

**E. DISPOSITION WITHOUT TRIAL**

<b>Disposition Method</b>	<b>Applicant</b>	<b>Application</b>	<b>Factors</b>	<b>Effect</b>
<b>Adjournment</b>	Plaintiff or Defendant	Notice of motion + affidavit	Reasons for adjournment, interest of justice, time of application, resources of courts and public ( <i>Aon v ANU</i> ).	Court may order proceedings be adjourned at any time ( <i>CPA s 66(1)</i> ) to move them to another time and/or place.
<b>Default Judgement</b>	Plaintiff	Notice of motion + affidavit of service ( <i>UCPR 16.3 (2(a))</i> ) (unless LC, (3)) + affidavit in support ( <i>UCPR 16.3 (2(b))</i> ).  OR by court order ( <i>UCPR 16.2(1)(c)</i> ).	Where defendant is in default ( <i>UCPR 16.2</i> ) – failure to file defence within time limit ( <i>16.2 (1)(a)</i> ), failure to file affidavit ( <i>16.2(1)(b)</i> ) or duly filed defence ( <i>16.2(1)(c)</i> ).	Judgement for plaintiff.  OR Defendant can apply to set aside default judgement by notice of motion ( <i>UCPR 36.16</i> ), establishing defence and explaining delay ( <i>Borowiak v Hobbs</i> ).
<b>Summary Judgement</b>	Plaintiff	Notice of motion + affidavit in support	Where defendant has no defence ( <i>UCPR 13.1(1)(b)</i> ), and there is no real issue to be tried.	Judgement for plaintiff.  OR where judgement was ordered irregularly, illegally or against good faith ( <i>UCPR 36.15</i> ); or if the parties to consent ( <i>UCPR 36.15(2)</i> ).
<b>Summary Dismissal</b>	Defendant	Notice of motion + affidavit in support	No reasonable cause of action ( <i>UCPR 13.4(1)(b)</i> ), frivolous ( <i>UCPR 13.4(1)(a)</i> ) or vexatious proceedings or abuse of process ( <i>UCPR 13.4(1)(c)</i> ).	Judgement for defendant.  Plaintiff can bring fresh proceedings (unless statute barred, say by limitation period).
<b>Dismissal for want of prosecution</b>	Plaintiff or defendant	Court order	Lack of progress/want of due despatch ( <i>UCPR 12.7(1)</i> ) or inactivity for over 5 months in SC ( <i>UCPR 12.8(2)</i> ) OR proceedings are not disposed of within 9 months after SOC filed in DC or LC ( <i>UCPR 12.9(2)</i> ) – by file of defence or file for default judgement.  Exception: <i>Phornpisultikul v Mileto</i> (evidence in Thailand and self-represented).	Fresh proceedings ( <i>CPA s 91</i> ) or appeal.

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<b>Discontinuance</b>	Plaintiff	Notice of discontinuance + affidavit(?) + costs	Defendant must consent ( <i>UCPR</i> 12.1(1)(a)) or court must give permission ( <i>UCPR</i> 12.1(1)(b)).	Fresh proceedings ( <i>UCPR</i> 12.3(1)) unless statute barred ( <i>UCPR</i> 12.3).
<b>Security for costs</b>	Defendant	Notice of motion + affidavit	Circumstances from <i>UCPR</i> 42.21, time of application, reasons for proceedings, reasonable prospects of plaintiff's success, someone else can cover plaintiff's costs, corporation etc. ( <i>Idoport v NBA</i> )	Plaintiff must pay costs, and failure to comply may result in summary dismissal ( <i>UCPR</i> 42.21(3)).
<b>Stay of proceedings</b>	Plaintiff or defendant	Notice of motion + affidavit OR Court order OR file of notice of payment for liquidated claim stays proceedings permanently ( <i>UCPR</i> 6.17(4)).	Time of application, reason for stay, public and court resources, prolongation of commercial affairs etc ( <i>Rinehart v Welker</i> )	Temporary or permanent stop to proceedings.
<b>Settlement</b>	Plaintiff or defendant	Offers to compromise (notice in writing exclusive of costs) or Calderbank letter	Offer to compromise: explicitly state compliance with <i>UCPR</i> r 20.26(3), be exclusive of costs ( <i>UCPR</i> r 20.26(2)) and cannot be withdrawn before the time specified ( <i>UCPR</i> r 20.26).	Offer accepted: parties can bear their own costs ( <i>UCPR</i> 42.13A(2)(a)) or court orders otherwise ( <i>UCPR</i> 42.13A(2)(b)). Offer not accepted: indemnity costs may be awarded for offeror ( <i>UCPR</i> 42.14).  Calderbank letters only result in indemnity costs where offer contained a genuine compromise and rejection was so unreasonable ( <i>Kain v Mobbs (No 2)</i> ).

## **F. DISPOSITION WITH TRIAL**

### **1. Applications and requisitions for try by jury.**

- a) In proceedings other than defamation (UCPR 29.2)
  - Plaintiff file notice of motion: within 56 days after service of SOC on defendant (UCPR 29.2(4)(a)(i)) or 28 days after service of defence on plaintiff (UCPR 29.2(4)(a)(ii))
  - Defendant file notice of motion: within 28 days after service of SOC (UCPR 29.2(4)(b)(i)) on defendant or 28 days after fixed date by court (UCPR 29.2(4)(b)(ii)).
- b) In defamation proceedings
  - File a notice of intention to file a notice of election for jury trial on active party (UCPR 29.2A(2)(a)).
  - File and serve a notice of election for jury trial (UCPR 29.2A(1)).

### **2. Opening address**

- a) Burden of proof is on the plaintiff
  - Plaintiff gives opening address (UCPR r 29.1(a))
  - Plaintiff may call evidence (UCPR r 29.6(2))
  - Plaintiff closes case (UCPR r 29.6(24)(c))
  - Plaintiff addresses court, then defendant
- b) Burden of proof is on defendant
  - Defendant can open case – may give address (UCPR r 29.1(b))
  - Defendant may call evidence (UCPR r 29.6(2))
  - Defendant closes case (UCPR r 29.6(24)(c))
  - Defendant addresses court, then plaintiff

NOTE: if defendant does not call evidence then plaintiff must address first, then defendant addresses.