

Pleadings

SUMMARY

- Drafted SOC {Statement of C}
- Things going back and forth
- Limitation 14 days
- Parties can admit/deny claims
- There are diff ways of responding
- O20 states what we have to do
 - Rely on facts which are related to the elements of COA.
 - Facts + Law.
 - Prayer for relief
 - Damages, interest, cost and any order the crt will se fit ← ask for this
- O69 - states the formatting requirements.

- ! • **YouTube - civil pro by Professional Conner (teach in Melbourne)**

PLEADINGS

- ” • **SCA {Supreme Crt Act}: includes -**
- the statements in writing of the claim or demand of the plaintiff, and
 - of the defence of any defendant thereto, and
 - of a counter-claim (if any) of a defendant, and
 - of the reply of the plaintiff to any counter-claim of a defendant, and
 - any subsequent pleading;



STATEMENT OF CLAIM

- **Particulars:**
 - Details + further Particular facts
- There has to be logical flow
- Subtitle - Contract
 - Sub-subtitle : Particulars
 - Substance of the para above - More specific
- Lecture 20 - Prayer of relief
 - ” ◦ **What you are asking the crt for**
- **More below**

PURPOSE OF PLEADINGS

- Identify and narrow the points of dispute.
 - Procedural fairness - the person who is being sued have right to know what they have been accused of.
- Narrow the parties to definite issues, and reduce delay and expense.
 - reduce delay and expense - Save the crt time
 - As a lawyer you have duty to save the crt's time.
- Establish a permanent record of the dispute.
 - Have evidence.
- To ensure procedural fairness is afforded to the parties.

BENEFITS GOOD PLEADINGS

- Place clearly in issue the allegations you will be required to prove as fact.
- Focus the case.
- Demonstrates to the other party and the Court that you 'know what you are doing'.
- ! • **Judge will reading this first and sometime make judgement based on it.**

CONSEQUENCE POOR PLEADINGS

- Lead to failure of the action (summary judgment/strike out
- Increase costs (later amendment, requirement for further and better particulars, dealing with applications relating to the deficiencies)
- Harm the perception of the client's case
- Expose your client to costs orders in relation to delay if amendments required and/or pleadings are challenged

GENERAL RULES FOR PLEADING - O 20

- Rule 7 –
 - Each pleading must bear on its face:
 - the action number

- the title to the action
 - the description of the pleading;
 - the Date the writ was issued; and
 - the date filed.
- Each pleading must be divided into separate paragraphs and numbered consecutively.
- Each allegation must be contained in a separate paragraph
- Parties are bound by what pleadings says.
 - Doesn't mean you put everything in there. Need to be concise.
- All issues should be disclosed and no new issue should be raised
 - No new issues should be added.
- Pleadings are concerned with material facts that are connected to the COA.
- Parties should not make any claims that are inconsistent with the previous pleadings
- Set out the process and set out the burden of the proof for you and burden of proof pre-trial.
- Rule 8 - SUBSTANTIVE REQUIREMENT
 - Facts, not evidence (the fundamental rule)
 - ”▪ The pleading must contain a statement in summary form of the material facts relied on but not the evidence by which those facts are to be proved (the “fundamental rule” of pleading);
 - D's conduct has caused damage to the car engine NOT RAC mech carried out certain assessment and found the car engine has been damaged by the D's conduct.
 - ▶▪ The statement must be as brief as the nature of the claim permits
 - Facts, not law (eg cases supporting a legal principle – we save this for the submissions)
 - Pleading of law only w/out any facts = not permitted
 - Facts only, but not law = permitted
 - Pleading facts and expressing of breach (legal) + facts support the case = permitted
 - Pleading facts then the law follow
 - In breach of s ____ something has resulted
 - Can plead statutory provision that is relied upon
 - Express provision of law to identify the COA is certain
 - Pleading facts + law = Allowed
 - Facts, not conclusions
 - Not just any facts – material facts (and relevant facts)
 - ”▪ Material Facts {MF}: Relevant to establish or prevent establishment of COA or defence
 - ▶□ Factual element of COA only
 - Should state what the nature of the claim is but not state the facts of the claims.
 - Corporate statutes, undefined,
 - In mf there should not be pleading
 - Facts are anticipated as Defence, facts that are not relevant to that stage of proceeding, facts that are assumed by the law to be true
 - facts that are necessary for the case.
- Rule 9 - Same matter need to be specifically pleaded
 - Anything which makes a claim non-maintainable (eg performance of contract, release from liability, any relevant statute of limitation, fraud or any illegality);
 - Anything which, if not specifically pleaded, might take the opposite party by surprise (ie no “trial by ambush”)
 - Anything which raises issues of fact not arising out of the preceding pleading (eg if a defence seeks to rely on facts not already pleaded in a statement of claim)
 - Any claim for exemplary or aggravated damages together with the facts on which the party relies
 - Any claim for interest together with the component of the claim to which the interest relates, the contractual provision or statutory right giving the right to such interest, and the rate of interest and date or dates from which such interest is claimed.
- Rule 13:
 - Statement should give the other parties detail about the claim.
 - ”▪ Particular - give more detail of the mf
 - Should with clarity state to the other side what the nature of claim is.
 - ◆ Not point to the specific evidence.
 - Should state the facts of the claims
 - ▶○ MF are factual elements of the COA only, Particulars are sort of the case the D have to meet out in trial, w/out disclosing the manner in which it should be proven.
 - COA need high particulars to be provided, they include.
 - Misrepresentation
 - Fraud
 - Breach of Trust
 - Under influence

- 13(1) - Formal requires of particulars to be given of the matters pleaded.
- 13(3) - a court may order particulars be given
- 13(5) - such an order will not be given before a defence has been lodged unless the court is satisfied particulars are required to enable the defendant to properly plead (the practice is to file a bare defence together with a request for further particulars of claim).
- 13(6) - a written request must be made within 30 days of service of a pleading or such time as the court allows

- **Order 69 - Format required.**
- **Writ of summon need the pleading - supreme crt.**
- Magistrate crt - even with the s/claim it will not proper.

PROCESS

1. Statement of Claim
 - State out the material facts by which the P COA is set and the relief that is sought.
 2. Defence by D
 - May Serve the counterclaim with the defence
 3. P can chose to either serve a reply OR reply + defence to the counter claim.
 - They **have** to serve a reply when it is order by the Crt [o9]
- Burden of proof
 - D serve a positive Defence - then D has to disprove it
 - D denies an allegation - P have to prove it.

ELEMENTS

- Before drafting, truly understand what facts make up all of the causes of action you are pursuing.
- Action heading, plaint no., parties, Description of pleading, date of filing, Party/service details
- Introductory statements – who/when/what – what aspects of the factual matrix ought to be pleaded?
 - ! ○ **Try putting stuff in if you can but if it is not relevant take it out.**
- Cause of Action – principal cause of action, and the “further and in the alternative”
 - You can plead in alternative - if this doesn't work can plead the alternative.
 - ! ○ **Do not plead something that is useless.**
- Use of particulars in support of factual matters pleaded
- Damage/relief claimed as a result of cause of action
 - ▶ ○ **Need to put in the damage.**
- Use of particulars in support of damage pleaded
- Format
 - Into - end
 - Substance of the allegation
 - Claim for relief.
- Know what the facts are - know what it is you are trying to do.

STATEMENT OF CLAIM

- Rule 2
 - P will serve the statement
 - ▶ ■ **Not just about the serve, there are other things**
 - 1) **File stage:** You need to file it first - take it to crt reg and they will stamp it.
 - 2) **Serving stage:** you have to provide the stamp copy to the D.
 - P going to
 - Allege all the MF
 - Verify the affi
 - Set out the remedies that P claims
- Rule 1: if a statement of claim is not attached to the Writ (ie a form 2 writ), the Plaintiff must file and serve a statement of claim before the expiration of 14 days after the Defendant enters an appearance.

INTRO

- Natural person: their name
- Business: Their co name, where they are regi and their nature of business.

SUMMARY OF FACTS

- COA
- Elements of COA
- Facts that stratify the elements of COA.

PRAYER FOR RELIEF AND SIGN OFF

- **What you are claiming.**

- ▶ • **Can claim damages, interest and cost.**
- **Damages** - P doesn't need to be specific just be general
 - General v specific liquidated damages
 - ” ▪ **Liquidated damages:** pre-determined sum in the K if there is breach - pre assumption of loss.
 - ” ▪ **General:** Not state the amount.
- **Interest**
 - Claim it specifically and state it out
 - Talk to part of claim where the interest will apply
 - ▶ ◦ **State it is part/under of Act or K and state the provision in Act and K and date at which the interest is/could be claim.**
- **Cost:**
 - Order 20 rule 2(1): if do not claim cost it will be included.
- ! • **In magistrate crt {MC}, there is statement of claim**
 - Form 19.
 - MC civil pro Act - 41A4 ←formatting requirement in Magistrate crt {MC}
 - ! ◦ **Look at MC website**
 - Online guide
 - Forms.

STATEMENT OF DEFENCE

- Stage of proceeding where originating process and appearance has been
- After statement of claim from P has came D have to choice if they want to reply or Defence.
- They have 14 days to reply [O20R4]
- Drafting
 - MF
 - State every MF which they rely.
 - Only facts not evidence must be pleading.
 - Defence need to have specific provision to prove that defence.
 - Something need to specific [Order 20 rule 9(1) SCR]
 - Performance
 - Limitation
 - Fraud
 - Illegality
 - If the matter that might take other parties by surprise,
 - Any matter that doesn't arise out of pleading.
- ▶ • **Do not repeat the para, just state if you agree or not with that para.**

FORMS

- **Admissions** [O20R14]
 - admitting some or all of the non-contentious allegations
 - ▶ ◦ **Make them if there no dispute to the issue.**
 - Deemed admission if there is concern of allegation of facts and not trivial by the parties.
 - Can be withdrawn.
 - Consequence:
 - No further evidence need to put to prove the facts.
- **Traverse:**
 - traversing (ie denying or not admitting) some or all of the contentious allegations
 - **Can be made by**
 - Denial
 - ➔ ◻ "D denies some allegation/in para"
 - ▶ ◻ **Should do this when Matters is within D knowledge**
 - Non-admission
 - ➔ ◻ "D doesn't not admit the allegation in para"
 - ▶ ◻ **Should do this when Outside of D's knowledge**
 - ! ▪ **P have to prove that allegation that traverse.**
 - If allegation is not traverse then it will be deemed to be admi
 - ✗! ▪ **There are exception:**
 - ▶ ◦ **Need to point to the specific allegation of facts.**
 - **Exception** [o20]
 - Particulars: Need to know the paragraph
 - Damages:
 - **Beyond Traverse:**
 - ” ▪ **Amplify:** Common example, referring to additional terms of a contract not pleaded in statement of claim.
 - **Clarify:** you admit a fact but you 'deny' part of it.

- ➔ □ You agree that it happened but it happened in these circumstances.
- Rectify: you completely deny a fact but you have the correct information which you should plead in its place.
- ➔ □ It's not red but orange

🚩 ○ You can trav some part of allegation and admit others.

- **Confession and avoidance:**

- pleading additional facts if necessary to a defence

- raising a **set-off or counterclaim** (if applicable)

- O20r17 - D can counterclaim certain things.

” ○ **Counterclaim {CC}**: COA which is separate from the claim is bought by the P.

- It has life of its own.
- It's different action
- If P's action is cancels/dismissed, counter claim will be alive.
- This is a monetary cross claim in nature of a defence, whether ascertained or not, which reduces the amount of the P's claim.
- It is not a defence to substance of P's claim.
- O18 r2 SCR
 - CC is indi - it can be about any matter which arises whenever and however.
- Replying to CC:
 - P doesn't rely to the CC they can get default judgement against them
 - P can choose to either serve or reply and they can rise new things.
 - Limitation - 14 days [o20 r5(2)]
 - Required when:
 - ◆ Pleading of further facts than pleading of denial.

” ○ **Set off**: Is only D and no relief can be recovered if P's action is discontinued or dismissed

- It attaches to the initial claims
- There si e-able set off
 - Give to the something e-able
 - ◆ It would be unconsequable for P to conti w/out set off.
- Get set off if the claim b/w the pa is of same nature or required at the same time or _____ AND set out with particularities.
- Set off has to be similar or nexus related to it

PROCESS

- Writ originating process
- Application in response of D
- Statement of claim
- Counterclaims