

How to Win Without a Lawyer

Pleadings



Saying What You Must Prove

Plaintiff starts the battle with a pleading called Complaint.

If the Court does not grant the Defendant's motions to avoid the Complaint, the Defendant must file a pleading called an Answer.

If Defendant is wise, she files along with her Answer another pleading called Affirmative Defenses.

If Plaintiff is wise, he then files a pleading called Reply to Affirmative Defenses.

These are the civil pleadings. (Civil pleadings do not apply in criminal cases.)

The pleadings "plead" the respective parties' positions.

More importantly, they tell the court what ultimate facts in support of their causes and defenses that the parties ultimately must prove to win. The battle, then, is to gather admissible evidence tending to prove those facts. The side with the most evidence (in civil cases) wins.

There are only these four types of pleadings:

1. Complaints

2. Answers

3. Affirmative Defenses

4. Replies to Affirmative Defenses

Anything that's not a pleading is, well, *not a pleading!*

Motions are motions.

Notices are notices.

Pleadings are pleadings.

Don't misuse these words!

As you now know, this is "Word War". Using the right words *counts!*

This class shows samples of each type of pleading and some common variations.

If you finished the preceding Tutorials in the Main Menu, you already know about the essential elements of:

- Causes of Action
- Affirmative Defenses

You also know you must allege and prove sufficient ultimate facts to establish each essential element of your:

- Causes of Action - if you're a Plaintiff
- Affirmative Defenses - if you're a Defendant

It all fits together neatly in the following equation:

ALLEGE + PROVE = VICTORY

Pleadings are where you do the alleging.

Proof comes later. Pleadings are not designed to prove your case. That's what discovery is for! You'll learn about Discovery in that Main Menu class later on. For now, please concentrate on pleadings.

Pleadings allege.

Powerful pleadings use "short and plain statements" to do the alleging. (The quoted portion of that statement is directly from the *official* rules.)

Short.

Plain.

Pleadings are not a "letter to the judge".

Neither are they little stories designed to persuade the court to believe what they allege.

Don't fall into the all-too-common "amateur lawyer" trap by saying more than necessary in your pleadings.

Let your pleadings do what they're intended to do ... *and no more!*

They should *not* be an attempt to "prove" your case!

There'll be time enough for provin' when the pleadin's done!

The Complaint is a pleading filed by a plaintiff seeking relief from the court.

It is is the most important document in a lawsuit.

Yet, even experienced lawyers do a poor job drafting complaints.

The official rules for your jurisdiction will read something like this:
"The complaint shall contain a short and plain statement of the grounds on which the court's jurisdiction depends, a short and plain statement of the ultimate facts showing the pleader is entitled to relief, and a demand for judgment for the relief sought." (From Rule 8, Federal Rules of Civil Procedure)

Three essential ingredients:

1. Short and plain statement of grounds for the court's jurisdiction.
2. Short and plain statement of *ultimate* facts on which right to relief is based.
3. Demand for relief.

Whether your lawsuit is in federal court or in the least significant court of some backwoods county in Appalachia, the Complaint must perform these three essential tasks.

The Complaint should *never* be used to "prove" the facts it alleges. That's *not* what it's for. Attempting to prove your case in the Complaint will only work against you!

Nor should you use the Complaint to tell a story. That's *not* what it's for. Attempting to tell a story with your Complaint will only work against you!

The Complaint is not a story.

The Complaint is not an argument.

The Complaint is *not* a "personal letter" to the judge.

The Complaint is a "tool" designed to accomplish at least three (3) things:

1. Allege ultimate facts sufficient to establish the court's jurisdiction.
2. Allege ultimate facts sufficient to establish the elements of your
1. Causes of action, if you're a plaintiff.
2. Affirmative defenses, if you're a defendant.
3. Demand the court's favorable judgment.

Your Complaint may also be used to do the following two (2) things:

1. Begin discovery with certain additional fact allegations (explained in sidebar).
2. Optionally demand trial of the evidence by jury.

Your Complaint should *not* attempt to do anything other than these five (5) things.

If you insist on writing your complaint any other way, you will dig yourself into a nasty hole and not realize how deep it is until you get trapped in it later on.

Stick to what this class teaches.

The most common flaw in *pro se* pleadings (and those of inexperienced lawyers) is a proclivity to demonstrate one's brilliant mastery of the English language, to impress the judge with one's vast legal knowledge, or to beat a dead horse with superfluous allegations that go beyond what's necessary ... *weakening the case by alleging non-essentials!*

The main function of a Complaint is to allege what *must* be alleged to get one's foot in the courthouse door ... not to *prove* the case in a single document.

Alleging more than absolutely necessary serves only to give the other side an advantage, because ...

- Judges don't want to and *won't* read it.
- You give your opponent more targets for mud-throwing.

Filing pleadings more than 10-12 pages in any kind of case is usually a mistake. When there is only one cause of action, a Complaint with no more than five (5) pages should suffice.

Short pleadings are powerful.

Keep it simple!

Short and concise!

Jurisdictional Allegations

The court in which Plaintiff files his Complaint must have "subject matter jurisdiction" over the issues Plaintiff alleges.

Plaintiff must allege sufficient ultimate facts to establish that the court, indeed, has the necessary "subject matter jurisdiction". He does this in the "Jurisdictional Allegations" section of his Complaint (as shown in the forms that follow).

The particular facts he must allege differ between jurisdictions. The facts giving rise to jurisdiction over civil matters in a federal district court may differ widely from those required to establish jurisdiction in a state small claims court, for example. If you're planning to bring a civil lawsuit as plaintiff, consult the *official* authorities in your jurisdiction to determine what essential facts must be alleged to give rise to jurisdiction in the court of your choice.

If the plaintiff fails to allege sufficient essential facts to establish that the court in which he files has jurisdiction over the case, the Defendant will prevail with her Motion to Dismiss for Lack of Subject Matter Jurisdiction.

Factual Allegations

In the forms that follow, you'll find a *brief* section where Plaintiff alleges sufficient ultimate facts to establish all of the essential

elements of his cause(s) of action.

It is not enough to merely recite the names of the elements one-by-one.

Plaintiff must allege *ultimate* facts sufficient to establish all elements of his cause(s).

Add nothing more (except facts alleged to obtain discovery, as explained later in this class).

Facts alleged for discovery should be *only* those facts that will tend to prove the essential elements and facts your opponent *must* admit in his or her response!

Use single sentences.

Let each sentence have its own paragraph number.

Do not put more than one sentence in any single numbered paragraph.

Do not use compound sentences (i.e., with "and", "but", etc.)

Each numbered paragraph should make one statement of fact and one only!

Wherefore Clause

At the end of the Complaint (or at the end of each Count, if there are multiple counts) the Plaintiff moves the Court to enter judgment in his favor.

The "Wherefore Clause" spells out what the Plaintiff wants.

Some lawyers *improperly* do this in the form of a "prayer" or request.

Do not "pray".

Do not "beg".

Move the court to enter a Final Judgment Order granting what you want.

The samples further on in this class show how.

Discovery Allegations

Plaintiff may allege additional facts he is *certain* Defendant *will*

admit (or risk being caught in a lie).

In this way, Plaintiff is able to get some facts into the record without wasting valuable discovery.

Discovery tools are limited. Wise litigants use them sparingly. The Complaint gives Plaintiff an opportunity to allege facts Defendant must either admit or deny in her Answer. Plaintiff can start the discovery process by alleging facts in his Complaint that Defendant is likely to admit (or risk being caught in a lie). Facts Defendant admits are deemed admitted for all purposes.

For the purpose of discovery, of course, there's no point alleging facts Defendant will surely deny.

Nor is there any point in alleging facts that have no likelihood of leading to admissible evidence tending to prove essential elements of the Plaintiff's cause(s) of action.

When going for discovery in your pleadings, allege only facts that will tend to lead to admissible evidence that can prove the elements you must ultimately prove.

This should *not* be over-used or abused.

There's no need to force Defendant to admit that Tuesdays follow Mondays or that such-and-such law is in existence.

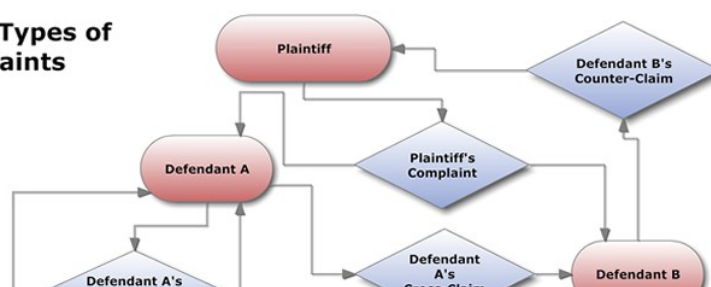
One can get those facts into the record later using motions for judicial notice. (See Motions class.)

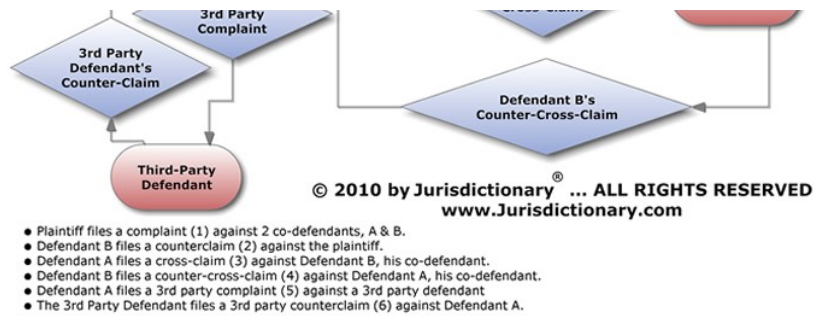
Allege only facts that will help you win.

Demand for Jury Trial

A demand for trial of the evidence by jury, if a jury trial is desired, should be included in the wherefore clause(s).

The 6 Types of Complaints





Every properly framed complaint contains certain components.

- Caption
- Title
- Preamble
- Jurisdictional Allegations
- General Factual Allegations
- Counts
- Wherefore Clauses
- Signature
- Verification (optional but recommended)

Caption

The caption tells us the:

- Name of the court
- Division of the court
- Case number
- Judge's name (optional)
- Plaintiff(s) name(s)
- Defendant(s) names(s)

Title

The title tells us it's a:

- Complaint or

- Petition

Preamble

The preamble tells us again who is suing whom and adds what's being sought.

For example, "Peter Plaintiff sues Danny Defendant for money damages arising from defendant's breach of a contract and states: ..."

Simple enough?

Jurisdictional Allegations

After the preamble, in numbered paragraphs containing one sentence each, Plaintiff alleges sufficient facts to establish that the court has jurisdiction over the subject matter of the case and over the person of the Defendant(s). See samples below.

General Factual Allegations

In this section Plaintiff alleges *all ultimate facts necessary to establish the essential elements of every cause of action he is pleading*. (Covered in the Causes of Action class)

Counts

Each count has a title.

The title of a count names the cause of action the count alleges, e.g., "Count One: Breach of Contract".

The body of each count re-states the foregoing Jurisdictional Allegations and General Factual Allegations.

Each count goes on to allege such additional ultimate facts as may be necessary to establish all essential elements of the cause of action for that count (if they were not sufficiently alleged in the General Factual Allegations sections).

Finally, each count closes with a "WHEREFORE" clause moving the Court for an Order granting judgment favorable to Plaintiff, "... together with such other and further relief as the court may deem

reasonable and just under the circumstances."

It's really quite simple to see and understand, when you take it apart like this.

Signature

After the last Count, the person filing the complaint must sign his name, whether it's the Plaintiff *pro se* or his lawyer.

Below the signature the mailing address, phone number, email address, and fax number (if he has one) should be added.

Verification

If the complaint is "verified" (explained later), the verification will appear below the filer's signature.

Here's a simple single-count Complaint for breach of contract.

IN THE THIRTIETH JUDICIAL CIRCUIT COURT IN AND FOR SUNSHINE COUNTY, FLORIDA

Case No. 2012-123

Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,

v.

DANNY DEFENDANT,
Defendant.

_____/

COMPLAINT

Peter Plaintiff sues Defendant Danny Defendant for money damages resulting from breach of contract and states:

JURISDICTIONAL ALLEGATIONS

1. This is an action for money damages in excess of \$15,000.
[Explained below.]
2. At all times material to this lawsuit, Peter Plaintiff was a resident of Sunshine County, Florida.

3. At all times material to this lawsuit, Danny Defendant was a resident of Sunshine County.

4. All acts necessary or precedent to the bringing of this lawsuit occurred or accrued in Sunshine County, Florida.

5. This Court has jurisdiction.

GENERAL FACTUAL ALLEGATIONS

6. On 17 May 2012 Plaintiff and Defendant entered into a written agreement whereby Defendant promised to spray Plaintiff's 5-acre strawberry farm with insecticide every week for 8 weeks while Plaintiff was on vacation in Hawaii.

7. Plaintiff paid Defendant \$3,000 at the time of execution of the contract in satisfaction of all the Plaintiff's obligations under the contract. [See where this is going?]

8. A copy of the written contract is attached as Exhibit 1. [Many jurisdictions require written contracts to be attached to complaints.]

9. Defendant failed and refused to spray Plaintiff's strawberries at any time, breaching the contract.

10. As a proximate result, strawberries valued in excess of \$15,000 were destroyed by insects, causing Plaintiff to suffer money damages.

WHEREFORE Peter Plaintiff demands judgment for money damages against Danny Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

Peter Plaintiff, Plaintiff

Let's go over it step-by-step.

First, at the very top is the caption. This tells us the name and location of the court, file number (assigned by court clerk at time of filing), name of Plaintiff(s), and name of Defendant(s).

Next is the title, telling us this is a simple "Complaint". If it were some other form, the title would tell us so **in bold font**.

Next are jurisdictional allegations. This is where Plaintiff alleges the

essential facts that give this court power over the *subject matter* of the pleading. In Florida (at the time of this writing), for example, a case brought in a circuit court must seek either money damages in excess of \$15,000 [at the time of this writing] or some equitable relief (e.g., an injunction or order determining ownership of property) or a mixture of both. An action for breach of contract where the amount in controversy is only \$14,999 cannot be brought in a circuit court in Florida. Such an action would have to be brought in a county court. If the amount in controversy is \$5,000 or less, the action would have to be brought in small claims court in Florida. Each jurisdiction has different rules for which courts have jurisdiction over each *subject matter* and amount in controversy. Consult local rules for details.

Peter Plaintiff lives in the county where this court sits. So does Danny Defendant. All acts that gave rise to the lawsuit also took place in the county where the court sits. In Florida these are factors that may be considered in arguing a court has jurisdiction over the subject matter of a case. If Danny lived in Omaha and Peter lived in Miami, and the contract was executed in Atlanta, with performance of its terms to be carried out by Danny in Chicago, the Florida court would *not* have jurisdiction ... *no matter how much money was in controversy*.

Allege all facts necessary to show the court you are filing in has subject matter jurisdiction, or the opposing party may move to dismiss for lack of subject matter jurisdiction.

Paragraphs 6-10 allege sufficient ultimate facts to establish the cause of action for breach of contract. It does this in "short and plain language". (For more on causes of action, see the "Complaints" class in this course.)

Finally, the "WHEREFORE" clause demands judgment for Peter's damages.

All three essential parts of the complaint are met:

1. short and plain statement of grounds for the court's jurisdiction
2. short and plain statement of facts on which right to relief is based
3. demand for relief

Is the simplicity of all this beginning to show?

Of course it is!

A multi-count complaint is the same as the single-count complaint we've examined, except that the general allegations include ultimate facts to establish more than one cause of action, i.e., more than one count - each with its own WHEREFORE clause.

A sample multi-count complaint follows:

**IN THE THIRTIETH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA**

Case No. 2012-123

Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,

v.

DANNY DEFENDANT,
Defendant.

_____/

COMPLAINT

PLAINTIFF Peter Plaintiff sues Danny Defendant for money damages and states:

JURISDICTIONAL ALLEGATIONS

1. This is an action for money damages in excess of \$15,000.
2. At all times material to this lawsuit, Peter Plaintiff was a resident of Sunshine County, Florida.
3. At all times material to this lawsuit, Danny Defendant was a resident of Sunshine County.
4. All acts necessary or precedent to the bringing of this lawsuit occurred or accrued in Sunshine County, Florida.
5. This Court has jurisdiction.

GENERAL FACTUAL ALLEGATIONS

6. On 17 May 2012 Plaintiff and Defendant entered into a verbal

agreement.

7. Terms of the verbal agreement required Defendant to deliver Plaintiff's fresh-picked grapefruit to Plaintiff's customers.

8. Defendant promised to make daily deliveries, including Saturdays and Sundays.

9. Defendant promised to continue deliveries through the end of August 2012.

10. Plaintiff paid Defendant \$5,000 in advance for the contemplated delivery services.

11. Defendant performed well for the first five weeks.

12. At some time in July 2012, Defendant stopped delivering grapefruit for Plaintiff.

13. Defendant began delivering his own grapefruit to Plaintiff's customers in competition with Plaintiff prior to the end of August 2012.

14. Plaintiff lost his long-standing grapefruit customers as a proximate result.

15. Plaintiff lost the value of the remainder of the season's undelivered grapefruit crop due to spoilage.

COUNT ONE: BREACH OF CONTRACT

16. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations. [This brings the foregoing allegations into this count, so each count stands by itself.]

17. The 17 May 2012 verbal agreement constitutes an enforceable contract, since the contract was for services that could be performed within the space of one year pursuant to the Statute of Frauds. [Verbal contracts for services that cannot be performed within one year are unenforceable in states that follow the common law statute of frauds.]

18. Defendant was obligated by the contract to deliver Plaintiff's grapefruit throughout the 2012 grapefruit season.

19. Plaintiff fully performed the contract by advance payment in full.

20. Defendant's failure to deliver through the entire 2012 season breached the contract.

21. As a proximate result of Defendant's breach, Plaintiff suffered substantial money damages.

WHEREFORE Peter Plaintiff demands judgment for money damages against Danny Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

COUNT TWO: TORTIOUS INTERFERENCE

22. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations. [Again, bringing those allegations in so the count stands on its own.]

23. Prior to the wrongs complained of, Plaintiff enjoyed a profitable relationship with his former grapefruit customers.

24. Defendant gained knowledge of the identity and location of Plaintiff's customers in the course of his employment by Plaintiff.

25. Defendant gained knowledge of the number and type of grapefruit that Plaintiff's customers purchased in the course of his employment by Plaintiff.

26. Defendant gained knowledge of the prices Plaintiff's customers paid for Plaintiff's grapefruits in the course of his employment by Plaintiff.

27. Defendant intentionally without justification interfered with Plaintiff's relationship with his former grapefruit customers by selling grapefruit to them directly and at a competitive price.

28. As a proximate result, Plaintiff suffered substantial money damages.

WHEREFORE Peter Plaintiff demands judgment for money damages against Danny Defendant, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

Peter Plaintiff, Plaintiff

Don't make more of it than it is. The worst thing you can do is think this is "too difficult", in which case it will be ... *for you!*

See past the negative thoughts.

Take it one step-at-a-time.

Then you will see just how easy this really is!

Include necessary parts ... *without adding anything unnecessary.*

However ...

Though not essential to either cause of action, it might simplify discovery to allege in the complaint that Danny used one of Peter's delivery trucks.

This next section explains.

The plaintiff can use his complaint to begin discovering evidence.

The defendant can use her affirmative defenses to discover evidence, though it's not so certain as with a complaint.

First, we'll look at using the complaint to discover evidence. The same principle applies with the affirmative defenses.

The point is to allege facts the other side *must* admit (in addition to those necessary to establish the essential elements of your causes or defenses).

Once an opponent admits facts in his response, they are admitted for all purposes in the lawsuit and cannot later be denied.

Suppose it would help to prove Danny sold to Peter's customers if Danny admitted using Peter's truck to deliver Danny's grapefruit. Use of the truck isn't an essential element for either of these two causes of action, *but it may be useful - if Danny admits it in his answer to the complaint.*

(If Danny denies it in his answer, Peter may be able to use his five discovery tools to prove Danny is a liar! More on this in the "Discovery" class in this course.)

Peter might add a paragraph like:

19. Defendant used Plaintiff's 1944 Ford pickup truck to deliver Defendant's grapefruit.

But, didn't we say earlier to allege only facts essential to the causes of action?

Yes ... *but not if we can get discovery with the complaint!*

Allege additional facts beyond what is essential to establish causes of action *only for the purpose of discovery!*

Defendant will be required to answer the complaint sooner or later (unless he succeeds with a flurry of motions explained elsewhere in this course).

If he admits using the old truck, Peter won't have to use his limited number of valuable discovery tools to get that fact into the record.

If we're certain he'll deny it (and we won't be able to prove he's lying) there's no point putting it in the complaint. If he denies (and we cannot prove he lied) we gain nothing by alleging it in the complaint.

If he admits it in his answer, however, it's admitted for all purposes throughout the remainder of the case.

He cannot later deny it once he admits it.

So, add allegations of fact that *if admitted* will help you get at evidence you need to prove your case.

This topic is so important it's a wonder law schools don't teach it.

Few lawyers are aware of the discovery power they miss by poorly wording each separate numbered paragraphs of their initial pleadings.

Each numbered paragraph should contain *only one sentence!*

One subject.

One verb.

As few adjectives and adverbs as possible.

Compound sentences should only *rarely* be used.

Avoid conjunctions like "and", "or", "but", "however", etc.

Never use "and/or" if you can avoid it.

Sentences with mixed conjunctions open the door to argument about what you meant. You want each and every sentence (in *all*

your legal forms) to mean *one thing and one thing only!*

Remember, the complaint is not merely a paper you file to "complain". It is your first bite at the discovery apple. You want each separate numbered paragraph to precisely state what it alleges, with no wiggle-room for your opponent.

Then, when the Defendant responds, he will be required to admit or deny each fact precisely.

Each admitted fact is admitted for all purposes.

A sentence like the following accomplishes nothing.

19. Defendant was aware Plaintiff was worried, but Plaintiff stood alone on the precipice of his financial defeat, while Defendant watched with pleasure at Plaintiff's suffering, knowing the Plaintiff would be sad.

Who cares?

What does this accomplish?

Does it provide any fact essential to a cause of action? It certainly gives no opportunity for discovery, if Defendant responds.

Defendant would surely answer "Without knowledge". How could the defendant know plaintiff was worried or sad?

You gain nothing from such run-on, complex sentences.

If a word does not support a cause of action or offer opportunity for discovery, *leave it out!*

Consider the following:

19. Defendant spoke by telephone with an Acme Truck Repair employee on the 12th of June 2012.

Will he deny?

Can he deny without lying?

If he admits, you won't have to prove the conversation took place.

If he denies, you can subpoena the Truck Repair company's phone records or depose the employee, proving Defendant is a dishonest man and, in that light, probably responsible for the damages your complaint sets forth.

Compare the foregoing with this compound sentence.

22. Defendant was in Pittsburgh on 11 December 2012, and Plaintiff was unable to reach him by phone.

How can Defendant know Plaintiff couldn't reach him by phone?

He will answer:

22. Denied.

That's what his response to that sentence will be. You gained nothing.

Far better to use simple sentences - one subject, one verb, like this:

22. Defendant was in Pittsburgh on 11 December 2012.

23. Plaintiff was unable to reach Defendant on 11 December 2012 by telephone.

Defendant may respond "Without Knowledge" to #23, but he must admit or deny #22, and that may be a valuable point in your favor (whether he lies or tells the truth).

Make all numbered paragraphs simple sentences - one subject, one verb, minimum adjectives and adverbs.

No need to allege any fact that won't help you win!

Nothing else matters.

Write, re-write, re-write, and re-write your papers until perfect!

Pleadings are the most important papers in any lawsuit. Ask a friend to go over yours with you. Have your friend read this section of this class *before* they read your pleading.

Brainstorm.

Be picky!

Pleadings are high-tech smart-bombs. Program for direct hit!

Carefully-drafted pleadings will do more to help you win your lawsuit than anything else you can do.

Poorly-drafted pleadings will get you off to a slow start and give your opponent opportunities to take advantage of you at every turn.

An Answer is simply a formal response to a Complaint.

Usually, the Complaint is plaintiff's initial pleading, but it may also be a counter-claim, cross-claim, or third-party complaint stating a claim filed by a defendant.

[More fully explained below.]

Defendants should try to avoid filing an Answer by using one or more of the following motions:

- Motion to Dismiss
- Motion to Strike
- Motion to Require a More Definite Statement

[More fully explained with samples in the "Motions" class.]

Lawyers and judges may call this phase of a proceeding the "flurry of motions", because until these are disposed of by court orders either granting or denying them, the case cannot proceed.

If defendant fails with his "flurry of motions", he must file his Answer.

The Answer responds to *each numbered paragraph* of the Complaint with one of the following:

- Admitted
- Denied
- Without Knowledge

There are no other responses.

A response may be somewhat more detailed, i.e., "Denied that Defendant ate the apple, otherwise admitted." But, the gist of answering is either to admit, deny, or claim one has insufficient knowledge of the facts alleged to either admit or deny.

Each response to *each numbered paragraph* of the Complaint must say one of these three, one way or another.

Refusing to respond can be fatal. The court may deem refusal to respond as an admission!

Either defendant denies the statement, admits the statement, or claims he has no knowledge by which he might answer the statement truthfully.

If you're a plaintiff, and your defendant answers in a manner substantially different from any of these three, file a motion to strike his answer as "unresponsive", file a motion for more definite statement, or file a motion to have his failure to properly respond deemed an admission.

Plaintiff is entitled to a response to each allegation of his complaint. He is entitled to know whether defendant admits, denies, or has no knowledge. If a response is reasonably responsive to the complaint, plaintiff loses the power of his complaint to start getting at the truth "from the get-go".

Plaintiffs should demand an answer reasonable people can understand.

Plaintiffs should demand an answer that pins the defendant down and begins to get the litigation ball rolling, instead of allowing defendant to play games with words.

Plaintiff should not allow defendant to squirm with weasel-word responses like, "Defendant believes plaintiff is attempting to obtain information he has no right to obtain," or, "This paragraph of plaintiff's complaint is wholly without factual foundation of any kind."

Such responses are "un-responsive".

They don't *answer* the complaint.

If you're a plaintiff, make sure all your hard work at drafting an effective initial pleading does not go to waste. Force your defendant to respond *responsively* to each and every numbered paragraph with one of the three allowed answers (or words to the same effect).

- Admitted
- Denied
- Without Knowledge

If you're a defendant responding to a complaint, there's a great deal more you can do in your response than merely "answer" the complaint. Among these are the all-important affirmative defenses [explained more fully in the "Defenses" class], the possibility of a counter-claim (an attack on Plaintiff), cross-claim (an attack on a co-Defendant), or third-party complaint (an attack on someone you

allege is the legal cause of Plaintiff's damages instead of you).

Here's a simple answer.

See how simple it really is.

**IN THE THIRTIETH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA**

Case No. 2012-123

Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,

v.

DANNY DEFENDANT,
Defendant.

_____ /

ANSWER

DEFENDANT Danny Defendant answers the complaint of Peter Plaintiff and, in response to each numbered paragraph thereof, states:

1. Denied.
2. Admitted.
3. Without knowledge.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.

RESPECTFULLY SUBMITTED this 23 May 2012.

Danny Defendant, Defendant

[Certificate of Service]

That's all there is to a simple answer.

There should *a/ways* be affirmative defenses [discussed more fully

with examples in the "Defenses" class] and possibly one or more additional claims:

- Counter-Claim (defendant sues plaintiff)
- Cross-Claim (defendant sues a co-defendant)
- Third-Party Complaint (defendant sues someone not named in Complaint)

Here's an answer with a counter-claim.

**IN THE THIRTIETH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA**

Case No. 2012-123

Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,

v.

DANNY DEFENDANT,
Defendant.

_____/

ANSWER AND COUNTER-CLAIM

DEFENDANT Danny Defendant answers the complaint of Peter Plaintiff, responding to each numbered paragraph thereof and counterclaiming as follows:

1. Denied.
2. Admitted.
3. Without knowledge.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.

COUNTER-CLAIM

8. On or about 13 May 2012, Plaintiff verbally contracted to pay

Defendant \$3,000 as an initial deposit toward the agreed full contract price of \$5,000 for grapefruit deliveries.

9. Defendant made multiple grapefruit deliveries for Plaintiff thereafter.

10. Plaintiff failed and refused to pay Defendant for any grapefruit deliveries, breaching the parties' contract.

11. Defendant suffered substantial money damages as a proximate result.

WHEREFORE Danny Defendant demands judgment for money damages against Peter Plaintiff, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

RESPECTFULLY SUBMITTED this 23 May 2012.

Danny Defendant, Defendant and Counter-Plaintiff

[Certificate of Service]

If an Answer with counter-claim is filed, plaintiff becomes a counter-defendant and must respond to the defendant's counter-claim in the same way defendant responded to plaintiff's initial Complaint.

A response is required for *each numbered paragraph*.

The cross-claim is like a counter-claim, but instead of defendant suing the plaintiff, defendant sues one or more of his co-defendants.

In the following, Peter Plaintiff sued Danny Defendant *and* Carl Co-Defendant.

Here's Danny's answer and cross-claim against Carl.

**IN THE THIRTIETH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA**

Case No. 2012-123

Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,

v.

DANNY DEFENDANT and
CARL CO-DEFENDANT,
Defendants.

_____/

ANSWER AND CROSS-CLAIM

DEFENDANT Danny Defendant answers the complaint of Peter Plaintiff responding to each numbered paragraph thereof, stating:

1. Denied.
2. Admitted.
3. Without knowledge.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.

CROSS-CLAIM

DEFENDANT Danny Defendant sues Carl Co-Defendant and states,

8. On or about 13 May 2012, Defendant and Co-Defendant agreed to work together to deliver grapefruit for Plaintiff.
9. Defendant and Co-Defendant agreed to share the labor responsibilities equally.
10. Defendant and Co-Defendant agreed to share their costs equally.
11. Defendant and Co-Defendant agreed to share Plaintiff's payments equally.
12. Plaintiff contracted to pay Defendant and Co-Defendant \$3,000 as an initial deposit toward agreed full contract price of \$5,000 for grapefruit delivery to be performed by both Defendant and Co-Defendant working together.
13. Plaintiff paid Co-Defendant the \$3,000 initial deposit.
14. Defendant made multiple grapefruit deliveries for Plaintiff

thereafter.

15. Co-Defendant failed and refused to make any grapefruit deliveries, breaching the contract between Defendant and Co-Defendant.

16. Co-Defendant failed and refused to tender any part of the \$3,000 initial deposit to Defendant, breaching the contract between Defendant and Co-Defendant.

17. Defendant suffered substantial money damages as a proximate result.

WHEREFORE Danny Defendant demands judgment for money damages against Carl Co-Defendant together with such other and further relief as the Court may deem reasonable and just under the circumstances.

RESPECTFULLY SUBMITTED this 23 May 2012.

Danny Defendant, Defendant and Cross-Plaintiff

[Certificate of Service]

The third-party complaint is similar but requires a change in the caption to add the name of the third-party Defendant.

The initial Defendant claims this new party, the Third-Party Defendant, is ultimately responsible for all or some significant part of the Plaintiff's losses.

If the initial Defendant loses the lawsuit brought by Plaintiff, the third-party Defendant may owe the initial Defendant some or all of the judgment.

In the following case, Peter sued Danny. When Danny filed his answer, he brought in Theo as Third-Party, whom Danny says is responsible for whatever Danny may be required to pay Peter.

**IN THE THIRTIETH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA**

Case No. 2012-123

Judge Benchpounder

PETER PLAINTIFF,

Plaintiff,

v.

DANNY DEFENDANT,
Defendant,

v.

THEO THIRD-PARTY,
Third-Party Defendant.

_____ /

ANSWER AND THIRD-PARTY COMPLAINT

DEFENDANT Danny Defendant answers the complaint of Peter Plaintiff responding to each numbered paragraph thereof,

1. Denied.
2. Admitted.
3. Without knowledge.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.

THIRD-PARTY COMPLAINT

DEFENDANT Danny Defendant sues Theo Third-Party and states,

8. On or about 13 May 2012, Theo Third-Party agreed to work for Defendant to deliver grapefruit for Plaintiff.

9. Defendant paid third-party Defendant \$1,500 to deliver grapefruit for Plaintiff.

10. Third-party Defendant failed and refused to deliver any grapefruit for Plaintiff, breaching his contract with Defendant.

11. As a result of the breach of third-party Defendant, Defendant has been required to file an answer in this lawsuit and defend against the claims of money damages brought against Defendant by Plaintiff.

12. Third-party Defendant is liable to Defendant for all damages suffered by Defendant in this lawsuit.

13. Third-party Defendant is further liable to Defendant for return of the \$1,500 taken by him without consideration of any kind.

WHEREFORE Danny Defendant demands judgment for money damages against Theo Third-Party together with such other and further relief as the Court may deem reasonable and just under the circumstances.

RESPECTFULLY SUBMITTED this 23 May 2012.

Danny Defendant, Defendant and Third-Party Plaintiff

[Certificate of Service]

The other *all-important and essential function* of an answer is the affirmative defense that should *always* be filed if an answer cannot be avoided. Affirmative defenses are covered in the "Defenses" class in this course.

A basic form for affirmative defense is given in the next section.

One or more affirmative defenses should *always* be filed - if you have any, that is. If you don't have any defenses ... well ... we won't go there just yet.

Affirmative defenses include any defense in fact or law that would prevent Plaintiff from winning any part or all of his case.

Examples include:

- Statute of Limitations - suit brought beyond statutory limit date
- Laches - suit brought beyond equitable time limit, prejudicing Defendant
- Accord and Satisfaction - parties already settled the dispute
- Assumption of Risk - Plaintiff knowingly exposed himself to danger
- Statute of Frauds - absence of writing to enforce contract
- Estoppel - Plaintiff's own actions prevent him from seeking a remedy in court

The list is, however, virtually endless and includes any matter constituting an avoidance or defense.

Every defense likely to prevent Plaintiff from winning part or all should be asserted with the answer as an affirmative defense.

An example that should suffice in most jurisdictions follows:

**IN THE THIRTIETH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA**

Case No. 2012-123

Judge Benchpounder

PETER PLAINTIFF,

Plaintiff,

v.

DANNY DEFENDANT,

Defendant.

_____/

ANSWER AND AFFIRMATIVE DEFENSES

DEFENDANT Danny Defendant answers the complaint of Peter Plaintiff and, in response to each numbered paragraph thereof, states:

1. Denied.
2. Admitted.
3. Without knowledge.
4. Denied.
5. Denied.
6. Denied.
7. Admitted.

AFFIRMATIVE DEFENSES

Further the Defendant asserts the following defenses and states:

8. Plaintiff's action is barred by the statute of limitations. Breach of contract complained of took place more than 5 years prior to the

filing of this action and is, pursuant to §95.11 Florida Statutes, barred.

9. Plaintiff's action is barred by the statute of frauds (§725.01 Florida Statutes) that precludes actions to enforce a verbal contract for service to be performed within the space of one year, because the contract complained of contemplated Defendant would work for Plaintiff more than one year, and contract is not in writing.

10. Plaintiff's action is barred by estoppel, in that Plaintiff's own failure to provide fresh grapefruit to Defendant for delivery to Plaintiff's customers is the cause of failure by the Defendant to deliver and thereby perform the contract.

RESPECTFULLY SUBMITTED this 23 May 2012.

Danny Defendant, Defendant

[Certificate of Service]

That's all there is to the form for affirmative defenses.

You absolutely must study the class in this course dedicated to "Defenses".

Notice, however, that we did not merely "name" the three affirmative defenses pleaded here. We alleged sufficient ultimate facts to *establish* each defense, if the facts are ultimately proven.

It cannot be urged too strongly that *all* defenses in fact and law should be asserted with *every* answer or other responsive pleading. Stated defenses are the Defendant's arsenal. They need to be made a part of the court's record at the very beginning of the lawsuit and include ultimate facts that, if proven, give victory to the Defendant.

Defendant's filing of affirmative defenses requires Plaintiff to file a reply (if he wishes to avoid the affirmative defense).

The reply is next.

A reply is filed to avoid affirmative defenses and demand strict proof.

This is the final pleading in most cases.

Once a reply is filed, the court and parties should know what the case is about:

- what is complained of,
- what the defenses are,
- what the complainers say about the defenses

So everyone knows where everyone else stands on the facts and law and what they must prove by admissible evidence to win.

The rest of the fight is to *prove who's telling the truth*.

If the answer includes a counter-claim, cross-claim, or third-party claim, there will be answers to each of these. Each answer in turn should include affirmative defenses and a reply to each affirmative defense.

That closes the pleadings, and the case is ready for trial ... unless the court allows additional time for the parties to discover evidence. (Learn more in the "Discovery" class in this course.)

A simple reply follows:

**IN THE THIRTIETH JUDICIAL CIRCUIT COURT
IN AND FOR SUNSHINE COUNTY, FLORIDA**

Case No. 2012-123

Judge Benchpounder

PETER PLAINTIFF,
Plaintiff,

v.

DANNY DEFENDANT,
Defendant.

_____/

REPLY TO AFFIRMATIVE DEFENSES

PLAINTIFF Peter Plaintiff replies to affirmative defenses filed by Defendant Danny Defendant and states with regard to each:

1. Plaintiff denies the first affirmative defense and demands strict proof.
2. Plaintiff denies the second affirmative defense and demands strict proof.

3. Plaintiff denies the third affirmative defense and demands strict proof.

Peter Plaintiff, Plaintiff

[Certificate of Service]

That's all there is to it!

If you want to get some extra mileage out of your reply, add to each denial some allegations of ultimate fact that, if you could back them up with admissible evidence, would tend to *prove* the affirmative defense has holes in it.

- Single sentences for each numbered paragraph.
- Single subject.
- Single verb.
- Only *essential* adverbs and adjectives.

Same as always.

When a party seeks injunctive relief (see Injunction under "I" in Alphabet above), his pleading is called a Petition, and he is called the Petitioner.

The party responding to such a Petition is, not surprisingly, called the Respondent.

Here's a sample Petition for temporary injunction (more fully explained in the Main Menu class on Causes of Action).

IN THE FOURTH JUDICIAL CIRCUIT COURT

IN AND FOR HAPPINESS COUNTY, FLORIDA ¹

Case No. _____ ²

PETER PIPER,

Petitioner,

v.

BORIS BADGUY,

Respondent.

VERIFIED PETITION FOR TEMPORARY INJUNCTION ³

PETER PIPER petitions this Honorable Court to issue a temporary injunction and in support therefor states:

JURISDICTIONAL ALLEGATIONS

1. This is an action for the equitable remedy of a temporary injunction.
2. Petitioner resides in Happiness County, Texas.
3. The threatened harm to be enjoined is threatened to be imposed in Happiness County.
4. Respondent resides in Happiness County [or has some other legal nexus to Happiness County that invokes the jurisdiction of this Honorable Court ⁴].
5. This Honorable Court has jurisdiction.

FACTUAL ALLEGATIONS

6. Petitioner has personal knowledge that respondent Boris Badguy has a well-formed plan to act in a manner that will surely cause petitioner serious bodily harm.
7. The threatened act complained of is the threat of Boris Badguy to break both of Peter Piper's knee caps with a baseball bat. ⁵
8. The threatened bodily harm is the breaking of Peter Piper's knee caps. ⁶
9. The threat is imminent because Boris Badguy promised to break Peter Piper's knee caps on Valentine's Day, just two weeks from the date of this filing. ⁷
10. An action for money damages alone is insufficient to restore petitioner to his *status quo ante* after the threatened harm because surgery cannot restore Peter Piper's knee caps sufficiently to allow Peter Piper to walk properly for the rest of his life. ⁸
11. The threatened harm to petitioner outweighs any substantial harm to the respondent, because Boris Badguy will suffer no harm

whatever in being prevented from breaking Peter Piper's knee caps.

9

12. There is no substantial public interest that will be contravened by this Honorable Court's issuing an injunction favoring this particular petitioner.

13. There is a substantial likelihood that petitioner will prevail in this action, because the facts obtained on the record by discovery will reveal that Boris Badguy is a beast , who has carried out such threats in the past and caused similar injuries to others. ¹⁰

14. Boris Badguy is a convicted felon. ¹¹

15. A temporary injunction is necessary to protect petitioner from the threatened harm.

WHEREFORE petitioner Peter Piper moves this Honorable Court to enter an Order enjoining respondent Boris Badguy from [*briefly* describe the threatened harm once again] and granting such other and further relief as the circumstances and demands of justice may warrant.

UNDER PENALTIES OF PERJURY I affirm that the facts alleged in the foregoing are true and correct according to my own personal knowledge.

Peter Piper, Petitioner

STATE OF FLORIDA

COUNTY OF HAPPINESS

BEFORE ME personally appeared Peter Piper who, being by me first duly sworn, executed the foregoing in my presence and stated to me that the facts alleged therein are true and correct according to his own personal knowledge.

Notary Public

My commission expires:

Notes to the foregoing sample pleading:

1. The title of the court, of course. Local research is required to know how to state the title of the court.
2. Leave this blank. The clerk will assign a case number when the case is filed.
3. Verify the petition by swearing to it under penalties of perjury. This gives it more force. Judges consider sworn facts more favorably, since petitioner risks a jail term by stating them under oath.
4. For example, Coca Cola can be sued anywhere in the world. My next door neighbor, on the other hand, can only be sued in the Florida county where we live, unless he runs over someone's dog in South Dakota.
5. Describe in reasonable detail the threatened act, not the effect it will have. That comes next. Be brief without omitting any essential fact. If known, state the time and place where the act will happen. If known, state the manner in which it will happen. If known, state the person(s) who will carry out the act.
6. Describe the harm that it will impact petitioner in a substantial and serious manner if the injunction fails.
7. Explain why the threat is imminent, i.e., soon and certain to occur if the injunction fails.
8. Explain why all the money in the world won't make things "right", if the injunction fails.
9. We need only "outweigh". We need not allege there will be "no harm" to respondent. In many actions for an injunction, respondent may be somewhat adversely affected. What must be alleged here *in brief* are facts that demonstrate that the threat of harm to petitioner outweighs any harm to respondent.
10. Explain *in brief* some *provable* facts to sustain this allegation. You will not try to prove those facts in this pleading. You will simply allege sufficient facts (and only such as are sufficient) to establish that *if proven* an injunction is necessary to carry out the essential requirements of justice.
11. Example of a fact being alleged for discovery purposes only, i.e., a fact we are certain must be admitted, one that will be helpful to have

admitted up front, so we don't have to use valuable discovery tools later on to prove. Use these with discretion. If such facts will not serve to assist in proving the essential element facts alleged to establish your right to the injunction, don't try to prove them. You'll be busy enough proving those things that are necessary to win. No need to build a straw house here!

So we come to the end of this class on pleadings.

You learned that pleadings are pleadings, not motions or notices or anything else.

You learned there are only four kinds of pleadings:

- Complaints
- Answers
- Affirmative Defenses
- Replies to Affirmative Defenses

And, hopefully, you learned some valuable and powerful information that will guide you to *use* pleadings tactically and strategically to *win your case!*

MICHELLE GOMEZ: Your subscription expires October 26, 2020

Take this quiz to see how much you still need to learn.

Some items may seem like "trick questions", but there is only *one* correct answer to each.

Remember: Reading *carefully* is essential to success in court.

Take this and all quizzes as many times as you wish.

However, to be properly prepared for your battles in court, go back over the classes until you get at least a "B" on every quiz.



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