

# International Comparative Legal Guides



Practical cross-border insights into litigation and dispute resolution work

## Litigation & Dispute Resolution 2023

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### 1 Litigation – Preliminaries

**1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?**

Pennsylvania has a state constitution, statutes, regulations, and local ordinances. A common law jurisdiction, Pennsylvania develops law by judicial precedent. The Rules of Civil Procedure govern trial courts and the Pennsylvania Rules of Appellate Procedure govern appeals. Each court may issue its own internal rules/procedures.

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

The county Courts of Common Pleas are the initial civil trial courts. Pennsylvania has two intermediate appellate courts. The Superior Court hears appeals in private civil matters from the trial courts. The Commonwealth Court hears appeals in, or has original trial jurisdiction over, cases involving the state and its administrative agencies. The Supreme Court is the highest court. *See* question 9.5 below.

**1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?**

1. **Pleadings** (*see* sections 3 to 5 below), including the filing of jury demands for six to 12 jurors.
2. **Discovery**. *See* section 7 below.
3. **Dispositive Motions**. *See* question 6.6 below.
4. **Pretrial & Trial**, during which the parties prepare and file materials required for trial such as trial/witness lists, jury instructions, motions *in limine*, and trial.
5. **Post-Trial/Judgment**, in which the court resolves any parties' post-trial motions before final judgment.
6. **Appeals**.

The timeline in the trial court is largely dependent upon county-level practice regarding case management orders. Civil appeals can take as long as 12–18 months from filing to resolution.

Expedited proceedings are generally available only upon motion or when immediate injunctive relief is required.

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

Such clauses are presumptively valid and will be enforced unless they result from fraud, effectively preclude a party from being heard in court, or violate some public policy.

**1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?**

Each county sets fees, which can be several hundred dollars, for a plaintiff's and defendant's initial filings, and may also require an additional fee for jury demands.

Under the "American rule", a party bears its own attorneys' fees and costs unless a contract or statute provides otherwise. *In re Farnese*, 17 A.3d 357, 370 (Pa. 2011). Certain costs defined by statute or rule (for example witness fees) may be recovered by the prevailing party.

**1.6 Are there any particular rules about funding litigation in your jurisdiction? Are claimants and defendants permitted to enter into contingency fee arrangements and conditional fee arrangements?**

Pennsylvania Rule of Professional Conduct 1.5 governs fee agreements with clients and sets forth several factors for evaluating a fee's propriety. It permits contingent fee agreements if they are in writing and detail when and in what amount the fee can be recovered. Under Rule 1.8(e), an attorney may advance costs or other expenses of litigation even in contingent fee matters. *See also* question 1.7 below.

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

Assignments or other agreements for funding by non-parties with no independent interest in a dispute, in exchange for a share of any recovery, are unenforceable as champerty. *See WVIC, LLC v. LaBarre*, 148 A.3d 812, 818-19 (Pa. Super. 2016).

**1.8 Can a party obtain security for/a guarantee over its legal costs?**

Security is available only in specific types of matters, or (a) in injunction proceedings on behalf of the defendant, to protect it

against losses from any wrongly issued preliminary injunction (Pa.R.C.P. 1531), or (b) to secure a judgment and stay enforcement pending appeal (Pa.R.A.P. 1731).

## 2 Before Commencing Proceedings

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

No pre-filing notice is required on most claims, though some claims, such as employment discrimination, require exhaustion of administrative remedies. The signer of every pleading containing an averment not appearing in the record or containing a denial of fact shall verify under oath that the averment or denial is true upon the signer's personal knowledge. Pa.R.C.P. 1024. In any professional liability action, the plaintiff must file a certificate of merit within 60 days of filing the complaint. Pa.R.C.P. 1042.3.

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

Personal injury, waste, trespass, and most tort actions must be brought within two years, a contract claim within four years, a claim based on construction defect within 12 years, and an action based on possession of realty within 21 years. Other civil actions not subject to a specific limitations period must be commenced within six years. *See, generally*, 42 Pa.C.S. §§ 5521–38. The statute begins to run when the plaintiff is able to maintain the elements of a claim (42 Pa.C.S. § 5502), but may be tolled for certain claims by the discovery rule. In other words, the limitations period begins to run when the plaintiff, by the exercise of reasonable diligence, knew or should have known of the injury and its cause.

## 3 Commencing Proceedings

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

Civil actions are commenced by filing either (1) a praecipe for a writ of summons, or (2) a complaint. Pa.R.C.P. 1007. If initiated by way of a praecipe for a writ of summons, but without filing a complaint, the prothonotary, upon praecipe by the defendant, will enter a rule upon the plaintiff directing the plaintiff to file a complaint. After failure to file a complaint within 20 days after service of the rule, upon praecipe by the defendant, the prothonotary will enter a judgment of non-pros. Pa.R.C.P. 1037(a).

Original process must be served within 30 days of the issuance of a writ of summons or the filing of a complaint. Pa.R.C.P. 401. If service is not made, upon praecipe by the plaintiff, the prothonotary will reissue the writ of summons or reinstate the complaint, providing an additional 30 days for service. Pa.R.C.P. 401. In all counties except Philadelphia, original process – except for limited categories of actions set forth in Pa.R.C.P. 400(b) and (c) – must be served by a sheriff. Pa.R.C.P. 400. In Philadelphia County, service of original process may be made by a sheriff or any competent adult. Pa.R.C.P. 400.1. Service of

original process is made by handing a copy: (1) to the defendant; (2) to an adult member of the defendant's family at the residence or to another adult person in charge if no adult family member is found; (3) to the clerk or manager of a property in which the defendant resides; or (4) to the person in charge at any office or usual place of business of the defendant. Pa.R.C.P. 402.

Parties outside of Pennsylvania must be served with original process within 90 days of the issuance of the writ or filing of the complaint by a competent adult, by mail, in any manner provided by the law of the jurisdiction where service is made, in the manner provided by treaty, or as directed by a foreign authority in response to a letter rogatory or request. Pa.R.C.P. 404.

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

A plaintiff may seek a preliminary injunction or a temporary restraining order, which requires that the plaintiff's right to relief be clear, the need for relief be immediate, and the injury be irreparable if the injunction is not granted. *See Credit Alliance Corp. v. Phila. Minit-Man Car Wash Corp.*, 450 Pa. 367, 371 (1973).

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

The main elements are: a caption; a notice to defend; numbered paragraphs, each containing one material allegation; a claim for relief; and verification by a party. The claim for relief must be specific. The pleading must be signed by an attorney of record, or the party if not represented. *See* Pa.R.C.P. 1018-23.1.

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

Yes. Pleadings may be amended at any time by filed consent of the adverse party or by leave of the court. Pa.R.C.P. 1033. A party may file an amended pleading as of course within 20 days after service of preliminary objections. If a party files an amended pleading as of course, the preliminary objections to the original pleading are deemed moot. Pa.R.C.P. 1028(c)(1).

### 3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Before trial commences, a plaintiff may withdraw a pleading voluntarily by filing a praecipe to discontinue. Pa.R.C.P. 229(a). Once trial has begun, a plaintiff may not voluntarily terminate the action "without leave of court upon good cause shown and cannot do so after the close of all the evidence". Pa.R.C.P. 230. Once withdrawn, a case cannot be reopened unless the action is commenced anew and all filing fees are paid. Pa.R.C.P. 231(a).

## 4 Defending a Claim

### 4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

Preliminary objections are limited to certain grounds, including lack of subject matter or personal jurisdiction, legal insufficiency of a pleading, and failure to exhaust a statutory remedy.



Pa.R.C.P. 1028. A defendant's answer must specifically deny the plaintiff's averments; general denials have the effect of an admission. Pa.R.C.P. 1029. The defendant's responsive pleading may contain "new matter", which may include a number of affirmative defences that must be pled. Pa.R.C.P. 1030. The defendant may also bring a counterclaim or a cross-claim. Pa.R.C.P. 1031, 1031.1.

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

An answer or preliminary objections are due within 20 days of service of the complaint. Pa.R.C.P. 1026.

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

Yes. A defendant may join as an additional defendant any person who may be solely liable or jointly liable with the joining party. Pa.R.C.P. 2252(a). The joining party joins a new defendant by filing a praecipe for a writ or a complaint. Pa.R.C.P. 2252(b).

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

Failure to defend a claim may subject the defendant to a plaintiff's request for a default judgment. Pa.R.C.P. 1037(b). If the prothonotary cannot assess damages, a trial will be held on the amount. Pa.R.C.P. 1037(b)(1).

#### 4.5 Can the defendant dispute the court's jurisdiction?

Yes. A defendant can dispute a court's subject matter or personal jurisdiction through preliminary objections. Pa.R.C.P. 1028. Subject matter jurisdiction can be raised at any time. Pa.R.C.P. 1032. Personal jurisdiction must be raised by preliminary objection or the defence is waived. Pa.R.C.P. 1032(a).

## 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?

Individuals with a joint interest in an action must be joined together as plaintiffs or defendants. Pa.R.C.P. 2227(a). If a required party refuses to join, that person may "be made a defendant or an involuntary plaintiff when the substantive law permits such involuntary joinder". Pa.R.C.P. 2227(b). Compulsory joinder applies to related plaintiffs. For example, if each spouse has a cause of action arising from the non-fatal injury sustained by one of them, they must bring their actions together. Pa.R.C.P. 2228(a). Permissive joinder is allowed where the parties assert a right to relief jointly, severally, separately, or arising out of the same transaction or occurrence. Pa.R.C.P. 2229(a).

#### 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?

If two or more actions in the same county involve a common question of law or fact, or arise from the same transaction or

occurrence, the court may order a joint hearing or trial, or that the actions to be consolidated for all purposes are just for discovery. Pa.R.C.P. 213. If two or more actions in different counties involve common questions of law or fact or arise from the same transaction or occurrence, a party can request the court to order coordination of the actions. Pa.R.C.P. 213.1.

#### 5.3 Do you have split trials/bifurcation of proceedings?

The court has discretion to order trials of separate issues. Pa.R.C.P. 213(b).

## 6 Duties & Powers of the Courts

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

The Philadelphia Court of Common Pleas has trial, orphans' court and family court divisions. 42 Pa.C.S. Ann. § 951(a). It also has a Commerce Program where certain corporate and business disputes are heard. There are no separate courts of equity in Pennsylvania.

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

The court may order the parties' attorneys to attend a pretrial conference to simplify the issues, enter a scheduling order, obtain admissions of fact, limit the number of expert witnesses, and settle the case. Pa.R.C.P. 212.3.

#### 6.3 In what circumstances (if any) do the civil courts in your jurisdiction allow hearings or trials to be conducted fully or partially remotely by telephone or video conferencing, and what protocols apply? For example, does the court – and/or may parties – record and/or live-stream the hearings and may transcriptions be taken? May participants attend hearings remotely when they are physically located outside of the jurisdiction? Are electronic or hard-copy bundles used for remote hearings?

Philadelphia's Civil Trial Division is conducting "very limited types of court proceedings" by Zoom, as specifically notified by scheduling order or other notice, including: discovery hearings; case management and status conferences; and some evidentiary hearings and bench trials. Access is available to the public by links on the court's website, and participants are not required to be within the jurisdiction for the remote proceeding. The court allows telephone participation only on express leave and only if the participant lacks access to Zoom. Participants may not record or transcribe the proceeding, although a stenographer is often present. Other courts within the Commonwealth, however, have set different parameters.

#### 6.4 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

The court may hold parties in contempt-conduct that bring into disrespect the authority of the court or fail to obey a court order

compelling discovery. Pa.R.C.P. 4019. A party subject to sanctions may be required to pay the movant's expenses and attorneys' fees.

#### 6.5 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

A party can file a preliminary objection to any pleading for inclusion of "scandalous or impertinent matter". Pa.R.C.P. 1028(a)(2). A court may dismiss a case entirely by granting a defendant's preliminary objections. Pa.R.C.P. 1028. Pennsylvania courts are required annually to "initiate proceedings to terminate cases in which there has been no activity of record for two years or more". Pa.R.C.P. 230.2(a). Additionally, trial courts may terminate a matter that has been inactive for an unreasonable amount of time. Pa. R.J.A. 1901(a).

#### 6.6 Can the civil courts in your jurisdiction enter summary judgment?

Summary judgment may be granted: (1) where there is no genuine issue of any material fact as to a necessary element of the claim or defence; and (2) "if, after the completion of [relevant] discovery [...] including [...] expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense". Pa.R.C.P. 1035.2.

#### 6.7 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The court may order a stay of execution on a judgment, of proceedings and compel arbitration, and pending appeal. A motion for a stay pending appeal must establish that the petitioner is likely to prevail on the merits, that the petitioner will suffer irreparable injury, and that a stay will not substantially harm either other interested parties or the public interest. *See Pa. Pub. Util. Comm'n v. Process Gas Consumers Grp.*, 467 A.2d 805, 808–09 (Pa. 1983), rev'd on other grounds, 511 A.2d 315 (Pa. 1986).

## 7 Disclosure

#### 7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

Discovery of relevant, non-privileged information is permitted, through document requests, interrogatories, depositions, and requests for admission.

Discovery is generally unavailable before suit. However, a plaintiff can first issue a writ of summons and then take discovery that is material and necessary to prepare a complaint, subject to limitations for undue burden, expense, or the like.

Parties may request electronic documents in a preferred format, subject to objection. Parties are encouraged, but not required, to meet and confer about targeted searches, sampling, or other techniques. *See* Pa.R.C.P. 4001–4019.

#### 7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

Pennsylvania recognises a number of privileges, such as attorney-client and accountant-client privileges. The privilege belongs to the client and cannot be waived by the attorney. Unless a privilege is waived by the client, protected information is generally not discoverable. Attorney work product is not discoverable. The right to invoke attorney work product belongs to the attorney, not the client. *See, generally, BouSamra v. Excela Health*, 210 A.3d 967 (Pa. 2019).

#### 7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

Third parties can be subpoenaed to testify and/or produce documents. Pa.R.C.P. 234.1–234.5 and 4009.21–4009.27 govern such subpoenas, as well as the procedures for providing notice to other parties to the action and their rights to object.

#### 7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

The trial court sets deadlines for discovery but otherwise is involved only to resolve disputes that cannot be resolved by agreement. A party can move to compel responses or compliance with a subpoena. The opponent or third party can seek a protective order. A court can sanction a non-compliant party or hold a third party in contempt for failure to comply with a subpoena. *See* Pa.R.C.P. 234.1–234.5, 4012, and 4019.

#### 7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

Parties and/or third parties may agree to limit the use or further disclosure of confidential business or personal information, such as trade secrets. Absent agreement, a court can enter a protective order upon motion by a party or third party. *See* Pa.R.C.P. 4012.

## 8 Evidence

#### 8.1 What are the basic rules of evidence in your jurisdiction?

The Pennsylvania Rules of Evidence govern the basic rules of evidence in the jurisdiction.

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

Admissible evidence must be relevant. *See* Pa.R.E. 402. "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable [...]; and (b) the fact is of consequence in determining the action." Pa.R.E. 401. Relevant evidence may be precluded if the "probative value is outweighed by a danger of [...] unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence". Pa.R.E. 403. Numerous rules govern admissibility of different types of evidence. *See, e.g.*, Pa.R.E. 801-807.

Pa.R.E. 702 permits expert evidence “if scientific, technical or other specialized knowledge beyond that possessed by a lay person will assist the trier of fact to understand the evidence or determine a fact in issue” and if the witness is “qualified as an expert by knowledge skill or experience, training or education”. The expert must use a methodology “generally accepted by scientists in the relevant field”, under *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923); *Commonwealth v. Topa*, 369 A.2d 1277 (Pa. 1977). The court should scrutinise scientific methodology and conclusions “to ensure that what might appear to the jury to be science is not in fact speculation in disguise”. *Blum v. Merrell Dow Pharmaceuticals, Inc.*, 705 A.2d 1314, 1325 (Pa. Super. 1997), *aff’d*, 764 A.2d 1 (Pa. 2000).

### 8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

Any fact witness testimony must be based on personal knowledge. Pa.R.E. 602. Every witness is presumed competent unless the court finds the witness to be incompetent due to “mental condition” or “immaturity”. Pa.R.E. 601.

Pa.R.C.P. 4020 permits the use of a deposition at trial if the witness is outside the Commonwealth (unless the proponent procured the absence) or cannot appear for medical reasons. To be admissible under Pa.R.E. 804, (a) the testimony must have been given under oath in the current or another action, and (b) the opponent or predecessor in interest must have “had an opportunity and similar motive” for examination. Other extrajudicial witness statements are inadmissible unless within a hearsay exception. Pa.R.E. 802–803.

### 8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

Under Pa.R.C.P. 4003.5, a party may serve interrogatories for the identity of experts who may testify at trial, their qualifications, and the bases for and substance of their opinions. The proponent can respond with an expert report signed by the expert witness. A failure to disclose an expert, or the substance/bases for any opinions, bars use at trial. Multiple experts may offer overlapping opinions, but may be limited at trial for cumulativeness under Pa.R.E. 403.

Communications with the expert are generally not discoverable. Expert depositions are not available under the Pennsylvania rules. No discovery may take place regarding non-testifying consulting experts.

## 9 Judgments & Orders

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

A judgment finally determines the parties’ rights and obligations. An interlocutory order determines a preliminary issue and does not adjudicate ultimate rights. A preliminary injunction is an interlocutory order. The court may enter a final judgment ordering money damages.

### 9.2 Are the civil courts in your jurisdiction empowered to issue binding declarations as to (i) parties’ contractual or other civil law rights or obligations, (ii) the proper interpretation of wording in contracts, statutes or other documents, (iii) the existence of facts, or (iv) a principle of law? If so, when may such relief be sought and what factors are relevant to whether such relief is granted? In particular, may such relief be granted where the party seeking the declaration has no subsisting cause of action, and/or no party has suffered loss, and/or there has been no breach of contract/duty?

Under the Declaratory Judgments Act, 42 Pa.C.S. Ann. § 7532, courts may issue declaratory judgments, which determine the parties’ rights with respect to certain factors. A court may determine any question of construction or validity of a contract, a statute, or similar writing before or after a breach has occurred; the rights or status of fiduciaries, creditors, or others; and any other issues that “will terminate the controversy or remove an uncertainty”. 42 Pa.C.S. §§7533–7536. A court may issue a declaratory judgment even if it involves an issue of fact. 42 Pa.C.S. §§7534, 7539. A declaratory judgment may not “determine rights in anticipation of events which may never occur”; there must be “antagonistic claims indicating imminent and inevitable litigation”. *Pennsylvania Protection & Advocacy, Inc. v. Dept. of Education*, 609 A.2d 909, 910 (Pa. Commw. Ct. 1992).

### 9.3 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

An award of damages is subject to post-judgment interest from the date on which the judgment is finally entered. 42 Pa.C.S. § 8101. The legal rate of interest in Pennsylvania is 6%. 41 Pa.C.S. § 202. Pre-judgment interest is only awarded where necessary to prevent injustice. *See Sack v. Feinman*, 413 A.2d 1059, 1065–66 (Pa. 1980).

### 9.4 How can a domestic/foreign judgment be recognised and enforced?

Execution is commenced by filing a writ of execution with the prothonotary of any county in which the judgment has been entered. Pa.R.C.P. 3103(a). The writ can be enforced by a variety of means, including sale of real property, garnishment, execution against contents of a safety deposit box, and sale of securities. *See* Pa.R.C.P. 3110–14. In special actions, enforcement occurs through an action of ejectment (to obtain possession of realty), an action of replevin (to obtain possession of personalty), or mortgage foreclosures. The Full Faith and Credit Clause of the United States Constitution requires courts to recognise judgments from other states. The Uniform Enforcement of Foreign Judgments Act applies to judgments of other states. *See* 42 Pa.C.S. Ann. § 4306. The Uniform Foreign Money Judgment Recognition Act governs money judgments obtained in another country. *See* 42 Pa.C.S. Ann. § 22001 *et seq.*; *see also* *Louis Dreyfus Commodities Suisse SA v. Fin. Software Sys., Inc.*, 99 A.3d 79 (Pa. Super. Ct. 2014) (judgments of other countries must first be recognised under the Recognition Act).

### 9.5 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

Where post-trial motions are required, the issues must be raised in timely post-trial motions in the trial court before they can be

raised on appeal. *L.B. Foster Co. v. Lane Enters.*, 710 A.2d 55 (Pa. 1997). The Pennsylvania Rules of Appellate Procedure provide for appeals of right from final, collateral, and certain interlocutory orders. If an order is not appealable of right, a petition for permission to appeal may be filed or a determination of finality may be sought. Pa.R.A.P. 341(c), 1311. Most appeals of right are to the Superior or Commonwealth Courts; however, in some cases, the Pennsylvania Supreme Court hears appeals from the Court of Common Pleas, the Superior Court, and the Commonwealth Court, some appeals as of right. *E.g.*, 42 Pa.C.S. Ann. § 9711(h); Pa.R.A.P. 1101. Most appeals to the Supreme Court are discretionary and are initiated by a petition for allowance of appeal from the Commonwealth or Superior Courts. Pa.R.A.P. 1112(c). The criteria that the Supreme Court uses to grant allowance of appeal are set forth in Pa. R.A.P. 1114. It has extraordinary jurisdiction and King's Bench powers, which can be sought by application. Pa.R.A.P. 3309.

## 10 Settlement

### 10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

42 Pa.C.S. § 7361 authorises judicial districts to implement compulsory non-binding arbitration for disputes below a certain dollar amount. For example, all civil actions filed in the Philadelphia Court of Common Pleas with an amount in controversy of \$50,000 or less are subject to compulsory non-binding arbitration.

## 11 Alternative Dispute Resolution

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

An agreement to arbitrate is presumed to be an agreement for common law arbitration. 42 Pa.C.S. § 7302(a). Mediation is also commonly used for dispute resolution.

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

Certain claims are subject to statutory arbitration, including collective bargaining agreements and disputes relating to government contracts. 42 Pa.C.S. §§ 7302(b)–(c). The Pennsylvania Uniform Arbitration Act governs witnesses, discovery, awards, and fees. A common law arbitration award “may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award”. 42 Pa.C.S. § 7341. Civil actions with an amount in controversy below the threshold are subject to compulsory arbitration. 42 Pa.C.S. § 7361.

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

A child custody dispute cannot use alternative dispute resolution methods where it is not in the best interests of the child. *See Miller v. Miller*, 620 A.2d 1161, 1165 (Pa. Super. Ct. 1993). Under extraordinary circumstances, arbitration clauses may be unenforceable if they violate public policy. *See, e.g., In re Fellman*, 604 A.2d 263, 267 (Pa. Super. Ct. 1992).

### 11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will 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, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Yes. Where an arbitration clause governs a dispute between parties, a party may file a motion to compel arbitration. Pa.R.C.P. 1329. Courts address disputes over the scope of the arbitration clause, *i.e.*, what issues may be arbitrated, unless the parties agree to submit such disputes to arbitration. *See, e.g., Kardon v. Portare*, 353 A.2d 368, 370 (Pa. 1976) (finding lower court inappropriately addressed subject matter within scope of arbitration agreement). A court may stay litigation pending arbitration.

### 11.5 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 your jurisdiction in this context?

Limited appellate review is available for final arbitration orders, as described in question 1.2. A court may enforce an arbitration award by ordering specific performance. In a court-established custody mediation programme, sanctions are available against a party who does not comply with the rules. Pa.R.C.P. 1940.8.

### 11.6 What are the major alternative dispute resolution institutions in your jurisdiction?

Arbitration agreements often call for disputes to be arbitrated by the American Arbitration Association. JAMS, a well-known provider of arbitration and mediation services, has a location in Philadelphia. Pennsylvania's Office of General Counsel offers a mediation programme for disputes involving Commonwealth employees or agencies. The Pennsylvania Council of Mediators provides mediation services in private disputes.





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