USA (Illinois)

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Litigation

1 Court system

What is the structure of the civil court system?

Illinois has both state and federal courts. The state courts are courts of general jurisdiction. The jurisdiction of the federal courts is limited to cases involving diversity of citizenship and matters involving questions of federal law, treaties or the United States Constitution. Generally, for a federal court to exercise diversity jurisdiction, the amount in controversy must exceed US$75,000, exclusive of interest and costs, and the matter must be between citizens of different states or citizens of a state and citizens of a foreign state. In most instances, corporations are deemed to be citizens of the state in which they are incorporated and the state where they have their principal place of business.

Illinois has a supreme court, an appellate court and circuit courts. The state is divided into five judicial districts, which are, in turn, divided into 22 judicial circuits. The supreme court sits in Springfield, the state capital. Cook County comprises the First Judicial District and the appellate court for that district sits in Chicago. The other appellate courts are in the following locations: Second District, Elgin; Third District, Ottawa; Fourth District, Springfield; and Fifth District, Mount Vernon.

Cook County, the First Judicial District, is also a single judicial circuit. The other four judicial districts are divided into 21 judicial circuits. The Circuit Court of Cook County is divided into the Municipal Department and the County Department. The Municipal Department generally hears civil actions and proceedings at law for money not in excess of US$30,000. There are seven divisions of the County Department including Law, Chancery, Criminal, Domestic Relations, County, Probate, and Juvenile. Generally, the Law Division hears civil actions for money in excess of US$30,000. The Chancery Division hears matters such as class actions, requests for injunctions and temporary restraining orders, declaratory judgment actions, and mortgage foreclosures. The circuits other than Cook County are also divided into various divisions which generally include law, chancery, criminal, family, probate and county divisions.

There are seven justices of the Illinois supreme court. Three of the justices are elected from the First District, and one Justice is elected from each of the other four districts. The justices serve for terms of ten years. The judges of the appellate court are elected and serve for terms of ten years. The First District (which includes the City of Chicago) has eighteen appellate judges. The remaining four districts elect six judges each. The circuit courts have circuit judges and associate judges. Circuit judges are elected for terms of six years and may be retained by voters for additional six-year terms. Associate judges are appointed by circuit judges for four-year terms. Each of the circuit courts has a chief judge, who is elected by the circuit judges of the circuit.

There are three federal court districts in Illinois: the United States District Court for the Northern District of Illinois, the Central District of Illinois, and the Southern District of Illinois. The Northern District is comprised of an Eastern and Western Division. Court for the Eastern Division is held in Chicago and Wheaton. Court for the Western Division is held in Freeport and Rockford. The Central District hears cases in Champaign/Urbana, Danville, Peoria, Quincy, Rock Island, and Springfield. The Southern District courts are located in Alton, Benton, Cairo and East Saint Louis.

Appeals from the three Illinois federal district courts are to the United States Court of Appeals for the Seventh Circuit, which sits in Chicago and hears appeals from federal district courts in the States of Illinois, Indiana and Wisconsin. Decisions of the Seventh Circuit may be reviewed by the Supreme Court of the United States by petition. As a practical matter, such review is granted infrequently. The US Supreme Court may also review a state court decision when the decision involves a question of federal law.

Unless otherwise specified, this article refers to Illinois state, as opposed to federal, laws, rules, practices and procedures.

2 Judges and juries

What is the role of the judge and, where applicable, the jury in civil proceedings?

The Illinois Constitution of 1970 recognises the right to a jury trial. The plaintiff or defendant can demand a jury in a civil proceeding. The right to a trial by jury normally does not attach where the relief sought is entirely equitable in nature, eg the plaintiff seeks an injunction; however, in its discretion, the court may direct an issue to be decided by a jury in an action seeking equitable relief. Defendants in criminal cases are entitled to a trial by jury.

In cases tried to a jury, the jury decides issues of fact and the judge decides issues of law. Where there is no jury, the judge decides both questions of fact and law.

Illinois uses an adversarial system in court proceedings in which each party presents its own case. Witness examinations are conducted by attorneys for the parties or by the parties themselves if they are not represented. Judges are also permitted to question witnesses.

3 Limitation issues

What are the time limits for bringing civil claims?

The time for bringing civil actions is set forth in Section 5/13-101 et seq. of the Illinois Code of Civil Procedure. The limitations period generally begins to run from the time an action accrues. Illinois statutes of limitation include:

One year: Defamation

Two years: Personal injury or loss of consortium

Five years: Actions on unwritten contracts; awards of arbitration; to recover damages for an injury done to property, real or personal; to recover the possession of personal property or damages for the detention or conversion thereof; and all civil actions not otherwise provided for

Ten years: Actions on written contracts, bonds, promissory notes, bills of exchange, written leases, or other evidences of indebtedness in writing; mortgage foreclosures

Twenty years: Recovery of land

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

Before filing an action, an attorney or a party that is not represented by an attorney is required to make a reasonable inquiry to ensure that the action has a basis in fact and law. A complaint, as well as all other pleadings, motions and papers, must be signed by an attorney or if the party is not represented, by the party. Corporations must be represented by counsel. The signature of the attorney or party constitutes a certificate that he has read the complaint, or other paper, and that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The court may impose sanctions if the complaint or other paper does not comply with this requirement.

Generally, parties may not commence discovery until after an action is filed. Illinois permits a limited exception where a person or entity may, with leave of court, compel discovery before filing a lawsuit to determine the identity of those who may be liable in damages. It also allows parties to conduct a deposition before an action is filed if necessary to perpetuate testimony.

5 Starting proceedings

How are civil proceedings commenced?

Civil actions in Illinois are commenced by the filing of a complaint and payment of a filing fee with the clerk of court. The plaintiff also prepares and files a summons for each defendant. The plaintiff then arranges for the summons and a copy of the complaint to be served on each defendant by the sheriff or other person authorized to serve process. If a jury is sought, a jury demand must be filed. The plaintiff must file its demand when the action is commenced; otherwise, it waives its right to a jury trial. If the plaintiff does not file a jury demand or withdraws its jury demand, the defendant – to be entitled to a jury – must file its own jury demand within prescribed time limits.

6 Timetable

What is the typical procedure and timetable for a civil claim?

In general, unless otherwise specified, a defendant has 30 days from the date of service of the summons in which to file an answer or to otherwise respond to the complaint. This deadline is extended where the defendant waives service of a summons. In such cases, the defendant has 60 days to respond to the complaint, or 90 days if the defendant is outside of the United States. Replies to answers must be filed within 21 days after the last day allowed for the filing of the answer. The defendant may file a counterclaim and affirmative defences with its answer. Answers to and motions directed against counterclaims must be filed within 21 days after the last day allowed for the filing of the counterclaim. The defendant may file a third-party complaint against a person not a party to the lawsuit who may be liable to the defendant for all or part of the plaintiff's claim. A third-party complaint must be filed within the time allowed for the defendant's answer or with leave of court. The schedule for the remainder of the case is determined by the court.

Illinois Supreme Court Rule 218 requires the court to hold an initial case management conference within 35 days after the parties are at issue but in no event later than 182 days after the complaint is filed. At the conclusion of the conference, the court enters an order which controls the subsequent course of action in the case. Case management orders may establish deadlines for, among other things, the completion of discovery, the disclosure of witnesses, subsequent case management conferences, and the date on which the case should be ready for trial.

7 Case management

Can the parties control the procedure and the timetable?

Parties, in conjunction with the court, have the opportunity for substantial input regarding the procedure and schedule to be applied to a particular case. As discussed in the preceding section, in Illinois state proceedings, the trial judge is required to hold a case management conference with the parties relatively soon after the filing of the complaint. At this meeting, the parties must address a wide range of issues, including, among others: the nature, issues and complexity of the case; the simplification of the issues; limitations on discovery (eg, the number and duration of depositions, the number of expert witnesses who may be called, deadlines for the disclosure of witnesses and the completion of written discovery and depositions); the possibility of settlement or alternative dispute resolution; the date on which the case should be ready for trial; and dates for subsequent case management conferences. In addition, Illinois trial judges are empowered to consolidate or sever causes of action, so long as doing so does not prejudice a substantial right of a party.

8 Evidence

What is the extent of pre-trial exchange of evidence? Is there a duty to preserve documents and other evidence pending trial? How is evidence presented at trial?

Parties may obtain information from other parties prior to trial by, among other means, written interrogatories, requests for the production of documents, oral depositions, physical and mental examination of persons, and requests to admit. Documents and deposition testimony may be obtained from non-parties through the service of subpoenas. In general, a party may obtain by discovery full disclosure regarding any matter relevant to the subject matter involved in the pending action, whether it relates to the claim or defence of the party seeking disclosure or of any other party.

Privileged communications, such as those between an attorney and a client, are exempt from discovery. Illinois courts recognise a work product doctrine, pursuant to which material prepared by or for a party in preparation for trial is subject to

discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney.

A party may obtain pre-trial discovery of other parties' expert witnesses, including the witness's qualifications, and opinions and conclusions and the bases therefor. However, in most instances, a party may not obtain discovery concerning a consultant retained by a party in anticipation of litigation but who is not to testify at trial. The identity, opinions and work product of such a consultant are discoverable only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject matter by other means.

Parties have a duty to preserve evidence. The failure to preserve evidence may result in the imposition of severe sanctions.

At trial, evidence may take the form of physical exhibits (eg, documents and things) and witness testimony. Both lay witness and expert witness testimony is permitted. Witness testimony is generally presented through questioning by attorneys for the parties. After a witness's direct examination, other parties are permitted to cross-examine the witness. Deposition testimony may be introduced into evidence where a witness is unavailable or as otherwise provided for under the Illinois Supreme Court Rules.

9 Interim remedies

What interim remedies are available?

Illinois courts may permit a plaintiff to seize and hold the property of a defendant prior to obtaining a judgment against the defendant. The circumstances in which prejudgment attachment may be granted are enumerated in Section 4-101 of the Illinois Code of Civil Procedure. They include situations in which, for example, the debtor has departed, or is about to depart, from the state with the intention of having his or her effects removed from the state; or the debtor has fraudulently concealed or disposed of his or her property, or is about to fraudulently conceal or dispose of his or her property, to hinder or delay his or her creditors.

A party may also obtain emergency injunctive relief in the form of temporary restraining orders and preliminary injunctions. A temporary restraining order allows a trial court to preserve the status quo until a hearing can be held on an application for a preliminary injunction. A preliminary injunction is intended to prevent a threatened wrong or a continuing injury. To establish the right to a preliminary injunction, a plaintiff must demonstrate: (1) there is a clearly ascertainable right that needs protection; (2) he will suffer irreparable harm without the protection of an injunction; (3) there is no adequate remedy at law for his injury; and (4) there is a substantial likelihood of success on the merits in the underlying action. Courts may also consider other factors in determining whether to grant a preliminary injunction, including balancing the equities or the relative hardships, and public policy and the public interest.

10 Remedies

What substantive remedies are available?

In civil cases, Illinois courts may award money damages, including compensatory and punitive damages, penalties, interest, and liquidated amounts; temporary, preliminary and permanent injunctions; other equitable relief such as accounting, rescission, reformation of contracts, and quieting title; partitions of property; and declaratory judgments.

Most Illinois judgments bear interest starting on the effective date of the judgment. The statutory rate for post-judgment interest is 9 per cent, or 6 per cent if the judgment debtor is a government entity. Courts may also award pre-judgment interest in certain circumstances.

11 Enforcement

What means of enforcement are available? What sanctions are available in the event a court order is disobeyed?

A judgment creditor may initiate supplementary proceedings to assist in the enforcement of a judgment. If such proceedings are commenced, the judgment creditor may serve citations to discover assets, which freeze assets and enable the judgment creditor to conduct examinations of the judgment debtor and of persons who may be in possession of property belonging to the judgment debtor or indebted to the judgment debtor. If assets are found, the judgment creditor may obtain turnover orders compelling the judgment debtor or non-parties to transfer assets to the judgment creditor. Judgment creditors in Illinois may also garnish the judgment debtor's wages; proceed by non-wage garnishment to obtain from non-parties other property owned by the judgment debtor, such as bank and brokerage accounts; and file and foreclose on liens against real property. A party that refuses to obey a court order may be judged in contempt and fined or imprisoned until it obeys.

12 Inter partes costs

Does the court have power to order costs?

Illinois follows the 'American Rule' where each side pays its own attorney's fees in most cases. The prevailing party may recover its costs. However, in practice, allowable costs tend to be quite limited. Parties may agree by contract that the losing party will pay the winning party's legal fees and other expenses. Certain statutes provide 'fee shifting provisions', which authorise courts to require one party to pay the other side's legal fees.

13 Fee arrangements

Are 'no win, no fee' agreements or other types of contingency fee arrangements available to parties?

Contingency fee arrangements are permissible in all but criminal or domestic relations matters. An agreement for a contingency fee must be in writing.

14 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

A final judgment of an Illinois circuit court in a civil case is appealable as of right. If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court makes an express written finding that there is no just reason for delaying either enforcement or appeal or both. In addition, an appeal may be taken from an interlocutory order of a trial court: (1) granting, modifying, refusing, dissolving or refusing to dissolve or modify an injunction; (2) appointing or refusing to appoint a receiver or sequestrator: (3) giving or refusing to give other or further powers or property to a receiver or sequestrator already appointed; (4) placing a mortgagor in possession of mortgaged premises; (5) appointing or refusing to appoint a receiver, liquidator, rehabilitator, or other similar officer for a bank or other financial institution; (6) terminating parental rights; and (7) determining

issues pertaining to eminent domain.

A party may petition for leave to appeal to the Illinois appellate court from certain orders of the trial court including orders: (1) granting a new trial; (2) allowing or denying a motion to dismiss on grounds of forum non conveniens; (3) denying a motion to dismiss for lack of personal jurisdiction; (4) denying a motion for a transfer of venue; (5) affecting the care and custody of minors; (6) remanding the proceeding for a hearing de novo before an administrative agency; (7) granting a motion to disqualify the attorney for any party; and (8) denying or granting certification of a class action. The appellate court may also exercise its discretion to allow an appeal from an interlocutory order when the trial court makes an express finding that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

Appeals to the Illinois supreme court are limited. A direct appeal from a final judgment of the circuit court to the supreme court may be taken in a case in which a statute of the United States or Illinois has been held invalid. A party losing before the appellate court may file a petition for leave to appeal to the supreme court in any case not appealable as a matter of right. Whether to grant the petition is entrusted to the sound judicial discretion of the supreme court. Appeals from the appellate court to the supreme court will lie where the appellate court certifies that a case it has decided involves a question of such importance that it should be decided by the supreme court. A party may appeal from the appellate court to the supreme court as a matter of right where a question under the constitution of the United States or Illinois arises for the first time in and as a result of the action of the appellate court.

15 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Under the United States constitution, all state court judgments in the United States must be given full faith and credit in the courts of all other states. In Illinois, money judgments from foreign states (ie, foreign countries) may be recognised under the Uniform Foreign Money-Judgments Recognition Act. The Act applies to any foreign judgment that is final and conclusive and enforceable where rendered. Foreign judgments meeting the requirements of the Act are given "full faith and credit" in Illinois courts, in the same manner as judgments from another state of the United States. A foreign judgment is not conclusive if: (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law; (2) the foreign court did not have personal jurisdiction over the defendant; or (3) the foreign court did not have jurisdiction over the subject matter. Further, foreign judgments need not be recognised if: (1) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend; (2) the judgment was obtained by fraud; (3) the cause of action on which the judgment is based is repugnant to the public policy of Illinois; (4) the judgment conflicts with another final and conclusive judgment; (5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or (6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action. Judgments not covered by the Act may be recognised in Illinois by other means, such as general principals of comity.

16 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Under Illinois Supreme Court Rule 204, an officer or person authorised by the laws of another state or country to take a deposition in Illinois may petition the circuit court of the county in which the deponent resides, works or may be found for a subpoena to compel the giving of testimony by the deponent.

Arbitration

17 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Arbitration in Illinois is governed by the Federal Arbitration Act (FAA), 9 U.S.C. 1 et seq., the Illinois Uniform Arbitration Act (UAA), 710 ILCS 5/1 et seq., and the International Commercial Arbitration Act (ICAA), 710 ILCS 30/1 et seq. Generally, the FAA applies to arbitration agreements that involve or affect interstate commerce, and the UAA applies to purely intrastate matters. The ICAA, which is patterned after the UNCITRAL model rules, governs the arbitration (in Illinois) of international disputes to the extent that it is not preempted by federal law.

18 Arbitration Agreements

What are the formal requirements for an enforceable arbitration agreement?

An agreement to arbitrate is a contractual undertaking and must satisfy the legal requirements for any contract. The FAA, UAA and ICAA each specify that an arbitration agreement must be in writing in order to be enforceable.

19 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Under the FAA and ICAA, if an arbitration agreement is silent and the parties are unable to agree, a party may request that a court designate the arbitrator or arbitrators. If the agreement does not specify the number of arbitrators, the FAA and ICAA provide that the dispute will be decided by a single arbitrator.

The FAA and UAA do not restrict the right of a party to challenge the appointment of an arbitrator or provide procedures for challenging an arbitrator. Under the ICAA, an arbitrator may be challenged "only if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence or if he or she does not possess qualifications agreed to by the parties." The ICAA further provides that, if a party appoints an arbitrator, that party may not challenge that arbitrator unless the party becomes aware of reasons for challenge that were not apparent when that arbitrator was appointed.

20 Procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The UAA and ICAA provide detailed procedural rules which apply to the conduct of an arbitration if the parties do not select other rules. The procedural rules of the UAA and ICAA concern, for example, the commencement of proceedings, statements of claim and defence, hearings and written proceedings, default, the appointment of experts, witnesses, subpoenas, depositions, and court assistance in taking evidence. The FAA does not contain procedural rules for conducting arbitrations.

21 Court intervention

On what grounds can the court intervene during an arbitration?

Under the FAA, UAA, and ICAA, the grounds for court intervention in an arbitration are limited and include matters such as compelling or staying arbitrations, and compelling the attendance of witnesses.

22 Interim relief

Do arbitrators have powers to grant interim or conservatory relief?

Most courts have found that the FAA and UAA allow arbitrators to grant interim relief, including security measures and injunctions. The ICCA expressly permits arbitrators to take any interim measure of protection that is necessary with respect to the subject matter of the dispute.

23 Award

When and in what form must the award be delivered?

The FAA does not impose formal requirements on the timing or form of the award other than the award must be in writing. The UAA and ICAA require that an award be written and signed by the arbitrators. Under the ICAA, the award must state the reasons upon which it is based, unless the parties have agreed otherwise.

24 Appeal

On what grounds can an award be appealed to the court?

The FAA, UAA and ICCA do not provide a right of appeal of an arbitral award. A party, however, may request that a court vacate an award. The grounds for vacating an award are limited and generally include: the award was procured by corruption, fraud, or other undue means; there was evident partiality on the part of an arbitrator; the arbitrators were guilty of misconduct which prejudiced the rights of a party; or the arbitrators exceeded their powers. In federal courts, an award may in some cases also be vacated on certain common law grounds such as where the arbitrators acted in "manifest disregard of the law."

25 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

In Illinois, as elsewhere in the US, the primary means of enforcing foreign awards is through the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) or the Inter-American Convention on International Commercial Arbitration (Panama Convention). Under the New York Convention, courts must recognise foreign awards "in accordance with the rules of procedure of the territory where the award is relied upon." The convention also specifies that courts may not impose more rigorous requirements on the enforcement of foreign awards than the enforcement of domestic awards. The Panama Convention provides for similar standards for the enforcement of awards.

Domestic awards may be enforced in Illinois courts under the FAA or the UAA. In both cases, parties may petition a court to confirm the award. Under the FAA, parties may apply to a court to confirm a domestic award within one year after the award is made.

26 Costs

Can a successful party recover its costs?

Under the UAA, the arbitrators may award costs, not including attorney's fees and other expenses, unless the parties have agreed otherwise. Under the ICAA, arbitrators may award the prevailing party costs, but generally not attorney's fees.

Alternative dispute resolution

27 Obligatory ADR

Is there a requirement for the parties to litigation or arbitration to consider alternative dispute resolution before or during proceedings?

In Illinois state court actions, non-binding arbitration may be mandated for claims that do not exceed US$50,000. In state court actions in Cook County, the county which includes Chi-

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cago, non-binding arbitration is required for many claims not exceeding US$30,000.

Miscellaneous

28 Specific features

Are there any specific features of the dispute resolution system not addressed in any of the previous questions?

None.