

Video Title: **Business Litigation Checklist CEPersVid-11**

Introduction – I am Carl E. Person and I want to review a list or checklist of claims or causes of action you should consider when preparing a complaint or counterclaim for a lawsuit. My list is not all-inclusive. I'm going to race through the material to stay within 10 minutes. Don't take notes. You see my outline at carlperson.com/checklist.php

Antitrust:

Robinson-Patman Act – price discrimination, federal/state; and commercial bribery

Sherman Act – conspiracy in restraint of trade, contract, combination, conspiracy to monopolize or attempt to monopolize – boycott, price fixing, acq/merger, concerted refusal to deal

Clayton Act – Section 7 – merger/act - where the effect may substantially lessen competition

Other Federal Statutes:

Civil rights law – individual or business involving state action (govt creating business barriers to protect favored business)

Trademark infringement

Copyright infringement

Patent infringement

Unfair competition – Lanham Act

Securities Acts

State Statutes:

New York General Business Law Sections 349-350 prohibiting false or misleading advertising or sales techniques

State Claims:

Breach of contract: oral or written, express or implied

Breach of implied covenant of good faith and fair dealing

Breach of contract in which you are a third-party beneficiary

Breach of confidentiality agreement – former employee

Interference with a contract or advantageous business relationship

Inducing breach of a contract

Breach of fiduciary duty - partner

Fraud, misrepresentation – 7 elements: (1) representation of a fact; (2) materiality of fact; (3) falsity of the representation; (4) knowledge of the falsity; (5) intent to have other rely; (6) reasonable reliance on the representation; (7) injury as a consequence.

Negligence

Product Liability

Lender's Liability (all sorts of possibilities because of the toxic mortgages and derivatives)

Negligent misrepresentation

"Negligence per se" violation of a statute designed to protect the public

Tortious destruction of your business

Prima facie tort defined as intentional oppressive or malicious conduct designed to injure someone in his/her person, property or mind without any economic justification - in other words, tortious conduct which is obviously outrageous and not intended to reap an economic benefit, but instead designed to and which does injure the person against whom the conduct is directed (an example might be blowing up a person's store without such motivation as being a competitor or a named insured on any fire insurance policy or a landlord who wants the tenant to vacate the premises).

Libel, slander, and defamation of title

Malicious Prosecution, Abuse of Process

Assault, Battery, False arrest, false imprisonment

Trespass

Extortion

Wrongful injunction

Remedies and Procedural Possibilities:

Declaratory relief

Class Action

Derivative suit

TRO, preliminary injunction, permanent injunction

Appointment of a receiver

Constructive trust

Disgorgement

Accounting

Action to reform contract

Punitive damages – outrageous conduct

Pre-judgment interest

Attorneys' fees

Costs

My outline at carlperson.com/checklist.php