

Rules of the District Court (Amendment) Rules 2008

The Rules of the District Court (Cap. 336H)

Order 18 – PLEADINGS

Remarks

1. Service of statement of claim (O. 18, r. 1)

Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are 2 or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend.

2. Service of defence (O. 18, r. 2)

(1) Subject to paragraphs (2) and (3), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on every other party to the action who may be affected thereby before the expiration of ~~14 days~~ **28 days** after the time limited for acknowledging service of the writ or after the statement of claim is served on him, whichever is the later. (L.N. 217 of 2000)

Rule 45
Rec 30

(2) If a summons under Order 14, rule 1, or under Order 86, rule 1, is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within ~~14 days~~ **28 days** after the making of the order or within such other period as may be specified therein.

Rule 45
Rec 30

(3) Where an application is made by a defendant under Order 12, rule 8(1) ~~or (2)~~, paragraph (1) shall not have effect in relation to him unless the application is dismissed or no order is made on the application and, in that case, shall have effect as if it required him to serve his defence within ~~14 days~~ **28 days** after the final determination of the application or within such other period as may be specified by the Court.

Rule 37
Rec 17

Rule 45
Rec 30

3. Service of reply and defence to counterclaim (O. 18, r. 3)

(1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 8; and if no reply is served, rule 14(1) will apply.

- (2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.
- (3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.
- (4) A reply to any defence must be served by the plaintiff before the expiration of ~~14 days~~ **28 days** after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of ~~14 days~~ **28 days** after the service on him of the counterclaim to which it relates.

Rule 46
Rec 30

4. Pleadings subsequent to reply (O. 18, r. 4)

No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

5A. Filing of pleadings and originating process (O. 18, r. 5A)

- (1) Subject to Order 3, rule 5(3) and subject to this rule, every pleading and originating process shall be filed in the Registry within the time during which that pleading or originating process may be served by him on any other party.
- (2) A party may apply to the Court for further time to file a pleading or originating process on a summons stating the further time required.
- (3) If a party fails to file a pleading or originating process within the time allowed under paragraph (1) or further time allowed under paragraph (2), he shall not be at liberty to file that pleading or originating process without the leave of the Court.

6. Pleadings: formal requirements (O. 18, r. 6)

- (1) Every pleading in an action must bear on its face –
 - (a) the year in which the writ in the action was issued and the number of the action;
 - (b) the title of the action;
 - (d) the description of the pleading; and
 - (e) the date on which it was served.
- (2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

- (3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.
- (4) Every pleading must be indorsed –
 - (a) where the party sues or defends in person, with his name and address;
 - (b) in any other case, with the name or firm and business address of the solicitor by whom it was served, and also (if the solicitor is the agent of another) the name or firm and business address of his principal.
- (5) Every pleading must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

7. Facts, not evidence, to be pleaded (O. 18, r. 7)

- (1) Subject to this rule and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.
- (2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation must not be stated, except in so far as those words are themselves material.
- (3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.
- (4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

7A. Conviction, etc., to be adduced in evidence: matters to be pleaded (O. 18, r. 7A)

- (1) If in any action which is to be tried with pleadings any party intends, in reliance on section 62 of the Evidence Ordinance (Cap. 8) (convictions as evidence in civil proceedings) to adduce evidence that a person was convicted of an offence by or before a court in Hong Kong, he must include in his pleading a statement of his intention with particulars of –
 - (a) the conviction and the date thereof;
 - (b) the court which made the conviction; and

- (c) the issue in the proceedings to which the conviction is relevant.
- (2) If in any action which is to be tried with pleadings any party intends, in reliance on section 63 of the Evidence Ordinance (Cap. 8) (findings of adultery as evidence in civil proceedings) to adduce evidence that a person was found guilty of adultery in matrimonial proceedings, he must include in his pleading a statement of his intention with particulars of –
- (a) the finding and the date thereof;
 - (b) the court which made the finding and the proceedings in which it was made; and
 - (c) the issue in the proceedings to which the finding is relevant.
- (3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party –
- (a) denies the conviction or finding of adultery to which the statement relates; or
 - (b) alleges that the conviction or finding was erroneous; or
 - (c) denies that the conviction or finding is relevant to any issue in the proceedings,
- he must make the denial or allegation in his pleading.

8. Matters which must be specifically pleaded (O. 18, r. 8)

- (1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality –
- (a) which he alleges makes any claim or defence of the opposite party not maintainable; or
 - (b) which, if not specifically pleaded, might take the opposite party by surprise; or
 - (c) which raises issues of fact not arising out of the preceding pleading.
- (2) Without prejudice to paragraph (1), a defendant to an action for recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.
- (3) A claim for exemplary damages or for provisional damages must be specifically pleaded together with the facts on which the party pleading relies.
- (4) A party must plead specifically any claim for interest under section 49 of the Ordinance or otherwise.

9. Matter may be pleaded whenever arising (O. 18, r. 9)

Subject to rules 7(1), 10 and 15(2), a party may in any pleading plead any

matter which has arisen at any time, whether before or since the issue of the writ.

10. Departure (O. 18, r. 10)

(1) A party shall not in any pleading make any allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his.

(2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

11. Points of law may be pleaded (O. 18, r. 11)

A party may by his pleading raise any point of law.

12. Particulars of pleading (O. 18, r. 12)

(1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing –

- (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies;
- (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies; and
- (c) where a claim for damages is made against a party pleading, particulars of any facts on which the party relies in mitigation of, or otherwise in relation to, the amount of damages.

(1A) Subject to paragraph (1B), a plaintiff in an action for personal injuries shall serve with his statement of claim –

- (a) a medical report; and
- (b) a statement of the special damages claimed.

(1B) Where the documents to which paragraph (1A) applies are not served with the statement of claim, the Court may –

- (a) specify the period of time within which they are to be provided; or
- (b) make such other order as it thinks fit (including an order dispensing with the requirements of paragraph (1A) or staying the proceedings).

(1C) For the purposes of this rule –

“medical report” (醫學報告) means a report substantiating all the personal

injuries alleged in the statement of claim which the plaintiff proposes to adduce in evidence as part of his case at the trial;

“a statement of the special damages claimed” (關於所申索的專項損害賠償的陳述書) means a statement giving full particulars of the special damages claimed for expenses and losses already incurred and an estimate of any future expenses and losses (including loss of earnings and of pension rights).

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served, and, if so, when, or is to be served with the pleading.

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(3A) The Court may make an order under paragraph (3) upon the application of a party or of its own motion.

Rule 57
Rec 33, 34

(3B) No order shall be made under paragraph (3) unless the Court is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party –

- (a) where he alleges knowledge, particulars of the facts on which he relies; and
- (b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

(7) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

Remarks

12A. Pleading with inconsistent alternatives (O. 18, r. 12A)

Rule 47
Rec 26-32,35

A party may in any pleading make an allegation of fact which is inconsistent with another allegation of fact in the same pleading if –

- (a) the party has reasonable grounds for so doing; and**
- (b) the allegations are made in the alternative.**

13. Admissions and denials (O. 18, r. 13)

(1) ~~Any allegation~~ **Subject to paragraph (5), an allegation** of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a ~~denial~~ **non-admission** of it.

Rule 42
Rec 22-24

(2) ~~A traverse~~ **Subject to paragraph (4), a traverse** may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(4) Where an allegation made in a statement of claim or counterclaim is traversed by a denial, the party who denies the allegation shall in his defence or defence to counterclaim –

- (a) state his reasons for doing so; and**
- (b) if he intends to put forward a different version of events from that given by the claimant, state his own version.**

(5) A party who –

- (a) fails to deal with an allegation; but**
- (b) has set out in his defence or defence to counterclaim the nature of his case in relation to the issue to which that allegation is relevant,**

is to be taken to require that allegation to be proved.

14. ~~Denial~~ Non-admission by joinder of issue (O. 18, r. 14)

Rule 43
Rec 22-24

(1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to paragraph (3) –

- (a) there is at the close of pleadings an implied joinder of issue on the

- pleading last served; and
- (b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or expressed, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a ~~denial~~ **non-admission** of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a ~~denial~~ **non-admission** of every other such allegation.

15. Statement of claim (O. 18, r. 15)

(1) A statement of claim must state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed.

(2) A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the endorsement of the writ without amending the endorsement.

(3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

16. Defence of tender (O. 18, r. 16)

Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 22 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

17. Defence of set-off (O. 18, r. 17)

Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

18. Counterclaim and defence to counterclaim (O. 18, r. 18)

Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically –

- (a) rules 12(1A), (1B) and (1C) and 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;
- (b) rules 8(2), 16 and 17 shall, with the necessary modifications, apply to a defence to counterclaim as they apply to a defence.

19. Striking out pleadings and indorsements (O. 18, r. 19)

(1) The Court may, **either of its own motion or on application**, at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that –

Rule 48
Rec 26-32,35

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons ~~as if the summons were a pleading~~ **and a petition as if the summons or petition, as the case may be, were a pleading**.

Rule 48
Rec 11-16

20. Close of pleadings (O. 18, r. 20)

(1) The pleadings in an action are deemed to be closed –

- (a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim; or
- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of ~~14 days~~ **28 days** after service of the defence.

Rule 49
Rec 26-32,35

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

20A. Pleading, etc. to be verified by statement of truth (O. 18, r. 20A)

(1) A pleading and the particulars of a pleading specified in paragraph (2) must be verified by a statement of truth in accordance with Order 41A.

(2) The particulars of a pleading referred to in paragraph (1) are the particulars given by a party to any other party, whether voluntarily or pursuant to –

(a) a request made by that other party; or

(b) an order of the Court made under rule 12(3) or (4).

21. Trial without pleadings (O. 18, r. 21)

(1) Where in an action to which this rule applies any defendant has given notice of intention to defend in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule or at any stage of the proceedings of its own motion, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree such a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, ~~give directions as to the future conduct of the action, and Order 23A, rules 9 to 13, shall apply as if the Court were conducting a directions hearing under that Order.~~ **give such directions as to the further conduct of the action as may be appropriate, and Order 25, rules 5 to 10 –**

(a) with the omission of so much of rule 10(1) as requires parties to serve a notice specifying the orders and directions which they require; and

(b) with any other necessary modifications, apply as if the application under this rule were a case management summons.

(4) This rule applies to every action begun by writ other than one which includes –

(a) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment; or

(b) a claim by the plaintiff based on an allegation of fraud.

Remarks

22. Framing of issues (O. 18, r. 22)

At any stage of the proceedings the Court may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree the statement, may settle the statement itself.

23. Transitional provision relating to rule 42 of Amendment Rules 2008 (O. 18, r. 23)

Rule 44
Transitional

Where a statement of claim has been served on a defendant before the commencement of the Amendment Rules 2008, then rule 42 of the Amendment Rules 2008 does not apply to the defence to the claim and if a counterclaim has been served on the plaintiff, to the defence to the counterclaim, and rule 13 as in force immediately before the commencement continues to apply as if rule 42 of the Amendment Rules 2008 had not been made.

24. Transitional provision relating to rules 45 and 46 of Amendment Rules 2008 (O. 18, r. 24)

Rule 51
Transitional

Where a statement of claim has been served on a defendant before the commencement of the Amendment Rules 2008, then rules 45 and 46 of the Amendment Rules 2008 do not apply –

(a) in relation to the service of the defence and the reply to that defence; and

(b) if a counterclaim has been served on the plaintiff, in relation to the service of the defence to the counterclaim,

and rules 2 and 3 as in force immediately before the commencement continue to apply as if rules 45 and 46 of the Amendment Rules 2008 had not been made.