



2023 Edition

Answer, Special Defense, Counterclaim, and Setoff to a Civil Complaint

A Guide to Resources in the Law Library

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If you are looking for Answer forms available on the Connecticut Judicial Branch website, please see the official court forms page at <https://www.jud.ct.gov/webforms>.

This is a research guide to legal resources available at the Connecticut Judicial Branch Law Libraries, including links to court rules, statutes, cases, and forms available online.

These guides are provided with the understanding that they represent only a beginning to research. It is the responsibility of the person doing legal research to come to his or her own conclusions about the authoritativeness, reliability, validity, and currency of any resource cited in this research guide.

View our other research guides at
<https://www.jud.ct.gov/lawlib/selfguides.htm>

This guide links to advance release opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar and Harvard's Case Law Access Project. The online versions are for informational purposes only.

References to online legal research databases refer to in-library use of these databases. Remote access is not available.

See Also:

- [Motion to Dismiss](#)
- [Motion to Strike](#)
- [Request to Revise](#)
- [Motion for Summary Judgment](#)

[Connecticut Judicial Branch Website Policies and Disclaimers](https://www.jud.ct.gov/policies.htm)
<https://www.jud.ct.gov/policies.htm>

Introduction

A Guide to Resources in the Law Library

- “The purpose of pleadings is to apprise the court and opposing counsel of the issues to be tried, not to conceal basic issues until after the close of the evidence.” [Biller v. Harris](#), 147 Conn. 351, 357, 161 A.2d 187 (1960).
- “Pleadings are intended to ‘limit the issues to be decided at the trial of a case and [are] calculated to prevent surprise.’” [Birchard v. City of New Britain](#), 103 Conn. App. 79, 83, 927 A.2d 985, cert. denied, 284 Conn. 920, 933 A.2d 721 (2007).
- The Answer; General and Special Denial: “The defendant in the answer shall specially deny such allegations of the complaint as the defendant who intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations, in which case he or she may deny them generally. Any defendant who intends to controvert the right of the plaintiff to sue as executor, or as trustee, or in any other representative capacity, or as a corporation, or to controvert the execution or delivery of any written instrument or recognizance sued upon, shall deny the same in the answer specifically.” Conn. Practice Book [§ 10-46](#) (2023).
- “Generally speaking, facts must be pleaded as a special defense when they are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action. Practice Book § 10-50.” [Almada v. Wausau Business Insurance Company](#), 274 Conn. 449, 456, 876 A. 2d 535 (2005).
- “A counterclaim arises out of the same transaction described in the complaint. A set-off is independent thereof.” [Bank of New London v. Santaniello](#), 130 Conn. 206, 210, 33 A.2d 126 (1943).
- Time to Plead: “Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of thirty days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the time period shall be fifteen days. The filing of interrogatories or requests for discovery shall not suspend the time requirements of this section unless upon motion of either party the judicial authority shall find that there is good cause to suspend such time requirements.” Conn. Practice Book [§ 10-8](#) (2023).
- Penalty for Failing to Plead: “Parties failing to plead according to the rules and orders of the judicial authority may be nonsuited or defaulted, as the case may be. (See General Statutes § 52-119 and annotations.)” Conn. Practice Book [§ 10-18](#) (2023).

Section 1: Admissions and Denials

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to admissions and denials in an answer to a complaint.

SEE ALSO: • [Default Motions and Judgments](#) (Research Guide)

- DEFINITIONS:
- "The defendant in the answer shall specially deny such allegations of the complaint as the defendant who intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations, in which case he or she may deny them generally..." Conn. Practice Book [§ 10-46](#) (2023).
 - Evasive Denials: "Denials must fairly meet the substance of the allegations denied. Thus, when the payment of a certain sum is alleged, and in fact a lesser sum was paid, the defendant cannot simply deny the payment generally, but must set forth how much was paid to the defendant; and where any matter of fact is alleged with divers circumstances, some of which are untruly stated, it shall not be sufficient to deny it as alleged, but so much as is true and material should be stated or admitted, and the rest only denied." Conn. Practice Book [§ 10-47](#) (2023).
 - "We note that the defendant's answer claimed insufficient knowledge on which to form a belief as to each and every paragraph of the complaint, including allegations that the defendant had signed the promissory note and mortgage deed. It is obvious that unless the defendant is incapacitated or otherwise unavailable to his attorney, such information is within his knowledge so as to require an admission or denial." [Tolland Bank v. Larson](#), 28 Conn. App. 332, 336, 610 A.2d 720 (1992).
[Superseded by statute on other grounds as stated in Snowdon v. Grillo, 114 Conn. App. 131, 134.]
 - Implied Admissions: "Every material allegation in any pleading which is not denied by the adverse party [the Defendant] shall be deemed to be admitted, unless such party avers that he or she has not any knowledge or information thereof sufficient to form a belief." Conn. Practice Book [§ 10-19](#) (2023).
 - "The plain and unambiguous language of Practice Book § 10-19 does not apply to legal conclusions." [Sullo Investments, LLC v. Moreau](#), 151 Conn. App. 372, 384, 95 A. 3d 1144 (2014).
 - "An admission in a defendant's answer to an allegation in a complaint is binding as a judicial admission. . . ." (Citations omitted; internal quotation marks omitted.) [Berty v. Gorelick](#), 59 Conn. App. 62, 65, 756 A.2d 856, cert. denied, 254 Conn. 933, 761 A.2d 751 (2000).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Conn. Practice Book (2023)

[Chapter 10: Pleadings](#)

- § 10-1. Fact Pleading
- § 10-5. Untrue Allegations or Denials
- § 10-7. Waiving the Right to Plead
- § 10-12. Service of the Pleading and Other Papers...
- § 10-13. Method of Service
- § 10-14. Proof of Service
- § 10-19. Implied Admissions
- § 10-39. Motion to Strike
- § 10-46. The Answer; General and Special Denial
- § 10-47. Evasive Denial
- § 10-48. Express Admissions and Denials to be Direct and Specific
- § 10-56. Subsequent Pleadings; Plaintiff's Response to Answer
- § 10-57. Matter in Avoidance of Answer
- § 10-58. Pleadings Subsequent to Reply
- § 10-60. Amendment by Consent, Order of Judicial Authority, or Failure to Object

[Chapter 17: Judgments](#)

- § 17-32. Default for Failure to Plead

[Chapter 24: Small Claims](#)

- § 24-16. Answers; Requests for Time to Pay
- § 24-20. Amendment of Claim or Answer, Setoff or Counterclaim; Motion to Dismiss

[Chapter 25: Family Matters](#)

- § 25-9. Answer, Cross Complaint, Claims for relief by Defendant
- § 25-10. Answer to Cross Complaint

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen Stat. (2023)

[Chapter 898 - Pleading](#)

- § 52-99. Untrue allegations or denials. Costs.
- § 52-119 Pleading to be according to rules and orders of court.
- § 52-120 Pleading filed by consent after expiration of time.
- § 52-121 Pleading may be filed after expiration of time fixed, but prior to hearing on motion for default judgment or nonsuit. Judgment or penalty for failure to plead.
- § 52-123 Circumstantial defects not to abate pleadings.
- § 52-130 Amendment of defects, mistakes or informalities.

CASES:

- [U.S. Bank, National Association v. Moncho](#), 203 Conn. App. 28, 35-36, 247 A.3d 161 (2021). "We conclude that the trial court did not err in holding that the defendants were not entitled to implied admissions on their special defenses. First, contrary to the defendants' contention, our decision in *Birchard* [*Birchard v. New Britain*, 103 Conn. App. 79, 927 A.2d 985 (2007)] indicates

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

that the provisions of Practice Book § 10-19 are not always mandatory. Specifically, a trial court is not bound by any implied admissions that are not brought to its attention at any stage of the trial proceedings. *Id.*, at 85, 927 A.2d 985. Although the defendants eventually brought the plaintiff's nonpleading to the court's attention, they did so only following the conclusion of trial, despite having had ample opportunity to do so beforehand. As we noted in *Birchard*, it would have been unfair and unworkable here to require the trial court to scour the pleadings in search of any implied admissions. Because the burden rests with the parties to bring to the court's attention any allegedly implied admissions and the defendants did not notify the court of their intention to claim implied admissions until approximately one month following trial, the court may not be bound by any implied admissions that could have resulted from the plaintiff's failure to plead if they were raised timely. *Id.*, at 85-86, 927 A.2d 985."

- [Christiana Trust v. Lewis](#), 184 Conn. App. 659, 666, n. 3, 195 A.3d 1176 (2018). "The substitute plaintiff also argues that the defendant did not properly raise the issue of forgery by way of a special defense In paragraph 4 of its amended complaint, the original plaintiff asserted that the defendant executed and delivered to MERS a mortgage on the subject property. In his answer, the defendant denied the allegations in paragraph 4 of the amended complaint. We conclude that the defendant's denial of the substitute plaintiff's allegation that he had executed the mortgage was sufficient in this case. See Practice Book § 10-50 ('No facts may be proved under either a general or special denial except such as show that the plaintiff's statements of fact are untrue. Facts which are consistent with such statements but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged....')."
- [Altama, LLC v. Napoli Motors, Inc.](#), 181 Conn. App. 151, 156-57, 186 A.3d 78 (2018). "Furthermore, '[a] complaint includes all exhibits attached thereto.' (Internal quotation marks omitted.) *Tracy v. New Milford Public Schools*, 101 Conn. App. 560, 566, 922 A.2d 280, cert. denied, 284 Conn. 910, 931 A.2d 935 (2007). 'Exhibits attached to a complaint can be considered by the factfinder if the defendant, through his answer or other responsive pleading, admits to the factual allegations contained therein so that the pleading constitutes a judicial admission.' (Internal quotation marks omitted.) *Wilson v. Hryniewicz*, 51 Conn. App. 627, 632, 724 A.2d 531, cert. denied, 248 Conn. 904, 731 A.2d 310 (1999)."
- [Horner v. Hartford Roman Catholic Diocesan Corp.](#), Superior Court, Judicial District of Waterbury, Complex Litigation Docket at Waterbury, No. X10CV176034898S (Oct. 24, 2018) (67 Conn. L. Rptr. 308) (2018 WL 5797810). "Notably, the diocese has not admitted the plaintiff's allegations that McSheffery was its employee (¶ 2) or agent (¶ 9), leaving the plaintiff to his proof,

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and has denied that McSheffery was under the direct supervision, employ, authority and control of the Archdiocese (¶ 3). Defendant's answer at entry # 167. However, in another pending action, UWY-CV-166032214, *O'Leary v. The Hartford Roman Catholic Diocesan Corp.*, the diocese has admitted that McSheffery was its agent and remained under its supervision, authority and control during the relevant time period of that action, 1972-1982, see Exhibit A to Plaintiff's Memorandum in Opposition at entry # 168, and the plaintiff relies on that answer as an evidentiary admission. This raises another material factual dispute."

- [Sullo Investments, LLC v. Moreau](#), 151 Conn. App. 372, 95 A. 3d 1144 (2014). "The defendant's final claim is that the court erred in holding that there was consideration to support the note because her first special defense regarding the lack of consideration was admitted under our rules of practice by virtue of the plaintiff's failure to reply to it in timely fashion. This claim is without merit." (p. 384)

"The defendant declares in her first special defense that Aurelien Moreau's obligation under the note and her obligation under the guarantee are 'unenforceable for want of consideration.' These are legal conclusions and not factual allegations, however, because '[t]he sufficiency of consideration is a question of law based upon the evidence' *Middlebury v. Steinmann*, 189 Conn. 710, 716 n.3, 458 A.2d 393 (1983). The plain and unambiguous language of Practice Book § 10-19 does not apply to legal conclusions." (p. 385)

- [Industrial Mold & Tool, Inc. v. Zaleski](#), 146 Conn. App. 609, 615, 78 A.3d 218 (2013). "The defendant, in his answer, admitted the allegations of paragraph four. In so doing, the defendant conclusively established the fact that postjudgment interest was due and owing to the plaintiff. The defendant did not deny the truth of that allegation or offer any defense thereto; he admitted it and, therefore, is bound by that admission."
- [Bruno v. Whipple](#), 138 Conn. App. 496, 508, 54 A. 3d 184 (2012). "Practice Book § 10-19 provides as follows: 'Every material allegation in any pleading which is not denied by the adverse party shall be deemed to be admitted, unless such party avers that he or she has not any knowledge or information thereof sufficient to form a belief.' Additionally, Practice Book § 10-48 provides in relevant part: '[A]ny pleader wishing expressly to admit or deny a portion only of a paragraph must recite that portion; except that where a recited portion of a paragraph has been either admitted or denied, the remainder of the paragraph may be denied or admitted without recital. . . .'"
- [Gianetti v. Connecticut Newspapers Pub. Co.](#), 136 Conn. App. 67, 75, 44 A.3d 191, 196, cert. denied, 307 Conn. 923 (2012). "Judicial admissions are voluntary and knowing concessions of

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fact by a party or a party's attorney occurring during judicial proceedings. They excuse the other party from the necessity of presenting evidence on the fact admitted and are conclusive on the party making them. Admissions, whether judicial or evidentiary, are concessions of fact, not concessions of law.' (Citations omitted; internal quotation marks omitted.) *Borrelli v. Zoning Board of Appeals*, 106 Conn.App. 266, 271, 941 A.2d 966 (2008)."

- [Thurlow v. Hulten](#), 130 Conn. App. 1, 6, 21 A.3d 535, cert. denied, 302 Conn. 925 (2011). "Section 47-31(d) provides that in actions for quiet title, '[e]ach defendant shall, in his answer, state whether or not he claims any estate or interest in, or encumbrance on, the property, or any part of it, and, if so, the nature and extent of the estate, interest or encumbrance which he claims, and he shall set out the manner in which the estate, interest or encumbrance is claimed to be derived.'"
- [Birchard v. City of New Britain](#), 103 Conn. App. 79, 927 A.2d 985, cert. denied, 284 Conn. 920, 933 A.2d 721 (2007). "In response to each allegation of a complaint, a defendant has three options. It may admit, deny, or plead that it 'has not any knowledge or information thereon sufficient to form a belief.' Practice Book § 10-19;" (p. 84-85)

"The question before us, then, is whether a trial court is bound by an implied admission pursuant to Practice Book § 10-19 that is not brought to its attention at any stage of the proceedings We think it is both unfair and unworkable to require the trial court, in each and every civil action before it, to scour the pleadings in search of implied admissions We therefore conclude that the burden rests with the parties to bring to the court's attention an allegedly implied admission pursuant to Practice Book § 10-19." (p. 85-86)

- [Rudder v. Mamasasco Lake Park Association](#), 93 Conn.App. 759, 769, 890 A. 2d 645 (2006). "Accordingly, '[t]he admission of the truth of an allegation in a pleading is a judicial admission conclusive on the pleader A judicial admission dispenses with the production of evidence by the opposing party as to the fact admitted, and is conclusive upon the party making it' *Solomon v. Connecticut Medical Examining Board*, 85 Conn.App. 854, 866, 859 A.2d 932 (2004), cert. denied, 273 Conn. 906, 868 A.2d 748 (2005); see also 71 C.J.S. 246, supra, § 196 (admission in a plea or answer is binding on the party making it, and may be viewed as a conclusive or judicial admission). 'It is axiomatic that the parties are bound by their pleadings.'"
- [Nationwide Mutual Ins. Co. v. Allen](#), 83 Conn. App. 526, 541, 850 A.2d 1047, cert. denied, 271 Conn. 907 (2004). "The distinction between judicial admissions and mere evidentiary admissions is a significant one that should not be blurred by

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imprecise usage.... While both types are admissible, their legal effect is markedly different; judicial admissions are conclusive on the trier of fact, whereas evidentiary admissions are only evidence to be accepted or rejected by the trier.”

- [Worden v. Francis](#), 153 Conn. 578, 583-84, 219 A.2d 442 (1966). “On the eve of the second trial, the plaintiff amended his complaint to claim permanent and total deafness on the left side as a result of the defendant's negligence. The defendant did not join issue on this allegation, and, since he did not deny it, it is to be taken as admitted.”
- [Postemski v. Watrous](#), 151 Conn. 183, 185, 195 A. 2d 425 (1963). “The answer pleaded no information to allegations that the state prevented the plaintiff from filling, grading and paving the land unless he eliminated the culvert in a manner proposed by the state, which he has done at considerable expense. The pleading of no knowledge or information to these allegations is in effect a denial.”
- *Pleading*
 - (C) Traverses or denials and admissions, #112-129
- *Connecticut Judicial Branch Civil Jury Instructions Part 2.4 — Types of Evidence* (2008)
 - 2.4-4 Admissions from Pleadings
 - 2.4-6 Admissions from Superseded Pleadings
- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, 2022 ed., LexisNexis.
 - Chapter 7. Pleadings
 - § 7.20 Answer
- 1 *Stephenson’s Connecticut Civil Procedure*, 3rd ed., by Renee Bevacqua Bollier et al., Atlantic Law Book Co., 1997, with 2014 supplement.
 - Chapter 8. The answer, counterclaim; subsequent pleadings
 - § 80. Determining Defense Strategy
 - § 81. The Answer: Structure and Service
 - § 82. Denials
 - § 83. Special Defenses
- 2 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (also available on Westlaw).
 - General-Responsive Pleadings
 - Comments to Forms 105.1, 105.2, 105.2-A, 105.2-B, 105.2-C, 105.3, 105.4
- 1 Connecticut Practice Series, *Connecticut Superior Court Civil Rules*, 2022-2023 ed. By Wesley W. Horton et al., Thomson West (also available on Westlaw).
 - Chapter 10. Pleadings

WEST KEY NUMBER:

CIVIL JURY INSTRUCTIONS:

TEXTS & TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

Authors' Comments to §§ 10-46 et seq.

- 1 *Dupont on Connecticut Civil Practice*, by Ralph Dupont, 2022-2023 ed., LexisNexis.
Chapter 10. Pleadings
Commentaries to §§ 10-46 et seq.
- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response.
- 7 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., Thomson West, 2010, with 2022-2023 supplement (also available on Westlaw).
Chapter 19, Pleadings
§ 19:9 Answer, cross-complaint and claims for relief by defendant
- *Library of Connecticut Collection Law Forms*, Robert M. Singer, editor, Connecticut Law Tribune, 2016.
Chapter 10 - Answer and Counterclaim
10-000. Commentary
- *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators*, by Jeanine M. Dumont, Connecticut Law Tribune, 1998.
Chapter 6. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings
- Civil Forms - [Responding to a Civil Lawsuit](#) (Connecticut Judicial Branch)
- Family Forms - [Responding to a Divorce](#) (Connecticut Judicial Branch)
- Housing Forms - Summary Process (Eviction), Answer to Complaint, [JD-HM-5](#)
- Small Claims - Instructions to Defendant, [JD-CV-121](#)
- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
Chapter 13, Defendant's Answer..., pp. 134-138
- 2 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (also available on Westlaw).
Forms 105.1, 105.2, 105.2-A, 105.2-B, 105.2-C, 105.3, 105.4
- 16, 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2022 ed., Thomson West (also available on Westlaw).

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

[see each chapter]

- *Connecticut Landlord and Tenant Law with Forms*, 3d ed., by Noble F. Allen, Connecticut Law Tribune, 2021.
Form 2-009 – Answer and Defense to Action for Private Receivership of Tenement House
- *Connecticut Law of Torts*, 4th ed. By Douglass B. Wright et al. 2018., Atlantic Law Book Co.
Form 8: Answer
- 1 *Dupont on Connecticut Civil Practice*, by Ralph Dupont, 2022-2023 ed., LexisNexis.
Chapter 10. Pleadings
Forms
H. Answers, In general
- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, 2022 ed., LexisNexis.
§ 7.26 Basic Form of Answer
- *Library of Connecticut Collection Law Forms*, Robert M. Singer, editor, Connecticut Law Tribune, 2016.
Form 10-001: Answer and Special Defenses
- *Library of Connecticut Family Law Forms*, 2d ed., by MacNamara, Welsh, and George, editors, Connecticut Law Tribune, 2014.
Form 1-009: Answer and Cross-Complaint
Form 1-012 Answer and Cross-Complaint – in Avoidance of Premarital Agreement]

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 61A *Am Jur 2d Pleading*, Thomson West, 2021, with 2023 supplement (Also available on Westlaw).
VI. Answers, Pleas, and Defenses
§ 181 – 295
VII. Denials and Admissions
§ 296 – 302
- 32 *CJS Evidence*, Thomson West, 2020, with 2023 supplement (Also available on Westlaw).
VIII. Admissions
§ 532 Judicial Admissions in Pleadings
- 71 *CJS Pleading*, Thomson West, 2022, with 2023 supplement (Also available on Westlaw).
III. Plea or Answer
§ 159- 196

Figure 1: Admissions and Denials (Form)

Form 105.1, Heading, and Form 105.3, Admissions and Denials, 2 Conn. Practice Book (1997).

No. _____	Superior Court
_____	Judicial District of _____
(First Named Plaintiff)	
v.	at _____
_____	_____
(First Named Defendant)	(Date)

ANSWER

1. Paragraph 1 of the plaintiff's complaint is admitted.
2. Paragraphs 2 and 3 of the plaintiff's complaint are denied.
3. As to paragraph 4 of the plaintiff's complaint, the defendant does not have sufficient knowledge or information upon which to form a belief, and therefore leaves the plaintiff to his proof.
4. So much of paragraph 5 of the plaintiff's complaint as alleges "a collision took place between the trucks" is admitted, and the re-maining portion of the paragraph is denied.
5. So much of paragraph 6 of the plaintiff's complaint as alleges the accident was "as a result of the negligence of the defendant" is denied, and the remaining portion of the paragraph is admitted.

Section 2: Special Defenses

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to special defenses to a complaint.

DEFINITIONS:

- “Generally speaking, facts must be pleaded as a special defense when they are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action.” [Almada v. Wausau Business Insurance Company](#), 274 Conn. 449, 456, 876 A. 2d 535 (2005).
- “. . . Thus, accord and satisfaction, arbitration and award, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded, while advantage may be taken, under a simple denial, of such matters as the statute of frauds, or title in a third person to what the plaintiff sues upon or alleges to be the plaintiff's own.” Conn. Practice Book § [§ 10-50](#) (2023).
- “We agree, however, with the plaintiff's observation that the list of special defenses in § 10-50 is illustrative rather than exhaustive.” [Kosinski v. Carr](#), 112 Conn. App. 203, 209, n. 6, 962 A. 2d 836 (2009).
- “Where several matters of defense are pleaded, each must refer to the cause of action which it is intended to answer, and be separately stated and designated as a separate defense, as, *First Defense*, *Second Defense*, etc. Where the complaint or counterclaim is for more than one cause of action, set forth in several counts, each separate matter of defense should be preceded by a designation of the cause of action which it is designed to meet, in this manner: *First Defense to First Count*, *Second Defense to First Count*, *First Defense to Second Count*, and so on. Any statement of a matter of defense resting in part upon facts pleaded in any preceding statement in the same answer may refer to those facts as thus recited, without otherwise repeating them.” Conn. Practice Book § [§ 10-51](#) (2023).
- “No special defense shall contain a denial of any allegation of the complaint or counterclaim unless that denial is material to such defense. An admission of any allegation of the complaint or counterclaim in a special defense will be deemed to incorporate such allegation in the defense.” Conn. Practice Book [§ 10-52](#) (2023).
- “If contributory negligence is relied upon as a defense, it shall be affirmatively pleaded by the defendant and the defendant shall specify the negligent acts or omissions on which the defendant relies. (See General Statutes § 52-114 and annotations.)” Conn.

Practice Book [§ 10-53](#) (2023).

- “A defendant's failure to plead a special defense precludes the admission of evidence on the subject. . . . It would be fundamentally unfair to allow any defendant to await the time of trial to introduce an unpleaded defense. Such conduct would result in trial by ambush to the detriment of the opposing party.” (Citations omitted; internal quotation marks omitted.) [Oakland Heights Mobile Park, Inc. v. Simon](#), 36 Conn. App. 432, 436-37, 651 A.2d 281 (1994).

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Conn. Practice Book (2023)
 - [Chapter 10: Pleadings](#)
 - § 10-3. Allegations Based on Statutory Grounds
 - § 10-12. Service of the Pleading and Other Papers...
 - § 10-13. Method of Service
 - § 10-14. Proof of Service
 - § 10-39. Motion to Strike
 - § 10-46. The Answer; General and Special Denial
 - § 10-47. Evasive Denial
 - § 10-48. Express Admissions and Denials to be Direct and Specific
 - § 10-50. Denials; Special Defenses
 - § 10-51. Several Special Defenses
 - § 10-52. Admissions and Denials in Special Defense
 - § 10-53. Pleading Contributory Negligence
 - § 10-56. **Subsequent Pleadings; Plaintiff's Response to Answer**
 - § 10-57. Matter in Avoidance of Answer
 - § 10-58. Pleadings Subsequent to Reply
 - § 10-60. Amendment by Consent, Order of Judicial Authority, or Failure to Object

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2023)
 - [Chapter 898 - Pleading](#)
 - § 52-99. Untrue allegations or denials. Costs.
 - § 52-114. Pleading of contributory negligence.
 - § 52-119. Pleading to be according to rules and orders of court.
 - § 52-120. Pleading filed by consent after expiration of time.
 - § 52-121. Pleading may be filed after expiration of time fixed, but prior to hearing on motion for default judgment or nonsuit. Judgment or penalty for failure to plead.
 - § 52-123. Circumstantial defects not to abate pleadings.
 - § 52-130. Amendment of defects, mistakes or informalities.

CASES:

- [Ocwen Loan Servicing, LLC v. Mordecai](#), 209 Conn. App. 483, 500, 268 A.3d 704 (2021). “We are mindful that, '[a]lthough it is not [the] habit [of appellate courts] to disturb a trial court's determination of whether an amendment should be permitted, we have done so on rare occasions when allowing the rul[ing] to stand would work an injustice to one of the

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

parties.’ (Internal quotation marks omitted.) *Connecticut National Bank v. Voog*, 233 Conn. 352, 369, 659 A.2d 172 (1995). Our careful review of the record before us leads us to conclude, for the following reasons, that this is such a case.” [Appellate court reversed Trial court's denial of the defendants' request to amend their special defenses.]

- [Stilkey v. Zembko](#), 200 Conn. App. 165, 173, 238 A.3d 78 (2020). “Our Supreme Court, in *Flannery v. Singer Asset Finance Co., LLC*, 312 Conn. 286, 301, 94 A.3d 553 (2014), explained that ‘[b]eyond the trial courts’ discretion to overlook violations of the rules of practice in the absence of a timely objection from the opposing party ... it may be just to reach the merits of a plaintiff’s claim to a toll of the statute of limitations, even when not properly pleaded pursuant to Practice Book § 10-57, if the issue is otherwise put before the trial court and no party is prejudiced by the lapse in pleading.’ In the present case, the trial court was in the best position to determine whether either party had been unfairly prejudiced by the defendant’s failure to specify the statute on which her defense rested or by the administratrix’ failure to timely raise the continuing course of conduct doctrine in avoidance of that special defense.”
- [U.S. Bank National Association v. Blowers](#), 332 Conn. 656, 212 A.3d 226 (2019). “In reaching our decision, we presume that the Appellate Court did not intend for the making, validity, or enforcement test to require mortgagors to meet a more stringent test than that required for special defenses and counterclaims in nonforeclosure actions. We therefore interpret the test as nothing more than a practical application of the standard rules of practice that apply to all civil actions to the specific context of foreclosure actions. See *CitiMortgage, Inc. v. Rey*, 150 Conn. App. 595, 605, 92 A.3d 278 (‘a counterclaim must simply have a sufficient relationship to the making, validity or enforcement of the subject note or mortgage in order to meet the transaction test as set forth in Practice Book § 10-10 and the policy considerations it reflects’), cert. denied, 314 Conn. 905, 99 A.3d 635 (2014).” (p. 667)

“These equitable and practical considerations inexorably lead to the conclusion that allegations that the mortgagee has engaged in conduct that wrongly and substantially increased the mortgagor’s overall indebtedness, caused the mortgagor to incur costs that impeded the mortgagor from curing the default, or reneged upon modifications are the types of misconduct that are “ ‘directly and inseparably connected’ ”; *Thompson v. Orcutt*, supra, 257 Conn. at 313, 777 A.2d 670; to enforcement of the note and mortgage...Such allegations, therefore, provide a legally sufficient basis for special defenses in the foreclosure action. Insofar as the counterclaims rest, at this stage, upon the same allegations

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as the special defenses, judicial economy would certainly weigh in favor of their inclusion in the present action. See *Connecticut National Bank v. Voog*, 233 Conn. 352, 368, 659 A.2d 172 (1995) ('[b]ecause th[ese] counterclaim[s] paralleled his special defense, [they were] also correctly pleaded in this case rather than as a separate action for damages')." (p. 675-676)

- [Suburban Landscape, LLC. V. Carriage Place Apartments II, LLC](#), Superior Court, Judicial District of Hartford at Hartford, No. HHDCV176082316S (May 8, 2018) (2018 WL 2418983). "This court addressed a similar issue in *Kuzoian v. Saybrook Country Barn, Inc.*, Superior Court, judicial district of New Britain, Docket No. CV-00-0501052- S (January 22, 2001, Shapiro, J.). The court granted a motion to strike misuse as a special defense because the defendant merely alleged, without supporting facts, that 'the plaintiff's injuries and damages, if any, were proximately caused by her and/or her parent's misuse of the product and such misuse was not foreseeable by the defendant.' Relying on appellate authority and the rules of practice, the court explained that an 'adverse party has the right to have the facts appear so that the question whether they support the conclusion may be determined and that he may have the opportunity to deny them.' (Internal quotation marks omitted.) The court further explained that 'legal conclusions or opinions stated in the special defense are not deemed admitted, but rather must flow from the subordinate facts provided.' (Internal quotation marks omitted.)"
- [Standard Petroleum Co. v. Faugno Acquisition, LLC](#), 330 Conn. 40, 72-73, 191 A.3d 147 (2018). "Each of the special defenses states a summary legal conclusion, lacking any supporting facts or indication as to which counts they are directed. As such, they would not even meet our fact pleading requirements for special defenses as set forth in Practice Book § 10-50. See *Fidelity Bank v. Krenisky*, 72 Conn. App. 700, 718, 807 A.2d 968 ('[t]he purpose of a special defense is to plead facts that are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action' [internal quotation marks omitted]), cert. denied, 262 Conn. 915, 811 A.2d 1291 (2002); R. Bollier et al., 1 Stephenson's Connecticut Civil Procedure (3d Ed. 1997) § 83 (g), p. 249 ('the rules applicable to fact pleading in complaints are equally applicable to fact pleading in special defenses' [footnote omitted]); see also, e.g., *Polson v. Wargo*, Docket No. CV-09-4029659-S, 2010 WL 3961378, *1 (Conn. Super. September 7, 2010) (striking defenses alleging that plaintiffs' claims are barred in whole or in part by 'doctrine of waiver' and 'doctrine of estoppel' because they state mere legal conclusions); *Generalli v. Drive-O-Rama*, Docket No. CV-05-4006726-S, 2007 WL 2570344, *2 (Conn. Super. August 15,

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2007) ('[T]he defendant alleges five special defenses, but does not plead any facts in support of those allegations showing how or why each of the alleged special defenses applies. The special defenses, as pleaded, do not comply with the Practice Book rules because Connecticut is a fact pleading state.')

- [Kaye v. Housman](#), 184 Conn. App. 808, 816-817, 195 A.3d 1168 (2018). "The plaintiff relies on the language of Practice Book § 10-6 (5) to support her contention that special defenses are defined as part of an answer. We do not construe § 10-6 (5) as defining a special defense as part of an answer. Section 10-6 (5) does no more than state that when a defendant responds to a complaint, the answer and special defenses are to be filed at the same time in the order of pleadings. An answer and a special defense have legally distinct functions as other rules of practice make clear."
- [Tedesco v. Agolli](#), 182 Conn. App. 291, 303, 189 A.3d 672 (2018). "The defendants bear the burden of proving their special defenses. See *Emigrant Mortgage Co. v. D'Agostino*, 94 Conn. App. 793, 802, 896 A.2d 814, cert. denied, 278 Conn. 919, 901 A.2d 43 (2006). Although the defendants may rely upon more than one special defense, they need only establish one in order to defeat a finding of liability. See *Union Trust Co. v. Jackson*, 42 Conn. App. 413, 417, 679 A.2d 421 (1996)."
- [Lane v. Cashman](#), 179 Conn. App. 394, 418, 180 A.3d 13 (2018). "The special defenses in the answer to the amended complaint were designated as 'first,' 'second,' and 'third' special defenses and, thus, were not pleaded in accordance with Practice Book § 10-51, which provides in relevant part that '[w]here the complaint ... is for more than one cause of action, set forth in several counts, each separate matter of defense should be preceded by a designation of the cause of action which it is designed to meet, in this manner: *First Defense to First Count, Second Defense to First Count, First Defense to Second Count, and so on....*'"
- [Cohen v. Meyers](#), 175 Conn. App. 519, 548-49, 167 A.3d 1157 (2017). "Turning to Cohen's defense that all of his statements concerning Meyers were true or substantially true, the court first rejected Cohen's argument that Meyers bore the burden of proving the falsity of the defamatory statements at issue herein, explaining that, having asserted truth as a special defense, it was his burden to prove the truth or substantial truth of those statements. The court then found: 'Several defamatory statements of Cohen stretch the test for "substantial truth" past its breaking point.' The court thus concluded that Cohen had not met his burden of proof as to the special defense of truth, and that recovery for

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defamation was not precluded on that basis.”

- [Grovenburg v. Rustle Meadow Assocs., LLC](#), 174 Conn. App. 18, 69–70, 165 A.3d 193 (2017). “Under Connecticut law, the statute of frauds operates as a special defense to a civil action. . . . Because ‘a special defense operates as a shield, to defeat a cause of action, and not as a sword, to seek a judicial remedy for a wrong’; *Bank of America, N.A. v. Aubut*, 167 Conn.App. 347, 374, 143 A.3d 638 (2016); the plaintiffs’ resort to the statute of frauds in this case is unavailing.”
- [Carter v. Philadelphia Indemnity Insurance Company](#), Superior Court, Judicial District of Fairfield at Bridgeport, No. FBTCV156051233S (June 7, 2017) (64 Conn. L. Rptr. 625, 626) (2017 WL 3011643) (2017 Conn. Super. LEXIS 3501). “The minority view is that, under our liberal rules of pleading, the special defense provision in Practice Book § 10–50 is permissive as to special defenses not specifically listed; if a defendant wishes to allege ‘sudden emergency’ as a special defense (and perhaps assume the burden of proof) the court in its discretion should permit defendant to do so. See e.g., *Kiewlen v. Mallison*, 2000 WL 1918055 *2 (Conn. Super. 2000) (Levine, J.) [28 Conn. L. Rptr. 565]. The majority rule is that ‘sudden emergency’ is not a viable special defense.”
- [Norwalk Medical Center, LLC v. O & G Industries, Inc.](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FSTCV166028475S (March 27, 2017) (64 Conn. L. Rptr. 179) (2017 WL 1429811) (2017 Conn. Super. LEXIS 549). “....instead of filing a motion to strike, filed special defenses to the effect that as to some of these counts, the plaintiffs have failed to assert a claim upon which relief could be granted. The plaintiffs have moved to strike those special defenses, claiming that the legal insufficiency of a claim/count is not a matter that can be raised by special defense.” (p. 180)
- “A special defense, in particular, is supposed to start with the presumption that the plaintiffs’ facts are or may be true, but adopting an ‘even if they are correct’ approach, identifying additional facts defeating part or all of the cause of action asserted. (The relevant language of Practice Book § 10–50: ‘Facts which are consistent with such statements but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged.’)” (p. 181)
- [Bank of America, N.A. v. Aubut](#), 167 Conn. App. 347, 378, 143 A.3d 638 (2016). “We briefly define some of the equitable defenses that the defendants alleged to have invoked by way of their predatory lending special defense.”
- [Elliott Enterprises, LLC v. Goodale](#), 166 Conn. App. 461, 472–73, 142 A.3d 335 (2016). “In the present case, the

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defendants raised the defense of equitable nonforfeiture in the trial court and specifically asserted that they had overpaid portions of the rent as a defense to the plaintiff's three counts of nonpayment of charges due under the lease. The special defense of equitable nonforfeiture was thus properly raised. In regard to the court's finding that the defendants were wilful and grossly negligent, the defendants raised as special defenses that they did not owe money for the charges alleged in counts two and three because they had overpaid all amounts due under the lease."

- [Bruno v. Whipple](#), 162 Conn. App. 186, 207, 130 A.3d 899 (2015). "On the basis of the foregoing, we conclude that the trial court abused its discretion by permitting Heritage Homes to raise the special defense of waiver for the first time after the close of evidence at trial, as it had not been specially pleaded, the pleadings did not allege any facts supporting an inference of waiver, and the claim that the plaintiff knowingly relinquished her contractual rights was not fully litigated at trial without objection by the plaintiff."
- [Mulcahy v. Hartell](#), 140 Conn. App. 444, 450, 59 A.3d 313 (2013). "The decisive issue is the distinction between cases in which the defendant asserts that the plaintiff has been comparatively negligent, and thus the defendant's conduct could also be a proximate cause, and those cases in which the defendant claims that his conduct did not cause the plaintiff's injuries at all. An assertion of comparative negligence is consistent with the plaintiff's rendition of the facts, and therefore must be raised as a special defense. On the other hand, the claim that an actor other than the defendant caused the plaintiff's injuries is inconsistent with a prima facie negligence case, and, thus, can be pursued under a general denial. The essence of the defense at issue in the present case was that the plaintiff was entirely responsible for her injuries; therefore, the court correctly admitted it without the assertion of a special defense."
- [Parnoff v. Yuille](#), 139 Conn. App. 147, 167, 57 A.3d 349 (2012), cert. denied, 307 Conn. 956 (2013). "The teaching of these provisions is that matters of avoidance must be specially pleaded. Here, even though the defendant raised as a special defense that the fee agreement violated the fee cap statute, the plaintiff merely denied the special defense and made no claim that the defendant had ratified her obligation under the agreement. Thus, we agree with the trial court that by failing to specifically reply to the special defense regarding the fee cap statute, the plaintiff failed, as well, to put the question of ratification at issue at trial. Our conclusion in this regard does not reflect a rigid adherence to form over substance. Rather, it comports with the notion that parties to litigation should be adequately apprised of each other's

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claims in order to pursue and defend their causes properly. In this instance, if the plaintiff had replied to the defendant's special defense of the fee cap statute with a claim that the defendant had, nevertheless, ratified the agreement, the defendant could, in turn, have raised the issue of whether ratification applies to an agreement against public policy, and the court, in turn, could have confronted and resolved the issue away from the pressure of an ongoing trial."

- [Town of Stratford v. A. Secondino & Son, Inc.](#), 133 Conn. App. 737, 746, 38 A.3d 179 (2012). "Because the plaintiff did not object to waiver evidence on the ground that waiver had not been pleaded specifically, any insufficiency in the pleading was waived by the plaintiff at trial."
- [Bedrick v. Bedrick](#), 300 Conn. 691, 696, n. 3, 17 A.3d 17 (2011). "In fact, Practice Book § 25-9 is applicable to family relations cases, and does not require that any defenses be pleaded specifically."
- [Singhaviroj v. Board of Education of Fairfield](#), 124 Conn. App. 228, 233, 4 A.3d 851 (2010). "It is well established that res judicata and collateral estoppel are affirmative defenses that may be waived if not properly pleaded . . . ('[c]ollateral estoppel, like res judicata, must be specifically pleaded by a defendant as an affirmative defense'); cf. Practice Book § 10-50 ('res judicata must be specially pleaded' as defense). The defendants failed to comply with that requirement. That is not to say that the defendants are foreclosed from pursuing such a defense in every instance. As this court explained years ago, '[t]here is, however, an exception to this general rule. The defendants' failure to file a special defense may be treated as waived where the plaintiff fails to make appropriate objection to the evidence and argument offered in support of that defense. See *Tedesco v. Stamford*, 215 Conn. 450, 462-63, 576 A.2d 1273 (1990); *Pepe v. New Britain*, 203 Conn. 281, 286, 524 A.2d 629 (1987).'"
- [Maltas v. Maltas](#), 298 Conn. 354, 363, 2 A.3d 902 (2010). "On the basis of the foregoing analysis, we conclude that, in an action to enforce a foreign judgment, a challenge to the foreign court's jurisdiction properly is raised as a special defense."
- [Braffman v. Bank of America Corporation](#), 297 Conn. 501, 518-519, 998 A. 2d 1169 (2010). "As we embark on this exercise, we first turn to Practice Book § 10-50, which governs the pleading of special defenses.... This particular rule of practice as it applies specifically to nonpayment claims creates an atypical situation within our general jurisprudence on special defenses because '[i]t is axiomatic that [t]he purpose of a special defense is to plead facts that are *consistent* with the allegations of the complaint but

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demonstrate, nonetheless, that the plaintiff has no cause of action.’ (Emphasis added.) *New England Retail Properties, Inc. v. Maturo*, 102 Conn. App. 476, 489, 925 A.2d 1151, cert. denied, 284 Conn. 912, 931 A.2d 932 (2007). It is self-evident, of course, that a claim of payment by the defendant would be inconsistent with the plaintiffs’ allegation of nonpayment. Because, however, the defendant had pleaded the special defense of payment, we need not address further this apparent anomaly.”

- [Beckenstein Enterprises v. Keller](#), 115 Conn. App. 680, 688, 974 A. 2d 764 (2009), cert. denied, 293 Conn. 916, 979 A.2d 488. “This court has previously concluded that the continuing course of conduct doctrine is a matter that must be pleaded in avoidance of a statute of limitations special defense. *Bellemare v. Wachovia Mortgage Corp.*, 94 Conn.App. 593, 607 n. 7, 894 A.2d 335 (2006), aff’d, 284 Conn. 193, 931 A.2d 916 (2007); see also Practice Book § 10-57.”
- [Kosinski v. Carr](#), 112 Conn. App. 203, 209, n. 6, 962 A. 2d 836 (2009). “The defendant notes that Practice Book § 10-50 ‘specifically does not require that the special defense of “unclean hands” be specially [pleaded]. . . .’ We agree, however, with the plaintiff’s observation that the list of special defenses in § 10-50 is illustrative rather than exhaustive.”
- [Ramondetta v. Amenta](#), 97 Conn. App. 151, 161-162, 903 A.2d 232 (2006). “They pleaded the defense as follows: ‘The [d]efendant’s claims are barred by the applicable [s]tatute of [l]imitations.’ That pleading is inadequate. A similar situation arose in *Avon Meadow Condominium Assn., Inc. v. Bank of Boston Connecticut*, 50 Conn. App. 688, 719 A.2d 66, cert. denied, 247 Conn. 946, 723 A.2d 320 (1998), in which the defendant failed to plead specifically a statute of limitations defense. We held: ‘Practice Book § 10-3 (a) provides that “[w]hen any claim made . . . in a . . . special defense . . . or other pleading is grounded on a statute, the statute shall be specifically identified by its number.” . . .’”
- [Parente v. Pirozzoli](#), 87 Conn. App. 235, 241, 866 A. 2d 629 (2005). “Relying on that principle, our Supreme Court has refused to find improper in a trial court’s consideration of an unpleaded special defense that was first argued by the defendant in its posttrial brief when the evidence relied on in support of that defense was introduced at trial by the plaintiff in support of its claim. See *Web Press Services Corp. v. New London Motors, Inc.*, 203 Conn. 342, 349, 525 A.2d 57, following remand, 205 Conn. 479, 533 A.2d 1211 (1987). The court noted that in introducing the evidence, the plaintiff did not request any limitation on its use, and the defendant did not object to its introduction. *Id.* Essentially, by introducing the evidence itself, the plaintiff effectively waived

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any objection to the defendant's reliance on it in support of a special defense.”

- [Dow & Condon, Inc. v. Brookfield Development Corp.](#), 266 Conn. 572, 585, 833 A. 2d 908 (2003). “We do not condone the practice of waiting until the day of trial to raise an important legal issue for the first time. Under the circumstances of the present case, however, we conclude that it was well within the trial court's discretion to grant the defendant's request to amend its answer.”
- [Bennett v. Automobile Ins. Co. of Hartford](#), 230 Conn. 795, 802, 646 A.2d 806 (1994). “Whether facts must be specially pleaded depends on the nature of those facts in relation to the contested issues.”
- [Pawlinski v. Allstate Ins. Co.](#), 165 Conn. 1, 6, 327 A.2d 583 (1973). “If, however, a party seeks the admission of evidence which is consistent with a prima facie case, but nevertheless would tend to destroy the cause of action, the ‘new matter’ must be affirmatively pleaded as a special defense. *Biller v. Harris*, supra; James, loc. cit.; 1 Stephenson, op. cit., pp. 518-19, § 127. Practice Book § 120 lists some of the defenses which must be specially pleaded and proved. Historically, the special defense plea is an outgrowth of the common-law plea of ‘confession and avoidance.’ 1 Stephenson, op. cit., p. 521, § 127 (c), explains the plea with an apt illustration: D is liable to P if a, b, and c are true unless d is also true. If d contradicts a, b, or c, then evidence of d may be admitted under a denial. If, however, the existence of d does not negate the existence of a, b, or c, but independently destroys liability, then evidence of d may be admitted only under a special defense. The distinction is significant since pleading is more than a mere procedural formality. Generally, it allocates the burden of proof on a particular issue. *DuBose v. Carabetta*, supra, 262; 1 Stephenson, op. cit., p. 523, § 127 (e); James, op. cit. § 4.10.”
- [DuBose v. Carabetta](#), 161 Conn. 254, 260, 287 A. 2d 357 (1971). “The inherent difficulty in drawing the line between what can be shown under a general denial and what must be specially pleaded is recognized by 1 Stephenson, Conn. Civ. Proc. (2d Ed.) § 126 (g).”

WEST KEY
NUMBER:

- *Pleading*
(D) Matter in avoidance, #130-137

CIVIL JURY
INSTRUCTIONS:

- *Connecticut Judicial Branch Civil Jury Instructions*
[Part 2.6 – Burden of Proof](#) (2008)
2.6-2 Burden of Proof - Affirmative Defenses
[Part 3.3 – Torts – Defenses](#) (2008)

- 3.3-1 Statute of Limitation Defense - General
- 3.3-2 Statute of Limitation Defense - Occurrence not Discovery
- 3.3-3 Statute of Limitation Defense – Tolling Doctrines
- [Part 3.5 – Torts – Comparative Negligence](#) (2008)
- [Part 3.9 – Torts – Premises Liability](#) (2008)
- 3.9-20 Plaintiff's Duty to Use Faculties
- [Part 3.10 – Torts – Product Liability](#)
- 3.10-3 Product Liability - Comparative Responsibility (Causation) (2009)
- 3.10-4 Product Liability - Misuse of a Product (2008)
- [Part 4.4 – Contracts – Legal Relationships](#) (2009)
- 4.4-1 Minors
- 4.4-3 Mental Illness or Defect

TEXTS & TREATISES:

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References to online databases refer to in-library use of these databases. Remote access is not available.

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, 2022 ed., LexisNexis.
 - Chapter 7. Pleadings
 - § 7.20 Answer
 - [8] Special Defenses
 - [a] Role of Special Defenses
 - [b] Special Defenses Must Be Specifically Alleged
 - [c] Failure to Plead Special Defenses Results in Waiver
 - [d] Admissions and Denials in Special Defenses
 - [e] Pleading Several Special Defenses
 - [9] Contributory Negligence Must Be Pleaded As a Special Defense
 - § 7.23. Plaintiff's Response to Special Defenses
 - [1] Plaintiff's Response to Answer
 - [2] Matter in Avoidance of Answer
 - Chapter 8. Statutes of Limitation
 - § 8.01 Statutes and Practice Book Rules
 - § 8.02 Topical Overview of Limitations
 - § 8.03 Determining When a Statute of Limitations Begins To Run
 - § 8.04 Determining Whether a Statute of Limitations Has Been Tolloed
 - § 8.05 Equitable Estoppel Bars a Defendant from Raising Statute of Limitations as Special Defense
 - § 8.06 Continuing Course of Conduct Doctrine Is an Equitable Exception to the Statute of Limitations
 - § 8.07 Determining Which Statute of Limitations Applies
 - § 8.08 Actions Relate to the Statute of Limitations Period
 - § 8.09 CHECKLIST: Determining Whether Defendant Can Raise Statute of Limitations as Bar to Action
 - § 8.10 FORM: Special Defense—Action Barred by Statute of Limitations

- 1 *Stephenson's Connecticut Civil Procedure*, 3rd ed., by Renee Bevacqua Bollier et al., Atlantic Law Book Co., 1997, with 2014 supplement.
Chapter 8. The answer, counterclaim; subsequent pleadings
§ 83. Special Defenses
§ 84. Multiple Defenses
- 2 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (also available on Westlaw).
General-Responsive Pleadings
Comments to Forms 105.1 and 105.4 et seq.
- 1 Connecticut Practice Series, *Connecticut Superior Court Civil Rules*, 2022-2023 ed. By Wesley W. Horton et al., Thomson West (also available on Westlaw).
Chapter 10. Pleadings
Authors' Comments to § 10-50, including "Table of Defenses" [This table lists many common defenses requiring pleading of special defense.]
Authors' Comments to § 10-57. Subsequent Pleadings.
- 1 *Dupont on Connecticut Civil Practice*, by Ralph Dupont, 2022-2023 ed., LexisNexis.
Chapter 10. Pleadings
Commentaries to §§ 10-50 et seq.
- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response.
- 1 *Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure*, 13th ed., by Denis R. Caron and Geoffrey K. Milne, Connecticut Law Tribune, 2023.
Chapter 6: Defenses to Foreclosure
- *Connecticut Landlord and Tenant Law with Forms*, 3d ed., by Noble F. Allen, Connecticut Law Tribune, 2021.
Chapter 9 – Summary Process Litigation
9-3:2. Tenant's Defenses/Special Defenses
- *Connecticut Torts: The Law and Practice*, 2d ed., by Frederic S. Ury et al., LexisNexis, 2022.
Chapter 5 – Anticipating Special Issues Relating to Minors
Chapter 24 – Is the Action Time Barred? Asserting or Avoiding the Statute of Limitations Defense
- *Connecticut Summary Process Manual* by Paul J. Marzinotto (2002).
IX. Special Defenses, page 99

Note: Connecticut Practice Series, *Superior Court Civil Rules*, Vol. 1, section 10-50, includes an annotated "Table of Defenses," which lists many common defenses requiring the pleading of a special defense along with citations to case law.

- *Library of Connecticut Collection Law Forms*, Robert M. Singer, editor, Connecticut Law Tribune, 2016.
Chapter 11 – Special Defenses
11-000. Commentary—General and Special Defenses, page 630
- *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators*, by Jeanine M. Dumont, Connecticut Law Tribune, 1998.
Chapter 6. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- Civil Forms - [Responding to a Civil Lawsuit](#) (Connecticut Judicial Branch)
- Housing Forms - Summary Process, Eviction (Connecticut Judicial Branch)
Answer to Complaint, [JD-HM-5](#)
Reply to Special Defenses, [JD-HM-16](#)
- 1 *Dupont on Connecticut Civil Practice*, by Ralph Dupont, 2022-2023 ed., LexisNexis.
[See [Table 1](#)]
- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, 2022 ed., LexisNexis. [
§ 7.26 Basic Form of Answer
§ 8.10 Form: Special Defense – Action Barred by Statute of Limitations
- *Library of Connecticut Collection Law Forms*, Robert M. Singer, editor, Connecticut Law Tribune, 2016.
[See [Table 2](#)]
- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
Chapter 13, Defendant’s Answer, Special Defenses..., pp. 134-138
- Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (also available on Westlaw).
[See index]
- 16, 16A Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2022 ed., Thomson West (also available on Westlaw).
[see each chapter]
- 15 Connecticut Practice Series, *Connecticut Environmental Protection Act*, by David F. Sherwood and Janet P. Brooks,

Thomson West, 2006, with 2022-2023 supplement (also available on Westlaw).

Form § 11:2—Special Defense, 22a-16 Action

- *Connecticut Landlord and Tenant Law with Forms*, 3d ed., by Noble F. Allen, Connecticut Law Tribune, 2021.
Form 2-009 – Answer and Defense to Action for Private Receivership of Tenement House
- *Connecticut Law of Torts*, 4th ed. By Douglass B. Wright et al. 2018., Atlantic Law Book Co.
Form 9: Special Defense & Form 10: Reply
- *Connecticut Summary Process Manual* by Paul J. Marzinotto (2002).
Forms 9.3 - 9.13

ENCYCLOPEDIAS:

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 61A *Am Jur 2d Pleading*, Thomson West, 2021, with 2023 supplement (Also available on Westlaw).
VI. Answers, Pleas, and Defenses
Affirmative Defenses, §§ 219, 228-240
- 71 *CJS Pleading*, Thomson West, 2022, with 2023 supplement (Also available on Westlaw).
III. Plea or Answer
D. Matter in Avoidance, § 197 – 199

Table 1: List of Special Defense Forms in *Dupont on Connecticut Civil Practice*

1 *Dupont on Connecticut Civil Practice*, by Ralph Dupont, 2020-2021 ed., LexisNexis.
(This title is available at each [Connecticut Judicial Branch Law Library](#).)

- F.10-50 Accord and Satisfaction -- Unliquidated Claim
- F.10-50(1) Accord and Satisfaction
- F.10-50(2) Release of Guarantor Because of Impairment of Collateral
- F.10-50(3) Release of Guarantor Because of Impairment of Collateral
- F.10-50(4) Probate Appeal (Another Form); Special Defenses
- F.10-50(5) Forged or Unauthorized Signature
- F.10-50(6) Special Defenses (Commonly Pled)
- F.10-50(7) Statute of Limitations
- F.10-50(8) Adverse Possession of Real Estate
- F.10-50(9) Title to Right of Way by Prescription
- F.10-50(10) Insanity
- F.10-50(11) Duress
- F.10-50(12) Against Holder in Due Course
- F.10-50(13) Misrepresentation as Regards to Insurance Policy
- F.10-50(14) Note -- Induced by Fraud
- F.10-50(15) Fraud in Recovery of Judgment With Counterclaim for Equitable Relief
- F.10-50(16) Invalidity of Judgment
- F.10-50(17) Usury
- F.10-50(18) Note – Illegality
- F.10-50(19) Truth-In-Lending Violation, in Action or Note
- F.10-50(20) Res Adjudicata
- F.10-50(21) Payment
- F.10-50(22) Infancy
- F.10-50(23) Contributory Negligence, Under Statute
- F.10-50(24) Answer in Replevin by Officer, With Special Defense and Counterclaim
- F.10-50(25) Mistake in Amount of Note
- F.10-50(26) By Surety, Alleging Alteration of Agreement
- F.10-50(27) To Action Against Carrier, That Injury to Goods Was by Plaintiff's Fault
- F.10-50(28) That Loss of Goods by Common Carrier Was Due to Risk for Which Defendant Was Not Liable
- F.10-50(30) Unauthorized Completion of Instrument
- F.10-50(31) Mistake in Amount of Note
- F.10-50(32) Alteration of Negotiable Instrument
- F.10-50(33) Failure to Make Presentment for Payment: Resultant Discharge of Endorser
- F.10-50(34) Defense Against Acceleration of Note Under Insecurity Clause
- F.10-50.35 F.10-50(35) Defense and Counterclaim in Action for Assault

- F.10-50(36) Defense Against Common Law Claim for Personal Injuries by an Employee of a Subcontractor Within the Workmen's Compensation Act
- F.10-50(37) By Sheriff to Complaint for Illegal Seizure
- F.10-50(38) Lien for Storage
- F.10-50(39) Defective Fence
- F.10-50(40) To Action for Waste
- F.10-50(41) Defense, in Action of Ejectment; License
- F.10-50(42) Equitable Title in Defendant
- F.10-50(43) Special Defense and Counterclaim to Foreclosure; Mistake, Fraud or Accident in Failure to Make Payments
- F.10-50(44) Discharge in Bankruptcy
- F.10-50(45) Tender
- F.10-50(46) Mutual Rescission of Contract
- F.10-50(47) Rescission After Repudiation by Plaintiff
- F.10-50(48) That Plaintiff Made Fraudulent Proof of Loss
- F.10-50(49) Transfer of Interest of Insured
- F.10-50(50) Failure to Make Proof of Loss
- F.10-50(51) Failure to Give Timely Notice of Dishonor: Resultant Discharge of Endorse

Table 2: List of Special Defense Forms in *Library of Connecticut Collection Law Forms*

Library of Connecticut Collection Law Forms, Robert M. Singer, editor, Connecticut Law Tribune, 2016.

(This title is available at each [Connecticut Judicial Branch Law Library](#).)

- 11-001 - Statute of Limitations—Negligence Claim
- 11-002 - Statute of Limitations—Breach of Contract Claim
- 11-003 - Lack of Capacity—Under the Age of Majority
- 11-004 - Lack of Capacity—Mental Incapacity
- 11-005 - Fraud
- 11-006 - Waiver
- 11-007 - Mutual Mistake
- 11-008 - Statute of Frauds—Answering for the Debt of Another
- 11-009 - Statute of Frauds—Work Taking Longer Than One Year to Perform
- 11-010 - Defective Goods
- 11-011 - Disputing Amount of Debt
- 11-012 - Failure to Perform Services

Table 3: Pleading Statute of Limitations Defense - Selected Recent Case Law

Pleading Statute of Limitations Defense - Selected Recent Case Law	
<p>Doe v. Town of W. Hartford, 328 Conn. 172, 192, 177 A.3d 1128, 1141 (2018).</p>	<p>“Typically, ‘in the context of a motion for summary judgment based on a statute of limitations special defense, a defendant ... meets its initial burden of showing the absence of a genuine issue of material fact by demonstrating that the action had commenced outside of the statutory limitation period.’ <i>Romprey v. Safeco Ins. Co. of America</i>, supra, 310 Conn. at 321, 77 A.3d 726. Then, if the plaintiff claims the benefit of a provision that operates to extend the limitation period, ‘the burden ... shifts to the plaintiff to establish a disputed issue of material fact in avoidance of the statute.’ <i>Id.</i> In these circumstances, it is ‘incumbent upon the party opposing summary judgment to establish a factual predicate from which it can be determined, as a matter of law, that a genuine issue of material fact [as to the timeliness of the action] exists.’ (Internal quotation marks omitted.) <i>Iacurci v. Sax</i>, 313 Conn. 786, 799, 99 A.3d 1145 (2014).”</p>
<p>Kleen Energy Sys., LLC v. Ace Am. Ins. Co., Judicial District of Waterbury, No. CV-13-6021750 (Mar. 31, 2016) (62 Conn. L. Rptr. 88, 88) (2016 WL 1578076).</p>	<p>“‘[Ordinarily, [a] claim that an action is barred by the lapse of the statute of limitations must be pleaded as a special defense, and not raised by a motion to strike.’ (Internal citation omitted. Internal quotations omitted.) <i>Greco v. United Technologies Corp.</i>, 277 Conn. 337, 344 n. 12, 890 A.2d 1269 (2006). There are two exceptions to this rule however. <i>Forbes v. Ballaro</i>, 31 Conn.App. 235, 239, 624 A.2d 389 (1993). The first is where the parties agree that the complaint includes all of the pertinent facts necessary to a determination regarding the applicability of the statute. <i>Id.</i> The defendant insurers rely on the second exception which applies in circumstances ‘where a statute gives a right of action which did not exist at common law, and fixes the time within which the right must be enforced[.][T]he time fixed is a limitation or condition attached to the right—it is a limitation of the liability itself as created, and not of the remedy alone.’ <i>Id.</i> at 239–40, 624 A.2d 389, citing, <i>DeMartino v. Siemen</i>, 90 Conn. 527, 528–29, 97 A. 765 (1916).”</p>
<p>Ferraiuolo v. Dean, Superior Court, Judicial District of New Haven, No. NNH-CV-14-6047444-S (Feb. 26, 2015) (59 Conn. L. Rptr. 829, 830-</p>	<p>“‘[I]n assessing the sufficiency of . . . special defenses, a court may look not only to the few facts specifically alleged in the special defenses themselves but also to the abundant facts alleged in the counts of the complaint to which the special defenses are directed...’ (Internal quotation marks omitted.) <i>East Greyrock, LLC v. OBC Associates, Inc.</i>, Superior Court, judicial district of Stamford-Norwalk at Stamford, Complex Litigation</p>

<p>831) (2015 WL 1283383).</p>	<p>Docket, Docket No. X08-CV-04-4002173-S (June 6, 2008, Jennings, J.) (45 Conn. L. Rptr. 753, 754). When there are no facts alleged in the special defense, 'there is no clear appellate authority on . . . whether a bald legal conclusion constitutes a legally sufficient special defense [and] . . . there has long been a split of authority on this issue at the Superior Court level.' <i>U.S. Bank National Ass'n v. Ascenzia</i>, Superior Court, judicial district of New Haven, Docket No. CV-08-5022527 (July 30, 2009, Abrams, J.) (48 Conn. L. Rptr. 345, 346)."</p>
<p>Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. 357, 402, 119 A.3d 462 (2015).</p>	<p>"...based on these separation of powers and administrative concerns ... we conclude that the line between legal and equitable claims vis-à-vis laches is still sound, and we decline to disturb it. In cases at law, where the legislature has determined through a statute of limitations that the door for bringing suit should remain open for a predetermined period of time, it should not be left to a judge's discretion to close that door early." (Internal quotation marks omitted.)</p>
<p>Sean O'Kane AIA Architect v. Puljic, 148 Conn. App. 728, 741, 87 A. 3d 1124 (2014).</p>	<p>"Laches may be available as a defense to an equitable cause of action, whereas the statute of limitations is applicable to legal causes."</p>
<p>Gianetti v. Connecticut Newspapers Pub. Co., 136 Conn. App. 67, 75, 44 A.3d 191, 196 (2012).</p>	<p>"A statute of limitations defense is not subject to the limiting waiver rule. See Practice Book § 10–32. Generally, such defenses are appropriately raised as special defenses, as it was here, and not in motions to dismiss."</p>
<p>Martino v. Scalzo, 113 Conn. App. 240, 245, 966 A.2d 339, cert. denied, 293 Conn. 904, 976 A.2d 705 (2009).</p>	<p>"An additional consideration informs the analysis when the pleading in question is a special defense raising a statute of limitations. In instances in which a limitations period is contained within the statute that establishes the underlying remedy, such a limitations period is jurisdictional and cannot be waived.... However, when the right of action exists independently of the statute in which the limitations period is found, the statutory bar is considered personal and procedural and is <i>deemed waived if not specially pleaded</i>" (Internal quotation marks omitted.)</p>
<p>Ramondetta v. Amenta, 97 Conn. App. 151, 161-162, 903 A.2d 232 (2006).</p>	<p>"They pleaded the defense as follows: 'The [d]efendant's claims are barred by the applicable [s]tatute of [l]imitations.' That pleading is inadequate. A similar situation arose in <i>Avon Meadow Condominium Assn., Inc. v. Bank of Boston Connecticut</i>, 50 Conn. App. 688, 719 A.2d 66, cert. denied, 247 Conn. 946, 723 A.2d 320 (1998), in which the defendant failed to plead specifically a statute of limitations defense. We held: 'Practice</p>

	<p>Book § 10-3 (a) provides that [w]hen any claim made...in a...special defense...or other pleading is grounded on a statute, the statute shall be specifically identified by its number.” (Internal quotation marks omitted.)</p>
<p>Beckenstein Enterprises v. Keller, 115 Conn. App. 680, 688, 974 A. 2d 764 (2009), cert. denied, 293 Conn. 916, 979 A.2d 488.</p>	<p>“This court has previously concluded that the continuing course of conduct doctrine is a matter that must be pleaded in avoidance of a statute of limitations special defense. <i>Bellemare v. Wachovia Mortgage Corp.</i>, 94 Conn.App. 593, 607 n. 7, 894 A.2d 335 (2006), aff’d, 284 Conn. 193, 931 A.2d 916 (2007); see also Practice Book § 10-57.”</p>
<p>Flannery v. Singer Asset Finance Company, LLC, 312 Conn. 286, 301, 94 A.3d 553 (2014).</p>	<p>“<i>Beckenstein Enterprises–Prestige Park, LLC</i>, does not, however, stand for the proposition that the pleading requirements are so rigid as to require that potentially meritorious claims in avoidance of the statute of limitations be categorically barred in all cases because of pleading lapses.... [I]t may be just to reach the merits of a plaintiff’s claim to a toll of the statute of limitations, even when not properly pleaded pursuant to Practice Book § 10–57, if the issue is otherwise put before the trial court and no party is prejudiced by the lapse in pleading.”</p>
<p>Rompney v. Safeco Insurance Co. of America, 310 Conn. 304, 321-22, 77 A.3d 726 (2013).</p>	<p>“We acknowledge that, in the context of a motion for summary judgment based on a statute of limitations special defense, a defendant typically meets its initial burden of showing the absence of a genuine issue of material fact by demonstrating that the action had commenced outside of the statutory limitation period....</p> <p>“We never have addressed, however, the question of whether the burden should remain on the moving party to establish that a party did not act in a timely manner when the statute they are relying on specifically provides for tolling as an alternative method of timeliness.”</p>

Table 4: Pleading Statute of Limitations Defense - Selected Treatises

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, 2022 ed., LexisNexis.
 - Chapter 7. Pleadings
 - § 7.20 Answer
 - [8] Special Defenses
 - [a] Role of Special Defenses
 - [b] Special Defenses Must Be Specifically Alleged
 - [c] Failure to Plead Special Defenses Results in Waiver
 - [d] Admissions and Denials in Special Defenses
 - [e] Pleading Several Special Defenses
 - [9] Contributory Negligence Must Be Pleaded As a Special Defense
 - § 7.23. Plaintiff's Response to Special Defenses
 - [1] Plaintiff's Response to Answer
 - [2] Matter in Avoidance of Answer
 - Chapter 8. Statutes of Limitation
 - § 8.01 Statutes and Practice Book Rules
 - § 8.02 Topical Overview of Limitations
 - § 8.03 Determining When a Statute of Limitations Begins To Run
 - § 8.04 Determining Whether a Statute of Limitations Has Been Tolloed
 - § 8.05 Equitable Estoppel Bars a Defendant from Raising Statute of Limitations as Special Defense
 - § 8.06 Continuing Course of Conduct Doctrine Is an Equitable Exception to the Statute of Limitations
 - § 8.07 Determining Which Statute of Limitations Applies
 - § 8.08 Actions Relate to the Statute of Limitations Period
 - § 8.09 CHECKLIST: Determining Whether Defendant Can Raise Statute of Limitations as Bar to Action
 - § 8.10 FORM: Special Defense—Action Barred by Statute of Limitations
- 1 *Stephenson's Connecticut Civil Procedure*, 3rd ed., by Renee Bevacqua Bollier et al., Atlantic Law Book Co., 1997, with 2014 supplement.
 - Chapter 8. The answer, counterclaim; subsequent pleadings
 - § 83. Special Defenses
 - § 84. Multiple Defenses
- 1 *Connecticut Practice Series, Connecticut Superior Court Civil Rules, 2022-2023 ed.* By Wesley W. Horton et al., Thomson West (also available on Westlaw).
 - Chapter 10. Pleadings
 - Authors' Comments to § 10-50, including "Table of Defenses" [This table lists many common defenses requiring pleading of special defense.]
 - Authors' Comments to § 10-57. Subsequent Pleadings.

Figure 2: Discharge in Bankruptcy (Form)

Form 105.1, Heading and Form 105.5: Discharge in Bankruptcy, 2 Conn. Practice Book (1997)

No. _____ Superior Court

(First Named Plaintiff) Judicial District of _____
v. at _____

(First Named Defendant) (Date)

SPECIAL DEFENSE

1. On _____ the defendant was adjudicated a bankrupt in the United States District Court for the District of _____.
2. On _____ that court granted the defendant a discharge in bankruptcy, a copy of which is annexed marked Exhibit A.
3. The indebtedness alleged in the plaintiff's complaint accrued before the petition was filed.

Figure 3: Reply to Special Defenses – General Denial (Form)

Connecticut Appellate Court Records and Briefs (February 2016).
Straw Pond Associates, LLC; et al v. Fitzpatrick, Mariano & Santos, P.C. et al.
167 Conn.App. 691, 145 A.3d 292 (2016).

D.N. FST-CV11-6010036-S : SUPERIOR COURT
STRAW POND ASSOCIATES, LLC; et al : JD OF STAMFORD/NORWALK
VS. : AT STAMFORD
FITZPATRICK, MARIANO & SANTOS, P.C. et al. : APRIL 26, 2013

REPLY TO SPECIAL DEFENSES

The Plaintiff denies the material allegations of the Defendant’s Special Defenses dated November 7, 2012.

THE PLAINTIFFS,

BY _____

Juris #

CERTIFICATION

This is to certify that a copy of this document has been mailed this day to:

Brendon P. Leydon

Figure 4: Reply to and Avoidance of Special Defenses (Form)

Connecticut Supreme Court Records and Briefs (October 2002)
Schilberg Integrated Metals Corporation v. Continental Casualty Company et al.,
263 Conn. 245, 819 A. 2d 773 (2003).

DOCKET NO.: X03-CV-98-04499554S : SUPERIOR COURT
SCHILBERG INTEGRATED METALS CORP., : COMPLEX LITIGATION DOCKET
Plaintiff, : JUDICIAL DISTRICT OF
v. : NEW BRITAIN AT NEW BRITAIN
CONTINENTAL CASUALTY COMPANY, ET AL., : DECEMBER 20, 2002
Defendants.

PLAINTIFF'S REPLY TO AND AVOIDANCE OF DEFENDANTS' SPECIAL DEFENSES DATED SEPTEMBER 14, 2000

Plaintiff Schilberg Integrated Metals Corp. ("SIMCO") hereby replies to and asserts matters in avoidance of the September 14, 2000 special defenses of Defendants Continental Casualty Company, Transportation Insurance Company, and Valley Forge Insurance Company (collectively, "CNA") as follows:

REPLY TO AND AVOIDANCE OF FIRST SPECIAL DEFENSE

1. SIMCO admits that Administrative Law Judge George J. Miller issued an "Adjudication" dated November 4, 1998 in the Commonwealth of Pennsylvania Environmental Hearing Board Docket No. 92-429-CP-MG. As to CNA's characterization of that "Adjudication", the "Adjudication" speaks for itself. SIMCO denies each and every other allegation set forth in this paragraph.

2. Denied.

3. Denied.

4. Denied.

5. SIMCO further states by way of avoidance that CNA's allegations do not constitute a valid special defense to SIMCO's breach of duty to defend claims.

REPLY TO SECOND SPECIAL DEFENSE

1. Denied.

REPLY TO THIRD SPECIAL DEFENSE

1. Denied.

REPLY TO AND AVOIDANCE OF FOURTH SPECIAL DEFENSE

1. Denied.
2. SIMCO further states by way of avoidance that, upon information and belief, any pollution exclusions contained in any applicable policy of insurance were not filed as required by Conn. Gen. Stat. § 38a-676, and therefore, are unenforceable against SIMCO.

REPLY TO AND AVOIDANCE OF FIFTH SPECIAL DEFENSE

1. As to the language of the subject insurance policies, said policies speak for themselves. SIMCO denies each and every other allegation set forth in this paragraph.
2. As to the language of the subject insurance policies, said policies speak for themselves. SIMCO denies each and every other allegation set forth in this paragraph.
3. Denied.
4. Denied.
5. SIMCO further states by way of avoidance that CNA's allegations do not constitute a valid special defense to SIMCO's breach of duty to defend claims.

[. . . etc., with replies to SIXTH through ELEVENTH SPECIAL DEFENSES . . .]

SCHILBERG INTEGRATED METALS CORP.

By: _____

Juris No.

Section 3: Counterclaims and Setoffs

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to counterclaims and setoffs in a civil matter.

DEFINITIONS:

- "Under our rules of practice, a counterclaim, if proper, is an independent action.... It has been defined as 'a cause of action existing in favor of a defendant against a plaintiff which a defendant pleads to diminish, defeat or otherwise affect a plaintiff's claim and also allows a recovery by the defendant.'" [Home Oil Co. v. Todd](#), 195 Conn. 333, 341, 487 A.2d 1095 (1985).
- "As stated above, the defendant Todd properly asserted a counterclaim in three counts which she had filed with her answer to the complaint." [Home Oil Co. v. Todd](#), 195 Conn. 333, 342, 487 A.2d 1095 (1985). (Emphasis added.)
- "In any action for legal or equitable relief, any defendant may file counterclaims against any plaintiff and cross claims against any codefendant provided that each such counterclaim and cross claim arises out of the transaction or one of the transactions which is the subject of the plaintiff's complaint; and if necessary, additional parties may be summoned in to answer any such counterclaim or cross claim. A defendant may also file a counterclaim or cross claim under this section against any other party to the action for the purpose of establishing that party's liability to the defendant for all or part of the plaintiff's claim against that defendant." Conn. Practice Book [§ 10-10](#) (2023).
- "In any case in which the defendant has either in law or in equity or in both a counterclaim, or right of setoff, against the plaintiff's demand, the defendant may have the benefit of any such setoff or counterclaim by pleading the same as such in the answer, and demanding judgment accordingly; and the same shall be pleaded and replied to according to the rules governing complaints and answers. (See General Statutes [§§ 52-139 to 52-142](#).)" Conn. Practice Book [§ 10-54](#) (2023).
- "Generally speaking, a counterclaim is a cause of action asserted by one or more defendants against one or more plaintiffs while a cross claim is asserted against one or more codefendants.... 'Cross claims are litigated by parties on the same side of the main litigation, while counterclaims are litigated...between the opposing parties to the principal action.'" [Williams v. Dumais](#), 34 Conn. Supp. 247, 250, 385 A.2d 686 (1977). (Citations omitted.)
- "Although General Statutes § 52-139 et seq. specifically sets forth a procedure for setoff of mutual debts, '[l]ong before statutes of set-off were enacted, courts of equity recognized and enforced the right of set-off.' *Sullivan v. Merchants' National*

Bank, 108 Conn. 497, 499, 144 A. 34 (1928);” [Cordero v. University of Connecticut Health Center et al.](#), 308 Conn. 215, 232, 61 A.3d 514 (2013).

COURT FEES:

- [Court Fees for Counterclaims](#) (Connecticut Judicial Branch)

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Conn. Practice Book (2023)

[Chapter 9: Parties](#)

§ 9-21. Counterclaim; Third Parties

[Chapter 10: Pleadings](#)

§ 10-1. Fact Pleading

§ 10-5. Untrue Allegations or Denials

§ 10-10. Supplemental Pleadings; Counterclaims

§ 10-11. Impleading of Third Party by Defendant in Civil Action

§ 10-39. Motion to Strike

§ 10-46. The Answer; General and Special Denial

§ 10-47. Evasive Denial

§ 10-48. Express Admissions and Denials to be Direct and Specific

§ 10-54. Pleading of Counterclaim and Setoff

§ 10-55. Withdrawal of Action after Counterclaim

§ 10-57. Matter in Avoidance of Answer

§ 10-59. Amendments; Amendments as of Right by Plaintiff

§ 10-60. Amendment by Consent, Order of Judicial Authority, or Failure to Object

[Chapter 17: Judgments](#)

§ 17-44. Summary Judgments; Scope of Remedy

[Chapter 18: Fees and Costs](#)

§ 18-12. Costs where Several Issues

§ 18-16. Costs on Complaint and Counterclaim

§ 18-17. Costs on Counterclaim

[Chapter 24: Small Claims](#)

§ 24-19. Claim of Setoff or Counterclaim

§ 24-20. Amendment of Claim or Answer, Setoff or Counterclaim; Motion to Dismiss

§ 24-33. Costs in Small Claims

[Chapter 25: Family Matters](#)

§ 25-9. Answer, Cross Complaint, Claims for relief by Defendant

§ 25-10. Answer to Cross Complaint

STATUTES:

- Conn. Gen. Stat. (2023)

[Chapter 898 - Pleading](#)

§ 52-99. Untrue allegations or denials. Costs.

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- § 52-119. Pleading to be according to rules and orders of court.
- § 52-120. Pleading filed by consent after expiration of time.
- § 52-121. Pleading may be filed after expiration of time fixed, but prior to hearing on motion for default judgment or nonsuit. Judgment or penalty for failure to plead.
- § 52-123. Circumstantial defects not to abate pleadings.
- § 52-130. Amendment of defects, mistakes or informalities.
- § 52-139. Set-off of mutual debts; procedure.
- § 52-140. Set-off by defendant in suit by assignee.
- § 52-141. Set-off in action for trespass or tort.
- § 52-142. Joint debtors; discharge; set-off.

[Chapter 926 – Statute of Limitations](#)

[§ 52-584](#). Limitation of action for injury to person or property caused by negligence, misconduct or malpractice.

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Northeast Builders Supply & Home Centers, LLC v. RMM Consulting, LLC, et al.](#), 202 Conn. App. 315, 333-334, 245 A. 3d 804 (2021). “As previously noted, ‘Practice Book § 10-10 provides that [i]n any action for legal or equitable relief, any defendant may file counterclaims against any plaintiff ... provided that each such counterclaim ... arises out of the transaction or one of the transactions which is the subject of the plaintiff’s complaint. ... This section is a commonsense rule designed to permit the joinder of closely related claims [if] such joinder is in the best interests of judicial economy. ... The transaction test is one of practicality, and the trial court’s determination as to whether that test has been met ought not be disturbed except for an abuse of discretion.’ (Internal quotation marks omitted.) *South Windsor Cemetery Assn., Inc. v. Lindquist*, 114 Conn. App. 540, 546, 970 A.2d 760, cert. denied, 293 Conn. 932, 981 A.2d 1076 (2009).

‘Our Supreme Court has instructed that the [r]elevant considerations in determining whether the transaction test has been met include whether the same issues of fact and law are presented by the complaint and the [counter]claim and whether separate trials on each of the respective claims would involve a substantial duplication of effort by the parties and the courts.’ (Internal quotation marks omitted.) *Id.*, at 547, 970 A.2d 760. In other words, proper application of the transaction test requires a trial court to consider ‘whether a duplication of judicial effort and resources would result if the subject of the complaint and counterclaim were tried in separate actions.’ *Ceci Bros., Inc. v. Five Twenty-One Corp.*, 81 Conn. App. 419, 423 n.3, 840 A.2d 578, cert. denied, 268 Conn. 922, 846 A.2d 881 (2004).

- [HSBC Bank USA, National Association v. Nathan](#), 195 Conn. App. 179, 197-198, 224 A.3d 1173 (2020). “Applying the rationale of *Blowers* [*U.S. Bank National Association v. Blowers*, 332 Conn. 656, 212 A.3d 226 (2019)] to the present case, we conclude that the trial court erred in striking the nonpleaded counts, the

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

defendants' second amended laches defense, and the defendants' second amended counterclaim on the ground that they did not satisfy the making, validity, or enforcement test. The defendants raised allegations of postorigination misconduct by the plaintiff that, inter alia, increased their debt and hindered their ability to cure their default. Such alleged misconduct is 'directly and inseparably connected to enforcement' of the note or mortgage and, therefore, may form the basis of special defenses and a counterclaim in the present action."

- [U.S. Bank National Association v. Blowers](#), 332 Conn. 656, 675-676, 212 A.3d 226 (2019). "These equitable and practical considerations inexorably lead to the conclusion that allegations that the mortgagee has engaged in conduct that wrongly and substantially increased the mortgagor's overall indebtedness, caused the mortgagor to incur costs that impeded the mortgagor from curing the default, or reneged upon modifications are the types of misconduct that are 'directly and inseparably connected'; *Thompson v. Orcutt*, supra, 257 Conn. at 313, 777 A.2d 670; to enforcement of the note and mortgage. To the extent that the pleadings reasonably may be construed to allege that the April, 2012 intervention by the Department of Banking resulted in a binding modification, there can be no doubt that the breach of such an agreement would bear the requisite nexus.¹⁵ See *U.S. Bank National Assn. v. Blowers*, supra, 177 Conn. App. at 630, 172 A.3d 837 (acknowledging *676 this point). Such allegations, therefore, provide a legally sufficient basis for special defenses in the foreclosure action. Insofar as the counterclaims rest, at this stage, upon the same allegations as the special defenses, judicial economy would certainly weigh in favor of their inclusion in the present action. See *Connecticut National Bank v. Voog*, 233 Conn. 352, 368, 659 A.2d 172 (1995) ('[b]ecause th[ese] counterclaim[s] paralleled his special defense, [they were] also correctly pleaded in this case rather than as a separate action for damages')."
- [Murallo v. United Builders Supply Co](#), Superior Court, Judicial District of New London at New London, No. CV135014614 (April 3, 2019) (2019 WL 2245966). "Therefore, the court may not grant an equitable setoff if a defendant has never affirmatively and adequately alleged the right of setoff in the pleadings."
- [Callaghan v. Car Parts Int'l, LLC](#), 329 Conn. 564, 568, 188 A.3d 691, 694 (2018). "The specific question we address in this appeal is whether the moratorium applies to the one-third portion of the employer's recovery that inures solely to the employee's benefit—that is, whether the employer has a right to a setoff against its obligation to pay for postjudgment workers' compensation benefits until those benefits exceed the one-third portion that the employee received from the proceeds of the third-party action. We conclude that the employee's one-third portion is not subject to the moratorium, and, as a result, the

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employer does not receive a credit against later arising benefits for the one-third portion paid to the employee.”

- [Sovereign Bank v. Harrison](#), 184 Conn. App. 436, 194 A.3d 1284 (2018). “The heart of the distinction is that a counterclaim is an independent cause of action, and a special defense is not. See *Historic District Commission v. Sciame*, 152 Conn. App. 161, 176, 99 A.3d 207 ([a] counterclaim is a cause of action ... on which the defendant might have secured affirmative relief had he sued the plaintiff in a separate action’ [internal quotation marks omitted]), cert. denied, 314 Conn. 933, 102 A.3d 84 (2014); *Valentine v. LaBow*, supra, at 447 n.10, 897 A.2d 624 (‘a special defense is not an independent action’). Rather, a special defense is a purely defensive pleading that does not seek any affirmative relief.” (p. 444)

“A claim of setoff is similar to a counterclaim in that it ‘involve[s] the existence, in favor of the defendant, of an *independent cause of action* which he might pursue in a separate action.’ (Emphasis added.) *Boothe v. Armstrong*, supra, 76 Conn. at 531–32, 57 A. 173. The two types of claims differ only in that ‘[a] counterclaim arises out of the same transaction described in the complaint’; *Savings Bank of New London v. Santaniello*, 130 Conn. 206, 210, 33 A.2d 126 (1943); whereas ‘[a] set-off is independent thereof.’ Id. Thus, this court observed in *225 Associates* that, ‘[t]raditionally, the distinction between a setoff and a counterclaim centers around whether the claim arises from the same transaction described in the complaint.’ (Internal quotation marks omitted.) *225 Associates v. Connecticut Housing Finance Authority*, supra, at 121, 782 A.2d 189. In contrast, the issue in the present case requires us to distinguish between a counterclaim and a special defense.” (pp. 445-446)

- [Izzo v. Quinn](#), 170 Conn. App. 631, 635, 155 A.3d 315 (2017). “On appeal, the defendant claims that the court improperly dismissed his counterclaim for two reasons, namely, (1) that the court incorrectly ruled that all four of counts were directed solely at North Haven Drywall, LLC, and that North Haven Drywall, LLC, was a necessary or indispensable party to each count; and (2) that, even if the court correctly determined that North Haven Drywall, LLC, was a necessary party, the failure to join a necessary party is not jurisdictional, and the court, therefore, should have granted the plaintiff’s motion to strike, rather than dismiss, the counterclaim, which would have given him an opportunity to replead. We agree that the court improperly dismissed the counterclaim on the ground that the defendant failed to join a necessary or indispensable party.”
- [State v. Bacon Construction Co.](#), 160 Conn. App. 75, 87-88, 124 A.3d 941, cert. denied, 319 Conn. 953 (2015). “Thus, the defendant’s argument regarding the plaintiff’s failure to assert a counterclaim in the arbitration proceeding would be valid in a compulsory counterclaim jurisdiction. Connecticut, however, is a

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permissive counterclaim jurisdiction. See Practice Book § 10-10; *Gattoni v. Zaccaro*, 52 Conn. App. 274, 280, 727 A.2d 706 (1999); *Hansted v. Safeco Ins. Co. of America*, 19 Conn. App. 515, 520 n. 4, 562 A.2d 1148, cert. denied, 212 Conn. 819, 565 A.2d 540 (1989). In Connecticut, the fact that a defendant in a prior action did not assert a related cause of action in that prior action does not foreclose the defendant from asserting those claims in a new action filed in the future.”

- [CitiMortgage, Inc. v. Rey](#), 150 Conn. App. 595, 608, 92 A.3d 27 (2014). “The question to decide is whether the subject of the defendant's counterclaim is sufficiently intertwined with the complaint that it arises from the same transaction. In this instance, it would be an abuse of discretion to answer that question in the negative.”
- [Chief Information Officer v. Computers Plus Center, Inc.](#), 310 Conn. 60, 94, 74 A.3d 1242 (2013). “Furthermore, the defendant's contention in the present case that the procedures for obtaining permission to bring a claim against the state as a plaintiff are inapplicable to the assertion of a counterclaim by a defendant is inconsistent with the nature of counterclaims under Connecticut law. Our rules of practice and case law make clear that, although counterclaims arise only in response to an action initiated by another party, they are essentially independent actions brought by the defendant against the plaintiff, which courts entertain concurrently simply in the interest of judicial economy.”
- [Cordero v. University of Connecticut Health Center et al.](#), 308 Conn. 215, 232, 61 A.3d 514 (2013). “Although General Statutes § 52-139 et seq. specifically sets forth a procedure for setoff of mutual debts, “[l]ong before statutes of set-off were enacted, courts of equity recognized and enforced the right of set-off.” *Sullivan v. Merchants' National Bank*, 108 Conn. 497, 499, 144 A. 34 (1928)”
- [Morgan Chase Bank, Trustee v. Rodrigues](#), 109 Conn. App. 125, 131, 952 A. 2d 56 (2008). “A motion to strike tests the legal sufficiency of a cause of action and may properly be used to challenge the sufficiency of a counterclaim . . . *Fairfield Lease Corp. v. Romano's Auto Service*, 4 Conn. App. 495, 496, 495 A.2d 286 (1985); see also Practice Book § 10-39. Accordingly, we conclude that a motion to strike was the proper procedural vehicle to test the sufficiency of the defendants' counterclaim. (Citations omitted; internal quotation marks omitted.)”
- [Morgera v. Chiappardi](#), 74 Conn. App. 442, 813 A. 2d 89 (2007). “The ‘transaction test’ is one of practicality, and the trial court's determination as to whether that test has been met ought not be disturbed except for an abuse of discretion. . . . Where the underlying purposes of Practice Book § [10-10], to wit, judicial economy, avoidance of multiplicity of litigation, and avoidance of

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piecemeal disposition of what is essentially one action, are thwarted rather than served by the filing of a cross claim, the cross claim may properly be expunged.” (p. 449)

“We conclude, therefore, that the necessary nexus existed such that the complaint and counterclaim were so related that they satisfied the practical test of our transaction rule stated in Practice Book § 10-10. Having satisfied the transaction test, the defendant also is entitled legitimately to invoke equitable relief.” (p. 456)

- [Urich v. Fish](#), 97 Conn. App. 797, 802-803, 907 A. 2d 96 (2006). “The plaintiff cites no case law, statute or rule of practice that supports his position. Here, prejudgment interest was awarded on the defendant's counterclaim. A counterclaim is an independent action. Practice Book §§ 10-10, 10-54, 10-55; *Ceci Bros., Inc. v. Five Twenty-One Corp.*, 81 Conn. App. 419, 428, 840 A.2d 578, cert. denied, 268 Conn. 922, 846 A.2d 881(2004). In its discretion, the court declined to award the plaintiff prejudgment interest on his claims but granted the defendant's request to award prejudgment interest on his claims. The court properly refused to set off the defendant's award against the plaintiff's award. To set off one claim against the other before calculating interest would, in effect, award § 37-3a interest to the plaintiff when the plaintiff had not been awarded such interest and was not entitled to such interest.”
- [Mulcahy v. Mossa](#), 89 Conn. App. 115, 126, 872 A. 2d 453 (2005). “As an action sounding in tort, the state's action falls squarely within actions contemplated by the exception for counterclaims provided for in § 52-584. . . Section 52-584 expressly provides that a counterclaim may be filed at any time prior to the close of pleadings, irrespective of whether the statute of limitations governing the counterclaim has run.”
- [OCI Mortgage Corp. v. Marchese](#), 255 Conn. 448, 463-464, 774 A. 2d 940 (2001). “In Connecticut, a setoff may be legal or equitable in nature. See *Connecticut Bank & Trust Co. v. Winters*, 225 Conn. 146, 162, 622 A.2d 536 (1993); *Savings Bank of New London v. Santaniello*, 130 Conn. 206, 211, 33 A.2d 126 (1943). Legal setoff is governed by General Statutes § 52-139 et seq. and involves mutual debts between parties in any action: (1) to recover on a debt pursuant to § 52-139; (2) by an assignee of a nonnegotiable chose in action pursuant to General Statutes § 52-140; (3) for trespass to real or personal property or other tort committed without force pursuant to General Statutes § 52-141; or (4) involving joint debtors pursuant to General Statutes § 52-142. See also Practice Book § 10-54.

When the statutes governing legal setoff do not apply, a party may be entitled to equitable setoff, nonetheless, ‘only to enforce the simple but clear natural equity’ in a given case. *Connecticut Bank & Trust Co. v. Winters*, supra, 225 Conn. 162, quoting

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Spurr v. Snyder, 35 Conn. 172, 174 (1868).”

- [225 Associates v. Connecticut Housing Finance Authority](#), 65 Conn. App. 112, 121, 782 A. 2d 189 (2001). “Traditionally, the distinction between a setoff and a counterclaim centers around whether the claim arises from the same transaction described in the complaint. If the claim involves a debt which is mutual and liquidated, even though it arises from separate transactions, it is characterized as a setoff. See General Statutes § 52-139. If the claim arises out of the same transaction described in the complaint, it is characterized as a counterclaim. *Savings Bank of New London v. Santaniello*, 130 Conn. 206, [210], 33 A.2d 126 (1943). The title of the pleading is not controlling. The issue is, rather, whether sufficient facts are pleaded that would allow recovery either as a setoff or as a counterclaim. *Peters Production, Inc. v. Dawson*, 182 Conn. 526, 528, 438 A.2d 747 (1980).’ *Northwestern Electric, Inc. v. Rozbicki*, 6 Conn. App. 417, 426, 505 A.2d 750 (1986).”
- [Hope's Architectural Products, Inc. v. Fox Steel Co.](#), 44 Conn. App. 759, 761-762, 692 A. 2d 829 (1997). “A defendant is in the position of a plaintiff with respect to a set-off or a counterclaim. See Practice Book § 168; *Yale University School of Medicine v. McCarthy*, 26 Conn. App. 497, 499 n.2, 602 A.2d 1040 (1992). The law of set-off is governed by General Statutes § 52-139 (a), the relevant portion of which provides that ‘[i]n any action brought for the recovery of a debt, if there are mutual debts between the plaintiff ... and the defendant ... one debt may be set-off against the other.’ ‘A condition precedent to the application of § 52-139 is that the defendant's claim arise from a debt due by the plaintiff.’ *Elis v. Rogers*, 15 Conn. App. 362, 365, 544 A.2d 633 (1988). While a counterclaim arises out of the same transaction described in the complaint, a set-off is independent thereof. *Savings Bank of New London v. Santaniello*, 130 Conn. 206, 210, 33 A.2d 126 (1943).”
- [Northeast Sav., F.A. v. Plymouth Commons Realty Corp.](#), 229 Conn. 634, 642, n. 10, 642 A.2d 1194 (1994). “The plaintiff relies on dictum in *Savings Bank of New London v. Santaniello*, 130 Conn. 206, 211, 33 A.2d 126 (1943), for the proposition that the defendants, by raising their legal claims as a counterclaim in the plaintiff's equitable action rather than filing a separate suit, have waived their right to a jury trial. To the extent that our dictum in *Savings Bank of New London* is inconsistent with the principles set forth in our subsequent cases; see, e.g., *Texaco, Inc. v. Golart*, supra, 206 Conn. 458-59; *United States Trust Co. v. Bohart*, supra, 197 Conn. 44-45; we decline to follow it.”
- [Northern Homes Distributors, Inc. v. Grosch](#), 22 Conn. App. 93, 96, 575 A.2d 711 (1990). “The defendant first asserts that the prior pending action doctrine cannot be applied in this situation. Contrary to the defendant's contention, the prior pending action

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doctrine applies with equal force to counterclaims. *Cole v. Associated Construction Co.*, 141 Conn. 49, 53, 103 A.2d 529 (1954). In this instance, the court must compare the allegations made in the counterclaim with those contained in the complaint brought by the party bringing the counterclaim. *Id.* If the counterclaim and the party's complaint contain 'essentially the same allegations,' the latter of the two must be dismissed."

- [Colonial Bank & Trust Co. v. Matoff](#), 18 Conn. App. 20, 29, 556 A. 2d 619 (1989). "It was ... [defendant's] burden to demonstrate his right of setoff by affirmatively and adequately alleging his claim in his pleadings."
- [Bank of New London v. Santaniello](#), 130 Conn. 206, 210, 33 A.2d 126 (1943). "A counterclaim arises out of the same transaction described in the complaint. A set-off is independent thereof."

WEST KEY NUMBER:

- *Pleading*
 - (E) Set-off, counterclaim, and cross-complaint, #138-150

RECORDS & BRIEFS:

- Connecticut Appellate Court Records And Briefs (April 2006). [Ramondetta v. Amenta](#), 97 Conn. App. 151 (2006).

- Answer and Counterclaim [See [Figure 5](#)]

CIVIL JURY INSTRUCTIONS:

- *Connecticut Judicial Branch Civil Jury Instructions*
[Part 2.6 – Burden of Proof](#) (2008)
2.6-1 Burden of Proof - Claims

TEXTS & TREATISES:

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, 2022 ed., LexisNexis.
Chapter 7. Pleadings
 - § 7.20 Answer
 - § 7.21 Counterclaims and Cross Claims
 - [1] Definitions
 - [2] Counterclaims and Cross Claims Must Arise from the Same Transaction as Complaint
 - [3] Counterclaims and Cross Claims Are Permissive
 - [4] Pleading Counterclaims
 - [5] Withdrawal of Action After Counterclaim
 - [6] Reply to Counterclaim
 - § 7.22 Set-offs
 - [1] Set-off of Mutual Debts
 - [2] Set-off Against a Judgment for Plaintiff in Action for Trespass or Tort
 - [3] Set-off By Bank Against Joint Debt
 - [4] Set-off By Defendant in Suit By Assignee
 - [5] Distinction Between Set-off and Counterclaim

- 1 *Stephenson's Connecticut Civil Procedure*, 3rd ed., by Renee Bevacqua Bollier et al., Atlantic Law Book Co., 1997, with 2014 supplement.

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References to online databases refer to in-library use of these databases. Remote access is not available.

Chapter 8. The answer, counterclaim; subsequent pleadings
§ 85. Recoupment, Setoff, Counterclaim
§ 86. Cross-Claims and Third Parties

- 2 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (also available on Westlaw).

General-Responsive Pleadings

Comments to Forms 105.8 and 105.9

- Connecticut Practice Series, *Connecticut Superior Court Civil Rules*, 2022-2023 ed. by Wesley W. Horton et al., Thomson West (also available on Westlaw).

Chapter 10. Pleadings

Authors' Comments to §§ 10-10, 10-54, 10-55

- 1 *Dupont on Connecticut Civil Practice*, by Ralph Dupont, 2022-2023 ed., LexisNexis.

Chapter 10. Pleadings

Commentaries to §§ 10-10, 10-54, 10-55

- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.

Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response.

- 2 *Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure*, 13th ed., by Denis R. Caron and Geoffrey K. Milne, Connecticut Law Tribune, 2023.

Chapter 5. Pleadings

§ 5-1:7.2 Counterclaims

Chapter 6. Defenses to Foreclosure

§ 6-6 Counterclaims

- *Library of Connecticut Collection Law Forms*, Robert M. Singer, editor, Connecticut Law Tribune, 2016.

Chapter 10 - Answer and Counterclaim

10-000 Commentary—Counterclaims

- *Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators*, by Jeanine M. Dumont, Connecticut Law Tribune, 1998.

Chapter 6. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings

FORMS:

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- Small Claims - Instructions to Defendant, [JD-CV-121](#)
- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
Chapter 13, Pleadings: Defendant's Answer, Special

Defenses, Counter-claims and Plaintiffs Response.

- 2 Connecticut Practice Series, *Connecticut Civil Practice Forms*, 4th ed., by Joel M. Kaye et al., Thomson West, 2004, with 2022 supplement (also available on Westlaw).
 - Form 105.8 (Setoff, with Prayer for Affirmative Relief)
 - Form 105.9 (Answer, and Set-Off)
 - Form 105.10 (Reply—Denial)
 - 16 Connecticut Practice Series, *Connecticut Elements of an Action*, by Thomas B. Merritt, 2022 ed., Thomson West (also available on Westlaw).

Sample answers containing counterclaims/setoffs

Chapter 4: Contract Actions — Breach of Contract, § 4:26
 - 1 *Dupont on Connecticut Civil Practice*, by Ralph Dupont, 2022-2023 ed., LexisNexis.
 - F.8-1(9) Answer in Replevin by Officer, Special Defense, Counterclaim
 - F.8-1(12) Prejudgment Remedy by Defendant After Filing Set-Off or Counterclaim
 - F.10-10 Counterclaim in Action on Building Contract
 - F.10-50(15) Fraud in Recovery of Judgment With Counterclaim for Equitable Relief
 - F.10-50(35) Defense and Counterclaim in Action for Assault
 - F.10-50(43) Special Defense and Counterclaim to Foreclosure; Mistake, Fraud or Accident in Failure to Make Payments
 - F.10-54 Setoff With Prayer for Affirmative Relief
 - F.10-54(1) Answer and Set-Off
 - F.10-56(3) Reply and Answer to Counterclaim for Assault
 - F.10-58 Defendant's Rejoinder to Answer to Counterclaim
 - *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, 2022 ed., LexisNexis.
 - § 7.26 Basic Form of Answer
 - *Library of Connecticut Collection Law Forms*, Robert M. Singer, editor, Connecticut Law Tribune, 2016.
 - Chapter 10 - Answer and Counterclaim
 - 10-002 Counterclaim for Fraud
 - 10-003 Counterclaim for Unfair Trade Practices
 - 10-005 Counterclaim on Consumer Collection—Outside of Proper Federal District Suit Under FDCPA
- ENCYCLOPEDIAS:
- 20 *Am. Jur. 2d Counterclaim, Recoupment, and Setoff*, Thomson West, 2015, with 2023 supplement (Also available on Westlaw).
 - I. In General,
 - Counterclaim, §§ 1 – 4
 - Recoupment and Setoff, §§ 5 – 7

Encyclopedias and ALRs are available in print at some law library locations and accessible online at all law library locations.

Online databases are available for in-library use. Remote access is not available.

- 61A *Am Jur 2d Pleading*, Thomson West, 2021, with 2023 supplement (Also available on Westlaw).
VIII. Cross Claims, §§ 303-310
- 71 *CJS Pleading*, Thomson West, 2022, with 2023 supplement (Also available on Westlaw).
III. Plea or Answer
E. Setoffs, Counterclaims, and Cross-Claims, §§ 200-207

Table 5: Selected Superior Court Decisions - Counterclaims

<p>Counterclaim by landlord for unpaid rent asserted in a tenant's premises liability lawsuit</p>	<p>"Likewise, in the present case, the defendant's counterclaims are not sufficiently intertwined with the amended complaint. All of the defendant's counterclaims are based upon a breach of the lease agreement. Plaintiff's complaint is a negligence action based upon a theory of premises liability."</p> <p><u>Delgado v. G & B Realty, LLC</u>, Superior Court, Judicial District of New Haven, No. CV166060643S (June 13, 2016) (62 Conn. L. Rpt. 494) (2016 WL 3609755).</p>
<p>Counterclaim in probate appeal</p>	<p>"Because the Superior Court's jurisdiction over a probate appeal 'is statutory and limited to the order appealed from ... the court has subject matter jurisdiction limited only to the order or decree appealed from.' <i>Silverstein's Appeal from Probate</i>, 13 Conn. App. 45, 58, 534 A.2d 1223 (1987). Counterclaims in this setting are ordinarily dismissed for lack of subject matter jurisdiction. An exception is made for counterclaims presenting issues that are 'identical' to those presented in the initial probate appeal; <i>Southport Congregational Church United Church of Christ v. Hadley</i>, 152 Conn. App. 282, 294, 98 A.3d 99, cert. granted on other grounds, 314 Conn. 933, 102 A.3d 84 (2014); but the defendants agree that the issues are not 'identical' here."</p> <p><u>Conlon v. McCallister</u>, Superior Court, Judicial District of New Haven, No. CV156052337 (Aug. 10, 2015) (60 Conn. L. Rpt. 806) (2015 WL 5315259).</p>

Figure 5: Answer and Counterclaim (Form)

Connecticut Appellate Court Records and Briefs (April 2006).
Ramondetta v. Amenta, 97 Conn. App. 151, 903 A.2d 232 (2006).

NO. CV-03-0825102-S

JOSEPH J. RAMONDETT A II, ET AL.

v.

SALVATORE AMENTA

SUPERIOR COURT

JUDICIAL DISTRICT OF
HARTFORD

AUGUST 12, 2003

ANSWER AND COUNTERCLAIM

Defendant Salvatore Amenta, Trustee hereby Answers the Complaint of the plaintiffs as follows.

FIRST COUNT

1. Admitted.

2. Admitted.

3. Trustee Amenta admits that all expenses and obligations incurred by him as

Trustee in maintaining the Trust premises or in connection with the improvement, sale, lease or mortgage of the Trust premises by the Trustee would be borne equally by the parties to

the Trust in their individual capacities. Trustee Amenta denies the remainder of the

allegations in paragraph 3.

4. Trustee Amenta lacks sufficient information to form a response to the allegations in paragraph 4 and therefore leaves the plaintiffs to their proof.

5. Trustee Amenta lacks sufficient information to form a response to the allegations in paragraph 5 and therefore leaves the plaintiffs to their proof.

6. Admitted.

7. Denied.

8. Denied.

THIRD COUNT

1. –7. Trustee Amenta hereby repeats and realleges his responses to paragraphs 1 through 7 of the First Count as his responses paragraphs 1 through 7 of the Third Count as if fully set forth herein.

8. Admitted.

9. Trustee Amenta admits that he undertook the responsibilities of a Trustee with respect to the Trust referred to in the Complaint. Trustee Amenta denies the remainder of the allegations in paragraph 9.

10. Denied.

11. Denied.

COUNTERCLAIM

Trustee Amenta hereby asserts the following Counterclaim against the plaintiffs and in support thereof alleges as follows:

COUNT ONE: Unjust Enrichment

1. By way of Trust Agreement dated May 4, 1970, Salvatore J. Amenta, Jack Cannarelle, Sebastian Ramondetta, Nicholas J. Cecere, Joseph Ramondetta and Sarino Garafolo entered into a Trust Agreement ("Trust").
2. Pursuant to the Trust, Salvatore J. Amenta ("Amenta") agreed to act as the Trustee for and in behalf of all parties to the Trust.
3. Upon information and belief, plaintiffs Joseph J. Ramondetta., II and John Ramondetta may own portions and/or may be beneficiaries of the Trust.
4. Since 1970, Trustee Amenta has acted as Trustee to the Trust thereby providing significant benefit to all parties to the Trust and, upon information and belief, the plaintiffs.
5. As a result of Trustee Amenta's efforts on behalf of the Trust over a period of 30 years, the plaintiffs have been enriched.
6. To the extent Trustee Amenta has not been paid a reasonable fee for his services as Trustee, the plaintiffs have been unjustly enriched at the expense of the Trustee.

WHEREFORE, Trustee Amenta respectfully requests:

1. Monetary damages.
2. Interest.
3. Costs.
4. Such other relief as the Court deems just and equitable.

DEFENDANT -
SALVATORE AMENTA, TRUSTEE

By _____

His Attorneys