

## SCHEDULE 1

### **The Rules of the Supreme Court (Northern Ireland) 1980** COMMENCEMENT AND PROGRESS OF PROCEEDINGS

## ORDER 18

### PLEADINGS

#### **Service of statement of claim**

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 two or more defendants, on each defendant, and must do so either when the writ, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 6 weeks after that defendant enters an appearance.

[E.r. 1]

#### **Service of defence**

2.—(1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 21 days after the time limited for appearing or after the statement of claim is served on him, whichever is the later.

(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 21 days after the making of the order or within such other period as may be specified therein.

[E.r. 2]

#### **Service of reply and defence to counterclaim**

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 21 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 21 days after the service on him of the counterclaim to which it relates.

[E.r. 3]

#### **Pleadings subsequent to reply**

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

[E.r. 4]

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### **Service of pleadings in the Long Vacation**

5. Without prejudice to Order 3, rule 3, pleadings may be served during the Long Vacation.

### **Pleadings: formal requirements**

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.
- (c) the Division of the High Court to which the action is assigned.
- (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 of a party 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.

(5) Every pleading of a party 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.

[E.r. 6]

### **Facts, not evidence, to be pleaded**

7.—(1) Subject to the provisions of this rule, and rules 10, 11, 12 and 23, 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 permits.

(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 shall 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.

(5) A party must refer in his pleading to any statutory provision on which he relies, specifying the relevant section, subsection, regulation, paragraph or other provision, as the case may be.

[E.r. 7]

### **Matters which must be specifically pleaded**

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,

and, where the defendant intends to rely on the defence of inevitable accident or Act of God, he must specifically plead such defence with all necessary particulars, but this requirement shall not transfer to the defendant any burden of proof which lies on, the plaintiff.

(2) Without prejudice to paragraph (1), a defendant to an action for the 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 must be specifically pleaded together with the facts on which the party pleading relies.

[E.r. 8]

#### **Matters may be pleaded whenever arising**

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.

[E.r. 9]

#### **Departure**

10.—(1) A party shall not in any pleading make any allegation of fact, or raise any new ground, or 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.

[E.r. 10]

#### **Points of law may be pleaded**

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

[E.r. 11]

#### **Particulars of pleading**

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 words—

- (a) particulars of any negligence, breach of statutory duty, misrepresentation, fraud, breach of trust, wilful default, undue influence or fault of the plaintiff on which the party pleading relies; and
- (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.

(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

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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.

(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.

[E.r. 12]

### **Admissions and denials**

13.—(1) Subject to paragraph (4), any 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 of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to paragraph (4), 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) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

[E.r. 13]

### **Denial by joinder of issue**

14.—(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 express, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a denial 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 of every other such allegation.

[E.r. 14]

### **Statement of claim**

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

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(2) A statement of claim shall 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 indorsement of the writ without amending the indorsement.

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

[E.r. 15]

#### **Defence of tender**

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.

[E.r. 16]

#### **Defence of set-off**

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.

[E.r. 17]

#### **Counterclaim and defence to counterclaim**

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) rule 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.

[E.r. 18]

#### **Striking out pleadings and indorsements**

19.—(1) The Court may 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—

- (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 and a petition as if the summons or petition, as the case may be, were a pleading.

[E.r. 19]

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### **Close of pleadings**

20.—(1) The pleadings in an action are deemed to be closed—

- (a) at the expiration of 21 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 21 days after service of the defence.

(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.

[E.r. 20]

### **Trial without pleadings**

21.—(1) Where in an action to which this rule applies any defendant has entered an appearance 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, 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 to 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 such directions as to the further conduct of the action as may be appropriate.

(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.

[E.r. 21]

### **Saving for defence under Merchant Shipping Acts**

22. Nothing in Order 75, rules 2 and 36 to 39, shall be taken as limiting the right of any shipowner or other person to rely by way of defence on any provision of the Merchant Shipping Acts 1894 to 1965 which limits the amount of his liability in connection with a ship or other property.

[E.r. 22]

### **Conviction, etc. to be adduced in evidence: matters to be pleaded**

23.—(1) If in any action which is to be tried with pleadings any party intends, in reliance on section 7 of the Civil Evidence Act (Northern Ireland) 1971(1), to adduce evidence that a person was convicted of an offence by or before a court in the United Kingdom or by a court-martial there or elsewhere, he must include in his pleading a statement of his intention with particulars of—

- (a) the conviction and the date thereof,
- (b) the court or court-martial which made the conviction, and
- (c) the issue in the proceedings to which the conviction is relevant.

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(1) 1971 c. 36 (N.I.)

(2) If in any action which is to be tried with pleadings any party intends, in reliance on section 8 of the said Act of 1971, to adduce evidence that a person was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation proceedings before a court in the United Kingdom, he must include in his pleading a statement of his intention with particulars of—

- (a) the finding or adjudication and the date thereof,
- (b) the court which made the finding or adjudication and the proceedings in which it was made, and
- (c) the issue in the proceedings to which the finding or adjudication 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, finding of adultery or adjudication of paternity to which the statement relates, or
- (b) alleges that the conviction, finding or adjudication was erroneous, or
- (c) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

- (4) This rule shall not apply to evidence intended to impeach the credit of a party or witness.

[E.r. 7A]