

An insurance company from State A paid out \$500,000 to a dentist from State B after she filed a claim for property damage allegedly caused by a spontaneous fire. After further investigation, however, the insurance company concluded that the dentist intentionally set the fire to recover the insurance money.

The insurance company sued the dentist in a federal court in State B to recover the \$500,000 it had paid her. In its complaint, the insurance company claimed that the dentist "intentionally devised a plan to defraud the insurer and obtain money by false pretenses."

The dentist filed a pre-answer motion to dismiss the complaint for failure to state a claim on which relief may be granted.

Will the dentist likely succeed on her motion to dismiss?

- A. No, because the complaint contains a short and plain statement of the claim showing that the insurance company is entitled to relief.
- B. No, because the dentist must file an answer before she can make this motion.
- C. Yes, because a federal court cannot hear claims based on fraud.
- D. Yes, because claims based on fraud must be stated with particularity.

Explanation:

Specificity of pleadings

Claim	Pleading requirements
General rule	<ul style="list-style-type: none">• Complaint – short & plain statement of claim showing plaintiff is entitled to relief• Answer – short & plain statement of admissions, denials, defenses & claims against other parties
Fraud/mistake/mental condition	<ul style="list-style-type: none">• Malice, intent, knowledge, or other mental condition may be alleged generally• Circumstances giving rise to fraud/mistake must be stated with particularity
Conditions precedent	<ul style="list-style-type: none">• Assertion that conditions precedent occurred may be alleged generally• Denial that conditions precedent occurred must be stated with particularity
Damages	<ul style="list-style-type: none">• General damages may be alleged generally• Special damages must be specifically stated

A **complaint** is the pleading that **starts a civil lawsuit** and states the **basis for the plaintiff's claim**. It generally must contain a short and plain statement of the claim showing that the plaintiff is entitled to relief. However, Federal Rule of Civil Procedure (FRCP) 9(b) sets forth different pleading requirements for a complaint alleging **mistake or fraud** (as seen here) or mental conditions. Such complaints:

- may **allege generally** the defendant's malice, intent, knowledge, or other mental condition—eg, stating that the defendant acted intentionally—*but*
- must **state with particularity** the **circumstances** giving rise to the claim—eg, specifying the time, place, and nature of the alleged fraud.

Here, the insurance company's complaint alleged that the dentist "intentionally devised a plan to *defraud* the insurer and obtain money by false pretenses." But it failed to state the circumstances giving rise to the fraud claim, like when and how the dentist set fire to her office (**Choice A**). As a result, the complaint failed to state a claim on which relief may be granted, and the dentist will likely succeed on her motion to dismiss.*

*However, the court will likely allow the insurance company to amend its complaint to correct the defect since amendments are liberally allowed in federal court.

(Choice B) [FRCP 12](#) allows a defendant to make several motions before filing his/her answer—including a motion to dismiss for failure to state a claim on which relief may be granted (as seen here).

(Choice C) Federal courts can hear most state law claims—including fraud claims—when their [subject-matter jurisdiction](#) is based on diversity jurisdiction. The only state law claims that may not be heard in federal court are those involving probate matters (eg, authenticating wills) or domestic relations (eg, issuing divorces).

Educational objective:

A complaint must contain a short and plain statement of the claim showing that the plaintiff is entitled to relief. When a complaint alleges mistake, fraud, or a mental condition, (1) the defendant's intent or other mental condition may be alleged *generally* but (2) the circumstances giving rise to the claim must be stated with *particularity*.

References

- Fed. R. Civ. P. 9(b) (heightened pleading standards).