

RULE 21 – STATEMENT OF DEFENCE AND COUNTERCLAIM

Form

- (1) A statement of defence must be in Form 10.

Damages

- (2) No denial is necessary as to damages claimed or their amount, but they shall be deemed to be put in issue in all cases unless expressly admitted.

Delivery

- (3) Where a defendant has entered an appearance the defendant shall file and deliver a statement of defence and any counterclaim to the plaintiff within 14 days from the time limited for appearance or from the delivery of the statement of claim, whichever is later.

Counterclaim

- (4) A counterclaim must be pleaded separately, must be in Form 19 and may be included in the same document as the statement of defence.
- (5) The parties shall be referred to in a counterclaim in their original capacities.

Counterclaim against plaintiff and another person

- (6) Where a defendant sets up a counterclaim that raises questions between that defendant and the plaintiff along with any other person, the defendant may join that person as a party against whom the counterclaim is made.
- (7) Where the person referred to in subrule (6) is not a party to the original action, the person's name shall be added to the style of proceeding as "defendant by counterclaim".
- (8) Where the person referred to in subrule (6) is a party to the original action, the defendant shall deliver the counterclaim to that person within the period in which the defendant is required to deliver it to the plaintiff.
- (9) Where the person referred to in subrule (6) is not a party to the original action, a notice in Form 20 shall be filed, and, together with the counterclaim, be served on that person, and the person may enter an appearance to it, and Rules 17, 18 and 19 apply as though that person were a defendant to a statement of claim.

Defence to counterclaim

- (10) A person served with a counterclaim becomes a defendant to the counterclaim from the time of service with the same rights and obligations in respect of conducting a defence to the counterclaim or otherwise as a defendant.

Separate trial of counterclaim

- (11) Where, on the application of a party against whom a counterclaim is made, it appears that the subject matter of the counterclaim ought to be dealt with separately, the court may order that the counterclaim be struck out or tried separately or may make any other order it thinks just.

Where action stayed or discontinued

- (12) Where, in an action in which the defendant has set up a counterclaim, the action of the plaintiff is stayed, discontinued or dismissed, the counterclaim may proceed.

Judgment

- (13) Where a set-off or counterclaim establishes a defence to the plaintiff's claim, the court may give judgment for the defendant for any balance in the defendant's favour or for other relief as the court thinks just.

Payment into court when tender pleaded

- (14) If a defence of tender or tender of money by way of amends is pleaded, the defendant shall pay into court the amount alleged to have been tendered, failing which the plea may be struck out.

Costs where defence of tender successful

- (15) If, on a judgment, costs are awarded to a defendant who has paid into court under this rule, the assessed costs shall be paid to the defendant out of the money in court.

Acceptance of money paid into court

- (16) A plaintiff may, before trial, apply to take out money paid into court under this rule, and the court may deal with costs of the action as if the defence of tender had succeeded.

Tender in defamation action

- (17) If in an action for defamation the defendant is permitted to plead a matter in mitigation of damages, the defendant may also plead tender of money by way of amends, whether the tender was made before or after action was commenced.