. Preliminary injunction orders must reflect a judicial weighing of any harm to the adverse party against the threatened harm to the movant, as well as consideration of the public interest. Such orders must contain findings of fact and conclusions of law. Additionally, the party seeking the preliminary injunction may require a bond or security. Otherwise, the burden to obtain a preliminary injunction is the same as that for a TRO.

Permanent injunctions are issued as part of orders disposing the case and may be sought in the complaint, counterclaim, third-party claim or other pleading. They are generally supported by a showing that damages will not adequately compensate the injury or threatened injury.

Decisions

20 Types of decisions

What types of decisions (other than interim relief) may a court render in civil matters?

Relief can be provided in the following forms:

- compensatory damages;
- punitive damages;
- specific performance; and
- injunctions.

21 Timing of decisions

At what stage of the proceedings may a court render a decision? Are motions to dismiss and summary judgment available?

Courts may entertain dispositive motions immediately after suit is filed. The two most frequently utilised are motions to dismiss and motions for summary judgment. Typically, a motion to dismiss challenges the sufficiency of the complaint or specific claims. Motions for summary judgment determine whether a case presents issues for trial. A motion for summary judgment should be granted if the record before the court "show[s] 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." See Federal Rule of Civil Procedure 56.

Additionally, a court may render a final judgment after trial.

22 Default judgment

Under which circumstances will a default judgment be rendered?

A default occurs when a party fails to file a timely response to a complaint, counterclaim, cross-claim, or third-party claim. When the relief sued for is a liquidated amount of money, the court can enter a default judgment. When relief other than damages is involved or when the damages sought cannot be readily calculated, default judgment cannot enter without a hearing where the movant presents evidence in support of that relief. At this hearing, the defaulting respondent may appear and oppose the amount of the claim or scope of the non-monetary relief to be awarded. A defaulting party may not, however, contest liability or defend the case, without first obtaining an order that vacates the default.

23 Duration of proceedings

How long does it typically take a court of first instance to render a decision?

The median length of time between filing and disposition of cases in US District Courts (the median for all districts as a whole) is 10.4 months as of December 2017. This median varies significantly by district, however. In 2017, the variation was from 2.6 months to 39.4 months. In state courts, time to disposition likewise varies.

Parties

24 Third parties – joinder, third-party notice, intervenors

How can third parties become involved in proceedings?

Interpleader deals with situations in which a third party is in possession of a property or fund, to which two or more people claim a right. Interpleader allows the third party in possession to obtain a ruling regarding disposition of the fund or property.

Intervention allows a third party to become a party to a pending lawsuit. "Intervention of right" is permitted authorised by statute or the applicant claims an interest in the subject matter of the suit which may be impaired, and will not be adequately protected, if intervention is not allowed. "Permissive intervention" is allowed only on showing that it will not unduly delay or prejudice the timely progress of the case or otherwise infringe on the rights of the original parties.

Third party claims are allowed to bring before the court a party "who is or may be liable to" a defending party. See Federal Rule of Civil Procedure 14(a).

Joinder is the process of joining together more than one lawsuit or joining several parties into one lawsuit if the legal issues and factual situations are the same for all parties.

Evidence

25 Taking and adducing evidence

Will a court take or initiate the taking of evidence or will it rely on the parties to request the taking of evidence and to present it?

The court will usually rely on the parties to initiate the gathering and production of evidence in order to establish each party's respective case. The court does rule on the admissibility of evidence.

26 Disclosure

Is an opponent obliged to produce evidence that is harmful to it in the proceedings? Is there a document disclosure procedure in place? What are the consequences if evidence is not produced by a party?

While state courts vary on their requirements, federal procedure contemplates the mandatory disclosure of certain information regarding witnesses, documents, experts, and insurance agreements including materials not favorable to the producing party.

In addition, broad pre-trial discovery is allowed consisting of "interrogatories" (written questions to the adverse party); "requests for the production of documents and tangible things" (written requests for documentary and other evidence); "discovery depositions" (sworn testimony by witnesses); and "requests for admissions" (requests that a party admit matters of fact or law).

Sanctions for failure to make disclosures or provide discovery may include court orders requiring payment of fees and expenses, striking of pleadings in whole or in part, determining that certain facts will be

regarded as established orders, staying or dismissing proceedings, among other things.

27 Witnesses of fact

Please describe the key characteristics of witness evidence in your jurisdiction. Is witness preparation allowed?

The most common method of introducing evidence is through the sworn witness testimony. The testimony of witnesses may be offered live at trial or by deposition.

Typically, witnesses are asked questions on direct examination by the proponent of the testimony. Then, the opponent of the testimony is entitled to question the witness on cross-examination which is normally limited to subjects touched on during direct. The proponent of the witness is then entitled to redirect examination which will ordinarily be confined to the subjects touched on during cross. Judges may also ask questions, but do not often do so.

Witness preparation is permitted but cannot amount to directing or influencing the witness's testimony.

28 Expert witnesses

Who appoints expert witnesses? What is the role of experts?

While courts can appoint experts, they seldom do. Expert witnesses, because of special training, knowledge or experience, are allowed to provide opinion testimony within their expertise provided it will assist the trier of fact.

29 Party witnesses

Can parties to proceedings (or a party's directors and officers in the case of a legal person) act as witnesses? Can the court draw negative inferences from a party's failure to testify or act as a witness?

Parties (including entity directors and officers) may testify. In civil cases, a court or jury is generally permitted to draw negative inferences based on a party's failure to testify or produce evidence in its possession.

30 Foreign law and documentation

How is foreign law or foreign-language documentation introduced into the proceedings and considered by the courts?

A party may adduce offer foreign law as evidence in federal court under Federal Rule of Civil Procedure 44.1, which, among other things, requires the party to give notice that it intends to use the foreign law by pleading or other writing.

31 Standard of proof

What standard of proof applies in civil litigation? Are there different standards for different issues?

The law generally imposes the burden of proving matters on the plaintiff. The defendant has the burden to prove any affirmative defenses it asserts.

The typical standard of proof in civil cases is "preponderance of the evidence", requiring the party to show that it is "more likely than not" that a situation, fact, or event occurred. The standard can vary, however. Proof of fraud, for example, may require "clear and convincing evidence", requiring the party to prove that a fact, event, or situation is substantially more likely than not true.

Appeals

32 Options for appeal

What are the possibilities to appeal a judicial decision? How many levels of appeal are there?

There is a right of appeal through at least one level of appeal. In most states and in the federal system, there is a second level of appeal, typically the state supreme court or, in the federal system, the US Supreme Court. Appeals to Supreme Courts are mostly discretionary.

33 Standard of review

What aspects of a lower court's decisions will an appeals court review and by what standards?

The standard for determining whether to affirm or reverse varies depending upon the nature of the decision in question and whether a judge or a jury made the decision. In the federal system, decisions of judges on matters of law are reviewed de novo. Decisions of judges on matters of fact are not set aside on appeal unless they are clearly erroneous, as stated in Federal Rule of Civil Procedure 52(a).

By contrast, jury findings in civil cases will typically be overturned only if they are not supported by sufficient evidence. The standard requires the reviewing court to uphold the findings of a jury if a rational trier of fact could have reached the same conclusion based upon the evidence presented.

Cases cannot be reversed on the basis of errors that did not affect the substantial rights of the parties.

34 Duration of appellate proceedings

How long does it usually take to obtain an appellate decision?

While there are no official data available, the authors believe that federal appellate cases usually take between seven and 12 months.

Special proceedings

35 Class actions

Are class actions available?

Under certain circumstances, the Federal Rules of Civil Procedure allow a plaintiff or several plaintiffs to prosecute a suit on behalf of or against classes of persons similarly situated. See Federal Rule of Civil Procedure 23 (explaining the requirements for civil class action lawsuits).

36 Derivative actions

Are derivative actions available?

Yes. The Federal Rules of Civil Procedure permit "shareholder derivative actions". See Federal Rule of Civil Procedure 23.1 (explaining the requirements for derivative actions).

37 Fast-track proceedings

Are fast-track proceedings available?

Fast-track proceedings are not generally available. Some courts do, however, operate fast-tracks or "rocket dockets".

38 Foreign-language proceedings

Is it possible to conduct proceedings in a foreign language?

Federal judicial proceedings in the United States are conducted in English. The courts permit the use of translators during hearings and at trial, to translate witness testimony into English and to translate the proceedings into a foreign language for the benefit of a party or witness.

Effects of judgement and enforcement

39 Effects of a judgment

What legal effects does a judgment have?

A judgment is the official statement of the court disposing of a case. See Federal Rules of Civil Procedure 54 and 58.

40 Enforcement procedure

What are the procedures and options for enforcing a domestic judgment?

A money judgment is enforced by a writ of execution, in accordance with the procedures of the state where the court is located. Discovery may be taken in aid of execution. See Federal Rule of Civil Procedure 69. To enforce a judgment requiring a specific act, a court may order another person to perform the act at the disobedient party's expense. The court may also enter an order divesting a party of property and vesting it in the enforcing party. Additionally, the enforcing party may seek a writ of attachment or sequestration against the disobedient party's property in order to compel obedience with the judgment, or may obtain a writ of execution or assistance. See Federal Rule of Civil Procedure 70.

41 Enforcement of foreign judgments

Under what circumstances will a foreign judgment be enforced in your jurisdiction?

There is no federal act, treaty or Constitutional provision governing the recognition of foreign judgments. Therefore, enforcement of judgments issued by foreign courts in the United States is governed by the laws of the states. These state laws vary with regard to the standards courts apply. Twenty-two states have adopted the Uniform Foreign Money-Judgments Recognition Act (Recognition Act), three states have not adopted the Recognition Act but have developed similar legislation, and 25 states have no similar statutory provision regarding foreign judgments.

In those states that have adopted the Recognition Act, a foreign judgment must be "final and conclusive and enforceable where rendered" in order to be entitled to recognition. The Recognition Act also provides certain grounds for non-recognition of a foreign judgment pertaining to the irregularity of foreign proceedings.

Costs

42 Costs

Will the successful party's costs be borne by the opponent?

Generally, the prevailing party in a lawsuit will be awarded costs other than attorney's fees. See Federal Rule of Civil Procedure 54(d)(1). However, there are a limited number of rules and statutes that do permit recovery of attorney fees. Also, courts will enforce contractual provisions allowing the award of fees to prevailing parties.

43 Legal aid

May a party apply for legal aid to finance court proceedings? What other options are available for parties who may not be able to afford litigation?

Legal aid organisations provide legal assistance to individuals who meet certain income limitations. There is no national legal aid society; instead, legal aid organisations are run on a more local or regional level. Parties who cannot afford litigation may proceed pro se, representing themselves.

44 Contingency fees

Are contingency fee arrangements permissible? Are they commonly used?

Contingency fee arrangements are permissible, with certain exceptions and are in common use.

45 Third-party funding

Is third-party funding allowed in your jurisdiction?

Yes, third-party funding of litigation is permitted. In certain jurisdictions, disclosure of such third-party financers is required.

46 Fee scales

Are there fee scales lawyers must follow? Are there upper or lower limits for fees charged by lawyers in your jurisdiction?

Lawyers are not required to follow any set fee scales. If a court is awarding attorney's fees as part of a judgment, the court will typically review the attorney's requested hourly rate and number of billed hours for reasonableness.

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He is a Fellow of the Chartered Institute of Arbitrators and he is registered as a panelist for the American Arbitration Association, the CPR (International Institute for Conflict Prevention and Resolution), International Centre for Dispute Resolution and International Chamber of Commerce. From 2014–2017, he was executive director at the Atlanta Center for International Arbitration and Mediation (ACIAM), an affiliate of the Georgia State University (GSU) College of Law, and helped establish the ACIAM hearing facility.

He teaches international commercial arbitration at GSU and at Vanderbilt University Law School in Nashville, Tennessee, USA. He is a frequent continuing education speaker and has lectured at Duke University Law School (Durham, North Carolina, USA), Emory Law School (Atlanta, Georgia, USA), the University of Memphis Law School (Memphis, Tennessee, USA) and the University of Tennessee College of Law (Knoxville, Tennessee, USA) among other places. He coaches the Georgia State Vis Moot team. He is a founding member of AtlAS, the Atlanta International Arbitration Society, currently serving as its Secretary. He is a former Chair of the Litigation Arbitration and Dispute Resolution Section of the World Law Group and edited *International Civil Procedure* (Kluwer 2004) comparing civil procedure in 33 jurisdictions.

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Christine H Lee's practice focuses on representing companies in all forms of business litigation. Whether the goal is to reach the courtroom or prevent litigation, Christine delivers efficient, zealous representation with an eye on the company's bottom line. She has argued before state and federal courts relating to matters involving contractual disputes, corporate claims, intellectual property, procedural nuances, unsettled areas of law and more.

Outside of the courtroom, Christine assists companies with day-to-day operations by providing outside general counsel services, including issue-spotting, advice on daily legal matters, drafting corporate documents and negotiating deals and settlements.

Representing a diverse range of businesses from national companies to entrepreneurs and locally owned companies, she has served as outside counsel for clients involved in the design, financial, medical and hospitality industry. Christine has advised companies on a variety of issues including trademark registration or infringement, non-disclosure agreements, corporate structure, and purchase and sale agreements.

Christine is fluent in Korean and connected to the Asian and international business community through memberships with the Korean-American Bar Association of Georgia, The Georgia Asian Pacific American Bar Association and the Korean American Coalition.

Christine graduated from Georgia State University College of Law.

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As an associate attorney with Miller & Martin PLLC, Jessica Malloy-Thorpe focuses her practice in the area of business litigation, with an emphasis on labour and employment litigation matters. Jessica has litigation experience in both state and federal courts, running the gamut from drafting initial pleadings, managing the discovery process and handling discovery disputes, to preparing dispositive motions. She also has experience in enforcing agreements to arbitrate.

Prior to joining Miller & Martin, Jessica clerked for the Honorable Susan K Lee in the US District Court for the Eastern District of Tennessee and the Honorable Susan L Collins in the US District Court for the Northern District of Indiana.

Jessica obtained her law degree from Georgetown University. She is licensed to practise law in Florida, Georgia and Tennessee.

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