

Names of Pleading Papers filed

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By PLAINTIFF

by DEFENDANT

1 Declaration
[action,
complaint]

2 Demur (issue of law) → judgment or continue
Plead

prohibited) -----

--(forced joinder - Further papers

3 Replication
Peremptory
Demur

4 Rejoinder

5 Surrejoinder

6 Rebutter

7 Surrebutter
9 Surrebutter

8 Rebutter
10 Rebutter

11 Surrebutter

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Alternating pleadings continue until traverse or Tender of Issue by
defendant.

Declaration is the original Action in law or Complaint in equity
Tender of Issue = party informs court that the facts are now at issue
At Issue Memorandum is same as Tender of Issue
At Issue means the parties cannot agree on the facts
The jury or court must decide what the facts are
Forced Joinder = some states prohibit filing more than 3 pleadings

1
Pleading by plaintiff

2 Name of Court

The Venue (county name)

3 Commencement

Selection of forum

4 Identification of parties

Decree law of the case

5 Body (11 choices of causes of action and/or counts)

Tort

6 Trespass (injury + violence)

Trespass on the Case (aka Case) (injury, no violence)

7 Trover (recovery of conversion)

Ejectment (adverse possession)

8 Detinue (recovery of property or conversion, + damages)

Replevin (immediate recovery of property, + damages)

9 Contract

Debt

10 Covenant (breach of promise under seal)

Account (breach of fiduciary capacity)

11 Special Assumpsit (breach of simple [unsealed] contract)

General (Indebitatus) Assumpsit (breach of implied contract)

12 Plaintiff's Right

Wrongful act violating that right

13 Only ultimate or operative facts

Who, what, where, when, how

14 Hear, see, feel, taste, smell, mental state

No evidentiary facts (inferred or implied facts)

15 No conclusions of law

Injury

16 Conclusion (prayer)

Affidavit

17 Date

Signature

18 Seal

19
20 **PLAINTIFF**

COMMON LAW ACTIONS (CAUSES OF ACTION)

21
22 1. Trespass - injury committed with force, actual or implied; immediate
and not consequential; if property involved, then property was in actual
or constructive possession of plaintiff at time of injury. Koffler:

23 Common Law Pleading, 152 (1969)

24 2. Trespass on the Case - In practice. The form of action by which a
person seeks to recover damages caused by an injury unaccompanied with
25 force or which results indirectly from the act of the defendant. It is
more generally called, simply, case. 2 Bouvier's Law Dictionary 610 (1867)

26
27 Trespass and Trespass on the Case are supplementary to each other; and it
may be said that, in general, Trespass on the Case lies where no other
theory or Form of Action is available, though it is sometimes concurrent
with other forms. Koffler: Common Law Pleading, 174 (1969)

3. Trover - In practice. A form of action which lies to recover damages
1 against one who has, without right, converted to his own use goods or
personal chattels in which the plaintiff has a general or special
2 property. 2 Bouvier's Law Dictionary 613 (1867)
- 3 4. Ejectment - In practice. A form of action by which possessory titles
to corporeal hereditaments may be tried and possession obtained. A form
4 of action which lies to regain the possession of real property, with
damages for the unlawful detention. 1 Bouvier's Law Dictionary 518 (1867)
5
5. Detinue - In practice. A form of action which lies for the recovery,
6 in specie, of personal chattels from one who acquired possession of them
lawfully but retains it without right, together with damages for the
7 detention. 1 Bouvier's Law Dictionary 472 (1867)
- 8 6. Replevin - In Practice. A form of action which lies to regain the
possession of personal chattels which have been taken from the plaintiff
9 unlawfully. 2 Bouvier's Law Dictionary 441 (1867)
- 10 7. Debt - In practice. A form of action which lies to recover a sum
certain. It lies wherever the sum due is certain or ascertained in such a
11 manner as to be readily reduced to a certainty, without regard to the
manner in which the obligation was incurred or is evidenced. 1 Bouvier's
12 Law Dictionary 436 (1867)
- 13 8. Covenant - the action of covenant lies for the recovery of damages for
breach of a covenant, that is a promise under seal, whether the damages
14 are liquidated or unliquidated. When the damages are unliquidated, it is
the only proper form of action. Koffler: Common Law Pleading, 303 (1969)
15
9. Account - The action of account lies where one has received goods or
16 money for another in a fiduciary capacity, to ascertain and recover the
balance due. It can only be maintained where there is such a relationship
17 between the parties, as to raise an obligation to account, and where the
amount due is uncertain and unliquidated. Koffler: Common Law Pleading,
18 310 (1969)
- 19 In practice. In Equity. Jurisdiction concurrent with courts of law is
taken over matters of account. In addition to these peculiar grounds of
20 jurisdiction, equity will grant a discovery in cases of account on the
general principles regulating discoveries, and will afterwards proceed to
21 grant full relief in many cases. 1 Bouvier's Law Dictionary 54 (1867)
- 22 In practice. At Law. The action lay against bailiffs, receivers, and
guardians, in socage only, at the common law, and, by a subsequent
23 extension of the law, between merchants. 1 Bouvier's Law Dictionary 54
(1867)
24
10. Special Assumpsit - for the recovery of damages for the breach of a
25 simple contract, either express or implied in fact. the term "special
contract" is often used to denote an express or explicit contract as
26 contrasted with a promise implied in law. Consideration is the test of
whether there was sufficient ground to enforce the promise. It is the
27 proper remedy for the breach of any simple or unsealed contract, whether
the contract is verbal or written, or whether it is for the payment of
money, or for the performance of some other act, as to render services or
deliver goods, or for the forbearance to do some act. A promise either

given in fact or implied by law is essential. Koffler: Common Law
1 Pleading, 318-319 (1969)

2 11. Indebitatus Assumpsit - Indebitatus or General Assumpsit is brought
for the breach of a fictitious or implied promise raised by operation of
3 law from a debt founded upon an executed consideration. The basis of the
action is the promise implied by law from the performance of the
4 consideration, or from a debt or legal duty resting upon the defendant.
Koffler: Common Law Pleading, 337 (1969)

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DEFENDANT

7 COMMON LAW DEFENSES

8 Demur (issue of law) → final judgment or continue
Plead

9 Dilatory plea (attempt to stop final "judgment on merits") (only for
step 2)

10 No jurisdiction → law trial by court

Abatement → law trial by court

11 Suspension of the action → action temporarily stopped

Peremptory plea (plea in bar) (attempt "judgment on merits")

12 Confession and avoidance → action continues

In justification or excuse

13 Liability never existed

In discharge

14 Liability once existed, but now does not

15 Traverse (denial) → trial of facts by jury

General issue (deny all facts)

Specific or common traverse (deny some facts)

16 Special traverse

facts ok + new facts + non-liable)

17 Estoppel (can't harvest the fruit of the poisoned tree)

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1Elements of Action

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3The action should be as briefly and simply written as possible. Before
4filing the action remember to apply Mark Twain's seven rules for good
writing:

5"Revise, revise, revise, revise, revise, revise, revise."

6It takes seven major revisions to do a writing correctly. Write one
7sentence per paragraph.

8Sentence format should be *subject verb object*.

9

10Parties + Cause of action [Duty + Breach + Proximate Cause + Injury} +
Damages + Execution

11e.g. Contract: Contract + Breach + Injury

12e.g. Advantage: Existence of Advantage & Knowledge of Advantage + Breach +
13Injury

14e.g. Slander & Libel: Intentional Falsehood + Communicated to 3rd Party +
15Injury

16

In your action make the following points:

17 1. What the defendant is doing or not doing.

18

19 2. Your injuries (e.g. loss of substantive rights). (NOTICE! "Injury"
20 and "damages" are NOT synonymous words. Injury is the harm done.
21 Damages are the compensation for the injury.)

22

23 3. His duty to not cause you injury. The moral, public, and private
24 laws that require him to not cause you injury (e.g. Ten Commandments;
25 Bill of Rights, 18 USC Sec. 241, 242; 42 USC Sections 1983, 1985,
1986; and your own rules).

26

27 4. He is breaching that duty.

5. State the damages (what he owes you) for the injury.

1 **6. Show that a demand was made and he has defaulted (Attach Notice &**
2 **Demand as an exhibit)**

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