HONG KONG CIVIL COURT PRACTICE

Desk Edition 2026
Volume 1

The Original Practitioner's Reference on the Rules of the High Court

Julienne Jen

HONG KONG CIVIL COURT PRACTICE

Desk Edition 2026
Volume 2

The Original Practitioner's Reference on the Rules of the High Court

Julienne Jen

HONG KONG CIVIL COURT PRACTICE

Desk Edition 2026

The Original Practitioner's Reference on the Rules of the High Court

Professional Boookshop
www.pbookshop.com

VOLUME 1

Contents

List of Contributors v

Preface xi

Publisher's Note xiii

Table of Cases xix

Table of Legislation ccxxxiii

Volume 1

Order 1	Citation, Application, Interpretation and Forms	1
Order 1A	Objectives	13
Order 1B	Case Management Powers	37
Order 2	Effect of Non-compliance	49
Order 3	Time	61
Order 4	Assignment, Transfer and Consolidation of Proceedings	72
Order 5	Mode of Beginning Civil Proceedings in the Court of First Instance	76
Order 6	Writs of Summons: General Provisions	84
Order 7	Originating Summons: General Provisions	96
Order 8	Originating And Other Motions: General Provisions	101
Order 9	Petitions: General Provisions	104
Order 10	Service of Originating Process: General Provisions	106
Order 11	Service of Process, etc., out of the Jurisdiction	119
Order 12	Acknowledgment of Service of Writ or Originating Summons	153
Order 13	Failure to give Notice of Intention to Defend	178
Order 13A	Admissions in Claims for Payment of Money	194
Order 14	Summary Judgment	212
Order 14A	Disposal of Case on Point of Law	237
Order 15	Causes of Action, Counterclaims and Parties	241
Order 16	Third Party and Similar Proceedings	303
Order 17	Interpleader	316
Order 18	Pleadings	324
Order 19	Default of Pleadings	385
Order 20	Amendment	393
Order 21	Withdrawal and Discontinuance	418
Order 22	Offers to Settle and Payments into Court	427
Order 22A	Miscellaneous Provisions about Payments into Court	497
Order 23	Security for Costs	501
Order 24	Discovery and Inspection of Documents	524
Order 25	Case Management Summons and Conference	592
Order 26	Interrogatories	628

Professional Book Shop
www.pbookshop.com

Order 27	Admissions	639
Order 28	Originating Summons Procedure	647
Order 29	Interlocutory Injunctions, Interim Preservation of Property, Interim Payments, etc.	661
Order 30	Receivers	752
Order 31	Sales, etc. of Land by Order of Court	759
Order 32	Applications and Proceedings in Chambers	762
Order 32A	Vexatious Litigants	793
Order 33	Place and Mode of Trial	800
Order 34	Setting Down for Trial Action begun by Writ	812
Order 35	Procedure at Trial	831
Order 36	Trials before, and Inquiries by, Master	849
Order 37	Damages: Assessment after Judgment and Orders for Provisional Damages	852
Order 38	Evidence	859
Order 39	Evidence by Deposition: Examiners of the Court	931
Order 40	Court Expert	945
Order 41	Affidavits	949
Order 41A	Statements of Truth	968

Volume 2

Order 42	Judgments and Orders	989
Order 43	Accounts and Inquiries	1020
Order 44	Proceedings under Judgments and Orders	1025
Order 44A	Prohibition Order before or after Judgment and Attachment of Property before Judgment	1032
Order 45	Enforcement of Judgments and Orders: General	1046
Order 46	Writs of Execution: General	1067
Order 47	Writs of Fieri Facias	1073
Order 48	Examination of Judgment Debtor, etc.	1086
Order 49	Garnishee Proceedings	1093
Order 49B	Execution and Enforcement of Judgment for Money by Imprisonment	1111
Order 50	Charging Orders, Stop Orders, etc.	1122
Order 51	Receivers: Equitable Execution	1141
Order 52	Committal	1144
Order 53	Applications for Judicial Review	1160
Order 54	Applications for Writ of Habeas Corpus	1211
Order 55	Appeals to the High Court from Court, Tribunal or Person: General	1230
Order 58	Appeals from Masters	1240
Order 59	Appeals to the Court of Appeal	1251
Order 60A	Appeals from Tribunals to Court of Appeal on a Question of Law other than by way of Case Stated	1336
Order 61	Appeals from Tribunals to Court of Appeal by way of Case Stated	1340
Order 62	Costs	1343

Order 62A	Costs Offer and Payments into Court	1515
Order 63	The Registry	1531
Order 64	Sittings, Vacations and Office Hours	1537
Order 65	Service of Documents	1543
Order 66	Paper, Printing, Notices and Copies	1565
Order 67	Change of Solicitor	1567
Order 68	Official Shorthand Note	1579
Order 69	Service of Process from a Country or Place Outside Hong Kong	1583
Order 70	Obtaining Evidence for Requesting Courts	1586
Order 71	Reciprocal Enforcement of Foreign Judgments	1594
Order 71A	Reciprocal Enforcement of Mainland Judgments	1617
Order 71B	Certified Copies of Judgments Given by Court of Final Appeal and High Court	1631
Order 72	Particular Proceedings	1636
Order 73	Arbitral Proceedings	1646
Order 74	(Repealed)	1677
Order 75	Admiralty Proceedings	1678
Order 76	Contentious Probate Proceedings	1738
Order 77	Proceedings by and against the Crown	1752
Order 78	District Court Proceedings Transferred or Removed to Court of First Instance	1761
Order 78A	Transfer of Proceedings from Court of First Instance to Competition Tribunal under Competition Ordinance (Cap. 619)	1766
Order 78B	Transfer of Proceedings from Competition Tribunal to Court of First Instance under Competition Ordinance (Cap. 619)	1769
Order 79	Tribunal Proceedings Transfer or Removal to the Court of First Instance	1772
Order 80	Disability	1774
Order 81	Partners	1798
Order 82	Defamation Actions	1810
Order 83A	Money Lenders' Actions	1816
Order 84A	Actions arising out of Hire-purchase or Conditional Sale Agreements	1821
Order 85	Administration and Similar Actions	1826
Order 86	Actions for Specific Performance, etc.: Summary Judgment	1834
Order 87	Debenture Holders' Actions: Receiver's Register	1840
Order 88	Mortgage Actions	1843
Order 89	Proceedings between Husband and Wife	1861
Order 90	Proceedings concerning Minors	1863
Order 92	Lodgment, Investment, etc. of Funds in Court	1870
Order 93	The Variation of Trusts Ordinance (Cap. 253)	1873
Order 95	The Bills of Sale Ordinance (Cap. 20) and Bankruptcy Ordinance (Cap. 6)	1874
Order 100	Trade Marks Ordinance (Cap. 559)	1879

Professional Bookshop
www.pbookshop.com

Order 102	The Companies Ordinance (Cap. 622) and The Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)	1885
Order 103	Patents Ordinance (Cap. 514)	1897
Order 106	Proceedings relating to Solicitors: The Legal Practitioners Ordinance (Cap. 159)	1928
Order 113	Summary Proceedings for Possession of Land	1945
Order 114	Commissioners for Oaths	1952
Order 115	Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)	1954
Order 115A	Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)	1970
Order 116	Organized and Serious Crimes Ordinance (Cap. 455)	1978
Order 117	Organized and Serious Crimes Ordinance (Cap. 455)	1982
Order 117A	United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)	1991
Order 118	Interpretation and General Clauses Ordinance (Cap. 1)	2007
Order 119	Prevention of Bribery Ordinance (Cap. 201)	2010
Order 120	Charitable Trusts	2012
Order 121	Child Abduction and Custody Ordinance (Cap. 512)	2015
Order 122	Registered Designs Ordinance (Cap. 522)	2030
Appendix A	Forms	2040
Appendix B	Special Admiralty Forms	2120
Appendix C	-	2131
Appendix D	Code of conduct for expert witnesses	2132
Index		2135

Professional Boookshop
www.pbookshop.com

TABLE OF CASES

References are to paragraph numbers

1638 Ltd v Power Cycles Ltd [2007] 3 HKC 306 .... [29.1.71]
1955 Capital Fund LLC v Global Industrial Investment [2020] HKCU 2272, [2020] HKCFI 956 .... [32.1.13]
3D-Gold Jewellery Holdings Ltd v PwC (a firm) [2014] 4 HKC 528 (HCA 1192/2011; DHCJ Lok; 22.05.2014) (CFI) .... [10.1.12], [81.3.2]
3D-Gold Jewellery Holdings Ltd v PwC (a firm) [2015] HKCU 854 (HCA 1192/2011; DHCJ Lok; 23.04.2015) (CFI) .... [10.1.12]
深圳正高金屬製品有限公司 v Iu Ho Construction Engineering Co Ltd [2022] HKCU 4212, [2022] HKCFI 2685 .... [21.3.4]

A

A v A, Re A [2002] EWHC 611 (Admin/Fam), [2002] 2 FCR 481, [2002] 2 FLR 274 .... [115.7.1] [67.1.4]
A v B [1984] 1 All ER 265 .... [29.1.90]
A v C [1981] 1 QB 956 .... [29.1.85]
A v C (No 2) [1981] 2 All ER 126, [1981] 1 QB 961 .... [15.4.32]
A v P Co & Ors [2018] HKCU 1410, [2018] HKCFI 907 .... [73.1.13], [73.10.8]
A v R [2010] 3 HKC 67 .... [11.9.2]
A & B v C [2007] HKCU 1340 (HCMP 2261/2006; A Cheung J; 06.07.2007) (CFI) .... [50.1.4]
A & M Records Inc v Darakdjian [1975] 3 All ER 983, [1975] 1 WLR 1610 .... [62.28.1]
A, Re [2020] HKCU 705, [2020] HKCFI 493 .... [24.2.44]
A (a child), Re [2012] UKSC 60 .... [62.8B.8]
A Barrister, Re (Wasted Costs Order) (No 4 of 1993) (1995) Times, 21 April (CA, Eng) .... [62.8B.8]
A Barrister, Re (Wasted Costs Order) (No 4 of 1992) (1994) Times, 15 March (CA, Eng) .... [38.37C.1]
A Civil Matter Pending in the US District Court, Re (Letter of Request) (No 2) [2021] 1 HKC 65, [2020] 5 HKLRD 30, [2020] HKCA 766 .... [7.2.2], [15.4.27], [15.4.30], [15.4.32], [15.4.33], [15.4.41], [24.1.12], [29.1.53]
A Co v B Co [2002] 2 HKC 497, [2002] 3 HKLRD 111 (HCMP 336/2002; Ma J; 12.03.2002) (CFI) .... [24.2.30]
A Crompton Ltd v Customs and Excise [1974] AC 405

HONG KONG
CIVIL COURT PRACTICE

Desk Edition 2026

The Original Practitioner's Reference
on the Rules of the High Court

VOLUME 2

Professional Boookshop
www.pbookshop.com

Council referred to the 'counsels of moderation' to the effect that the power should be exercised 'sparingly', with 'great care and jealousy', with 'extreme caution'.

(b) The discretion must be exercised judicially, *Oriental Peer* (above), citing *Hanson v Radcliffe Urban City Council* [1922] 2 Ch 490, 507.

(c) It is not necessary for the applicant to have a cause of action, but there must be a justiciable issue. Thus, a statement of claim seeking declaratory relief only will not be struck out as disclosing no reasonable cause of action, but the court will not grant the relief unless the case raises 'justiciable matters, that is, legal or equitable rights but not moral, social or political matters' *Dicks v Easy Finder Ltd* [1996] 3 HKC 65, 67I (HC).

(d) Declarations of a purely advisory or hypothetical nature will not normally be granted. Thus, in *Jackson v AG* [1980] HKC 182 (CA), the court refused to grant a declaration as to the manner in which a public servant's pension should be calculated because there was no right to a pension, merely an expectation. In *Charter View Development Ltd v Golden Rich Enterprises Ltd & Anor* [2000] 2 HKC 77 (CA), Ribeiro JA reiterated the court's reluctance to grant declarations on hypothetical questions or of an advisory nature. However, there are cases in which the court has been prepared to depart from that general principle. With regard to public law cases, see the discussion on advisory or hypothetical applications for judicial review in the commentary under O 53 r 1. In relation to private law cases, see the interesting discussion in *Rolls-Royce plc v Unite the Union* [2009] EWCA Civ 387 (14.05.2009) (para 38 et seq), where it is said that different considerations may arise in 'friendly actions' and test cases.

The court will not normally exercise its discretion to grant a declaration on an application for default judgment or on admissions. See the commentary under O 19 r 7. Similarly, a declaration will not be granted by consent: see the court's guidance note on common requisitions in ex parte applications, which is available on the judiciary's website under 'Guide to Court Services'.

[15.16.3] Arbitration clause

The court will not make a declaration of the rights of the parties when the subject matter comes within the scope of an arbitration agreement: *A-G v Shimizu Corp* [1994] 1 HKC 664 (HC). In that case, the court considered there could be an exception where there was an agreement that a preliminary point of law should be determined by the court under s 23A of the former Arbitration Ordinance (Cap 341).

17. Conduct of proceedings (O. 15, r. 17)

The Court may give the conduct of any action, inquiry or other proceedings to such person as it thinks fit.

ORDER 16

THIRD PARTY AND SIMILAR PROCEEDINGS

1. Third party notice (O. 16, r. 1)

(1) Where in any action a defendant who has given notice of intention to defend—

(a) claims against a person not already a party to the action any contribution or indemnity; or

(b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action;

then, subject to paragraph (2), the defendant may issue a notice in Form No. 20 or 21 in Appendix A, whichever is appropriate (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action (in this Order referred to as a third party) with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice is issued.

NOTES

[16.1.1] Origin and scope of Order 16

Order 16 is based on the Order of the same number in the Rules of the Supreme Court which applied in England and Wales prior to 1999 when the Woolf reforms took effect. The equivalent provisions in England are now found in Part 20 of the Civil Procedure Rules.

Order 16 lays down procedures which enable a defendant who has given notice of intention to defend to join into the proceedings a third party in any of the 3 sets of

Professional Bookshop www.pbookshop.com

circumstances listed in O 16 r 1(1). Leave to issue a third party notice may be required: see O 16 r 1(2) and O 16 r 2.

[16.1.2] Circumstances in which defendant may issue third party notice

A defendant may issue a third party notice in any of the 3 circumstances set out in O 16 r 1(1). The defendant must first give notice of intention to defend. The 3 sets of circumstances are, in brief, where the defendant:

(a) *claims any contribution or indemnity against a person who is not already a party —*
Rule 1(1)(a) permits the defendant to join a third party that it maintains is principally liable for the plaintiff's claims, if proved. For example, a guarantor may seek to join the guaranteed person into the proceedings. Furthermore, a party who is sued under principles of vicarious liability or in agency may seek to join the principal wrong-doer. By issuing a third party notice in such circumstances, the defendant does not necessarily relieve itself of liability to the plaintiff, but may be able to obtain from the court, in the same proceedings, an adjudication of its rights against the third party.

(b) *claims against a non-party any relief or remedy relating to or connected with the action and substantially the same as claimed by the plaintiff —*
By r 1(1)(b), the defendant may join a third party to seek relief other than that claimed in the main proceedings commenced by the plaintiff, provided that it relates to or is connected with and substantially similar to what the plaintiff claims.

(c) *requires that any question or issue relating to or connected with the action be determined not only between plaintiff and defendant, but also between defendant and third party —*
Rule 1(1)(c) permits the defendant to join a third party even though it makes no claim and seeks no specific remedy against the third party. For example, a defendant may wish simply to ensure that the third party is bound by the result of the court's decision as between plaintiff and defendant, thereby avoiding possible multiplicity of proceedings. See *KP Financial Services Ltd v Li Ka Man* [2018] 2 HKLRD 256, [2018] HKCU 1618 (HCA 1919/2015; Chow J; 13.10.2017) (CFI) (para 16), referring to *Chatsworth Investments Ltd v Amoco (UK) Ltd* [1968] 3 All ER 357, 361, [1968] 3 WLR 343, 356.

If the third-party claim does not fall within any of the 3 circumstances listed above, the third-party notice would be defective and should be struck out or set aside: see *China Citic Bank Int'l Ltd v Li Yan Hung* [2022] HKCU 523, [2022] HKCFI 354.

[16.1.3] Third party claims in tort – Civil Liability (Contribution) Ordinance (Cap 377)

An independent tortfeasor may be named as a third party under this Order. In *Kwan Man Ling v Chan Pui Shan Patsy & Anor* [1998] 4 HKC 695 (CFI), it was held that where each of several persons, not acting in concert, commits a tort against another person substantially contemporaneously and causing the same or indivisible damage, each several tortfeasor is liable for the whole damage. Hence, the defendant who alleges that another, possibly independent, tortfeasor, is wholly or partly responsible for the damage, may issue third party proceedings against that other claiming contribution under the Civil Liability (Contribution) Ordinance (Cap 377).

[16.1.4] Third party proceedings not appropriate against co-defendant

This rule, by its own terms, does not apply to the situation where a defendant wishes to claim relief against one of his co-defendants in the action. There are cases in which leave has been granted to one defendant to issue a third party notice against another defendant, with the result that the other defendant is both a defendant and third party in the proceedings. In principle, no such leave should be granted. Instead, the defendant who wishes to shift liability onto a co-defendant should issue a notice under r 8 of this Order.

[16.1.5] Effect of settlement of main action

Third party proceedings are not affected by settlement as between the plaintiff and defendant of the main claim. The third party proceedings may continue without the need to commence a fresh action: see *Lam Chun Lin v Lee Wai Chao & Ors* [1998] 2 HKC 68 (CFI).

2. Application for leave to issue third party notice (O. 16, r. 2)

(1) Application for leave to issue a third party notice may be made ex parte but the Court may direct a summons for leave to be issued.

(2) An application for leave to issue a third party notice must be supported by an affidavit stating—

(a) the nature of the claim made by the plaintiff in the action;

(b) the stage which proceedings in the action have reached;

(c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and

(d) the name and address of the person against whom the third party notice is to be issued.

NOTES

[16.2.1] Leave to issue third party notice

A defendant who wishes to issue a third party notice requires leave of the court unless the action was begun by writ and the notice is issued before service of the defence: O 16 r 1(2).

The grant of leave to issue a third party notice is within the discretion of the court: *FIL Leveraged US Government Bond Fund Ltd & Ors v TCW Funds Management Inc* [1999] HKCU 1567 (HCCL 231/1998; Stone J; 30.12.1999) (CFI) (para 10); *So Kai Hau v YSK2 Eng's Co Ltd* [2010] 5 HKLRD 278, [2010] HKCU 2201 (CFI) (para 35). The court may refuse to grant leave on the basis that the intended third party claims are frivolous: *China Citic Bank Int'l Ltd v Li Yan Hung & Ors* [2023] HKCU 4815, [2023] HKCFI 2978.

Order 16 rule 2 governs the procedure to be followed on an application for leave to issue a third-party notice. The application may be made ex parte, but the court may direct the issue of a summons in order that the plaintiff or even the proposed third party may be heard: r 2(1). Such a direction may be appropriate where there are concerns such as delay, as in *Ever-Long Capital Ltd v Rich Delta Dev't Ltd* [2008]

Professional Bookshop www.pbookshop.com

HKCU 1889 (HCA 509/2006; DHCJ L Chan; 27.11.2008) (CFI). According to the court's guidance note on common requisitions in ex parte applications, which is available on the judiciary's website under 'Guide to Court Services', leave to issue a third-party notice at a late stage will not be granted ex parte.

The application must be supported by an affidavit giving the information required by r 2(2). The requirements in r 2(2) are mandatory and the information should be adequately particularised: see *Safdar v Chesco Eng'g Ltd* [2008] 6 HKC 381, [2008] 5 HKLRD 725 (DC) (paras 17–18) and *Golden Leap Construction Co Ltd v Haraplaza Construction Ltd* [2023] HKCU 2619, [2023] HKCFI 1596 (para 11). The draft third party notice should be exhibited: see the court's guidance note referred to above. As an example, see *Ever-Long* (above) (para 16).

[16.2.2] Late application for leave to issue third party notice

The possibility of causing delay in prosecution of the main action and prejudice to the plaintiff are factors which the court should take into account in exercising its discretion to grant leave to issue a third party notice: *Henshaw v Sovereign Marine & General Insurance Co Ltd* [1988] HKC 115, 125 (CACV 33/1988; Silke VP, Kempster JA & Penlington J; 11.03.1988) (para 60) (CA). In *Chea Kam Wing Victor v Kwan Kin Travel Services Ltd* [2006] HKCU 2137 (HCPI 970/2005; Sakhrani J; 18.12.2006) (CFI) (para 16), an application made only after the action had been set down for trial was refused on the ground that it would delay the trial by a year, causing prejudice to the plaintiff in his claim for damages. On the other hand, the court was prepared to adjourn hearing of a vendor purchaser summons to accommodate the late joinder of the defendant's former solicitors as third party in *Lee Sau Ling v Chan Man Sang* [1999] HKCU 756 (HCMP 1731/1998; Yuen J; 30.06.1999) (CFI). The court was of the view the issue of solicitor's negligence in a conveyancing transaction should be tried with the main action.

See also *Li Shiu To v Cheung Pik Ng & Ors* [2013] HKCU 1558 (HCA 416/2009; Au-Yeung J; 10.07.2013) (CFI) (para 26) where the court allowed a late application on the ground that the convenience and justice of having all issues tried at the same time outweighed the delay.

[16.2.3] Limitation considerations

A claim made by way of third party proceedings is deemed to have been commenced on the same date as the general action was commenced. See s 35(1)(b) of the Limitation Ordinance (Cap 347). There is an exception where a 'new claim' as defined by s 35(2) is made by way of third party proceedings: the 'new claim' is deemed to be commenced on the date of commencement of the third party proceedings. The general limitation periods of Cap 347 will apply. Where third party proceedings are brought in a personal injury claim, the shortened limitation period in s 27 of Cap 347 does not apply. See *Chan Suwanna v Synergis Management Services Ltd & Ors* [2021] HKCU 74, [2021] HKDC 18 (paras 11–23).

3. Issue, service and acknowledgment of service, of third party notice (O. 16, r. 3)

(1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There must be served with every third party notice a copy of the writ or originating summons by which the action was

begun and of the pleadings (if any) served in the action and a form of acknowledgment of service in Form No. 14 in Appendix A with such modifications as may be appropriate.

(3) The appropriate office for acknowledging service of a third party notice is the Registry.

(4) Subject to the foregoing provisions of this rule, the following provisions of these rules, namely, Order 6, rule 7(3) and (5), Order 10, Order 11, Order 12 and Order 75, rule 4, shall apply in relation to a third party notice and to the proceedings begun thereby as if—

(a) the third party notice were a writ and the proceedings begun thereby an action; and

(b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action:

Provided that in the application of Order 11, rule 1(1)(c) leave may be granted to serve a third party notice outside the jurisdiction on any necessary or proper party to the proceedings brought against the defendant.

NOTES

[16.3.1] Issue of third party notice

When leave is granted to issue a third party notice, the court may give directions as to the period within which the notice is to be issued: r 3(1). Whether or not leave was required for the issue of the third party notice, it must be in Form 20 or 21 in Appendix A of these rules: r 1(1). A third party notice is issued on the date it is sealed by the court, and issues as to whether a limitation period has been complied with must be judged with reference to that date. See *Parshad v Chit Hing Construction Eng'g* [2011] 1 HKLRD 217, [2010] HKCU 2483 (CFI) (paras 93–120).

[16.3.2] Third party notice must be sealed

A third party notice is issued by the court. Being effectively the originating process against the third party, requiring him to acknowledge service and give notice of intention to defend or face default judgment under r 5, a third party notice should be sealed with the seal of the court just like a writ or originating summons. Order 6 rule 7(3), which provides that a writ is issued upon being sealed, applies to a third party notice by virtue of O 16 r 3(4). In *Keen Lloyd Ltd v Sam Lee Lightering & Transport Co Ltd* [1995] 2 HKC 350, 351B (HC), it was said that by virtue of those provisions, there is 'no doubt at all' that third party notices 'must be sealed'. In *Parshad v Chit Hing Construction Eng'g* [2011] 1 HKLRD 217, [2010] HKCU 2843 (CFI) (paras 93–120), a third party notice which had not been sealed was treated as ineffective and the court held that the procedural defect could not be cured under O 2 r 1.

[16.3.3] Service of third party notice

A third party notice must be served on the third party in the same manner as a writ or originating summons: O 16 r 3(4) expressly provides that various other provisions of these rules relating to service shall apply.

Rule 3(2) provides that together with the third party notice there must be served a

Professional Bookshop www.pbookshop.com

copy of the originating process by which the main action was commenced, together with any pleadings, and a form of acknowledgement of service. The third party must acknowledge service in the same way as must a defendant, and failure to do so may result in default judgment under r 5.

[16.3.4] Discontinuation and withdrawal of third party notice

A third party notice may be discontinued or withdrawn in the same way as any other claim, under Order 21. With regard to the costs of discontinuation and withdrawal, see the commentary under that Order, and see *Vinod Lachman Mahtani v Side* [2014] HKCU 832 (HCA 1410/2013; Registrar KW Lung; 01.04.2014) (CFI).

4. Third party directions (O. 16, r. 4)

(1) If the third party gives notice of intention to defend, the defendant who issued the third party notice must, by summons to be served on all the other parties to the action, apply to the Court for directions.

(2) If no summons is served on the third party under paragraph (1), the third party may, not earlier than 7 days after giving notice of intention to defend, by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

(3) On an application for directions under this rule the Court may—

(a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or

(b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or

(c) dismiss the application and terminate the proceedings on the third party notice;

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) Any order made or direction given under this rule may be varied or rescinded by the Court at any time.

NOTES

[16.4.1] Application for directions after issue of third party notice

A defendant who issues a third party notice is required to apply to the court for directions: O 16 r 4(1). The summons for directions should be served within 7 days of the third party giving notice of intention to defend, otherwise the third party can apply under r 4(2) to have the third party notice set aside.

Third party directions will normally provide for service of a statement of claim by the defendant on the third party, with consequential directions for service of a defence, for discovery and so forth. Useful references include the form of summons for third party directions in Chitty & Jacob's Queen Bench forms, and the directions given in *Paul Y Management Ltd v Eternal Unity Dev't Ltd & Ors* [2009] HKCU 825 (HCA 571/2007; A Cheung J; 01.06.2009) (CFI) (para 32). However, there will generally be no need for pleadings where the third party proceedings are issued under O 16 r 1(1)(c) (where the defendant seeks only to bind the third party by the result of any judgment between itself and the plaintiff, as discussed in the commentary under O 16 r 1): see *KP Financial Services Ltd v Li Ka Man* [2018] 2 HKLRD 256, [2018] HKCU 1618 (HCA 1919/2015; Chow J; 13.10.2017) (CFI) (para 19).

Rule 4(3)(b) empowers the court to direct that a third party claim be tried in a particular way. It is within the court's power to direct that there be a separate and subsequent trial of the third party claim. This can save costs in the event that the main claim fails and the third party trial becomes unnecessary. Where such a direction is given, the court may additionally grant leave to the third party to appear at the trial of the main action and oppose the plaintiff's claim, as in *Wing Mou Construction Co Ltd v Cosmic Insurance Corp Ltd & Anor* [2002] HKCU 730 (HCCT 40/2001; Ma J; 20.06.2002) (CFI).

Rule 4(3)(c) empowers the court, at the directions stage, to bring the proceedings under a third party notice to an end. In *Deks Air (HK) Ltd v Freight Management Int'l* (HCA 4261/1980; Commr Litton QC; 19.12.1980) (HC), this provision was relied upon in an (unsuccessful) application to strike out a third party notice for failure to disclose any ground of complaint against the third party.

In *Sabstex Trading Corp v Law Sau Kin & Anor* (HCA 3215/1986; Liu J; 25.06.1987) (HC), the court held that it was not appropriate to order two separate hearings if the result would be the same evidence having to be taken twice. Instead, the appropriate direction is for the evidence given in the action between the plaintiff and the defendant to be taken as evidence in the third party proceedings, with counsel for the third party to have equal right in cross-examination.

Where there is agreement on third party directions to be given, application may be made by consent summons. In addition to the consent of the defendant issuing the third party notice, and of the third party, the consent of the plaintiff is required: see the court's guidance note on common requisitions in ex parte applications, which is available on the judiciary's website under 'Guide to Court Services'.

[16.4.2] Where third party wishes to defend main claim

A third party who wishes to take an active part in defending the main claim against the defendant should seek a direction under r 4(4) rather than applying to be joined as a defendant: *Wing Mou Construction Co Ltd v Cosmic Insurance Corp Ltd & Anor* [2002] HKCU 730 (HCCT 40/2001; Ma J; 20.06.2002) (CFI).

Professional Bookshop www.pbookshop.com

5. Default of third party, etc. (O. 16, r. 5)

(1) If a third party does not give notice of intention to defend or, having been ordered to serve a defence, fails to do so—

(a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and

(b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, enter judgment against the third party in respect of any contribution, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

(2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

(3) The Court may at any time set aside or vary a judgment entered under paragraph (1)(b) or paragraph (2) on such terms (if any) as it thinks just.

NOTES

[16.5.1] Default in third party proceedings

Order 16 rule 5 lays out the consequences of default in third party proceedings.

Rule 5(1)(b) provides that where default judgment has been entered against a defendant the court may grant leave for that defendant to enter judgment against a third party. That power applies only where judgment in default has been entered against the defendant — where judgment by some other means, such as summary judgment, has been entered, the court's power to enter judgment against the third party is in r 7. See *Premier Fashion Wears Ltd v Li Hing Chung* [1994] 1 HKC 213 (CA).

Rule 5(3) expressly empowers the court to set aside any default judgment entered under the rule.

6. Setting aside third party proceedings (O. 16, r. 6)

Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

NOTES

[16.6.1] Test on application to set aside third party notice

In the Singapore case of *Lee Kuan Yew v Devon Nair* [1993] 1 SLR 723, it was held that the principles applicable on an application to set aside a third party notice are the same as on a strike out application under O 18 r 19. The Singapore rule considered in that case is identical to O 16 r 6.

7. Judgment between defendant and third party (O. 16, r. 7)

(1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on an application by summons, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant. *(L.N. 152 of 2008)*

(2) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, execution shall not issue on the judgment without the leave of the Court until that liability has been discharged.

(3) For the purpose of paragraph (2)—

***liability* (法律責任) includes liability under a judgment in the same or other proceedings and liability under an agreement to which section 3(4) of the Civil Liability (Contribution) Ordinance (Cap. 377) applies.**

NOTES

[16.7.1] Power to enter default judgment against third party

The provisions of O 16 r 7 are wide enough to permit the entry of default judgment against a third party where summary judgment has already been entered against the defendant: *Premier Fashion Wears Ltd v Li Hing Chung* [1994] 1 HKC 213 (CA).

[16.7.2] *Locus standi* of plaintiff

A plaintiff who has obtained judgment against a defendant has standing on an application concerning a claim by that defendant for indemnity against a third party. See the concurring judgment of Litton JA in *Premier Fashion Wears Ltd v Li Hing Chung* [1994] 1 HKC 213 (CA).

[16.7.3] Appeal by third party

A third party may appeal any judgment in favour of the defendant on the third party claim. However, leave is required for an appeal by a third party against a judgment awarded in favour of the plaintiff except in the circumstances laid down in *Asphalt & Public Works Ltd v Indemnity Guarantee Trust Ltd* [1969] 1 QB 465, 472F–473B. Those are:

(a) where the third party is bound by the judgment between the plaintiff and the defendant – see *On Park Parking Ltd v S-J* [2006] 3 HKC 132 (CA) (paras

Professional Bookshop www.pbookshop.com

ORDER 18

PLEADINGS

1. Service of statement of claim (O. 18, r. 1)
Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend.

NOTES

[18.1.1] When statement of claim required
Order 18 rule 1 provides for service of a statement of claim in cases where the writ of summons has been generally indorsed under O 6 r 2, and notice of intention to defend is subsequently given. If notice of intention to defend is not given, the plaintiff may enter default judgment under Order 13 without incurring the cost of setting out its claim with the precision required in a formal statement of claim.

The court may, under O 18 r 1, give leave to dispense with service of a statement of claim. Such leave will be appropriate in cases which may be tried without pleadings and an order to that effect is made under O 18 r 21.

[18.1.2] Time for service of statement of claim
The plaintiff is required by O 18 r 1 to serve a full statement of claim within 14 days of the defendant giving notice of intention to defend. Time may be extended under O 3 r 5 by agreement or by order of the court. Extension of time may be granted under O 3 r 5 even where application is not made until after expiration of the 14-day time limit, and even after the limitation period has expired: *Walker v Howard* [1997] TLR (13.11.1997) (CA, Eng).

[18.1.3] Manner of service of statement of claim
When a defendant gives notice of intention to defend, it is required to give an address for service. See Form 14 in Appendix A to these rules. Subsequent documents, including the statement of claim, may be served by 'ordinary service' (by hand, post or DX) pursuant to O 65 r 5. Personal service is not required.

[18.1.4] Failure to serve statement of claim
If a plaintiff fails to serve a statement of claim, the defendant may apply under O 19 r 1 for an order dismissing the action. In some cases, it may be appropriate to rely on the power under O 18 r 19(1)(d) to strike out for abuse of process on the ground that the plaintiff has no intention to proceed to trial. Alternatively, after lapse of time, the plaintiff may apply to dismiss for want of prosecution, as to which see the commentary under O 34 r 2.

[18.1.5] Filing of statement of claim
A statement of claim served under O 18 r 1 must be filed in court within the same time limit: O 18 r 5A.

2. Service of defence (O. 18, r. 2)

(1) Subject to paragraphs (2) and (3), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on every other party to the action who may be affected thereby before the expiration of 28 days after the time limited for acknowledging service of the writ or after the statement of claim is served on him, whichever is the later. ***(L.N. 383 of 1996)***

(2) If a summons under Order 14, rule 1, or under Order 86, rule 1, is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 28 days after the making of the order or within such other period as may be specified therein.

(3) Where an application is made by a defendant under Order 12, rule 8(1) or (2), paragraph (1) shall not have effect in relation to him unless the application is dismissed or no order is made on the application and, in that case, shall have effect as if it required him to serve his defence within 28 days after the final determination of the application or within such other period as may be specified by the Court. ***(L.N. 383 of 1996)***

(L.N. 152 of 2008)

NOTES

[18.2.1] Time for service of defence
Order 18 rule 2(1) requires a defendant to serve a defence within 28 days of the time limited for giving notice of intention to defend (see Order 12) or within 28 days of service of the statement of claim, whichever is later. In practical terms this means:

(a) a defendant may give notice of intention to defend immediately, without thereby shortening the time within which he must serve his defence; and
(b) where the writ is generally indorsed under O 6 r (2)(1)(a) with a concise statement short of a full statement of claim the 28-day period for service of a defence does not begin to run until the full statement of claim has been served.

The 28-day period prescribed by O 18 r 2(1) is subject to exceptions. First, the court may fix another time in the exercise of its powers to extend and abridge time (O 3 r 5), and of case management (Order 25). Secondly, there are specific exceptions under these Rules, including:

(a) *Application for summary judgment* – If the plaintiff issues a summons for summary judgment under Order 14 or Order 86 before the defence has been served, the time for service of the defence is suspended until further order: O 18 r 2(2).

Professional Bookshop www.pbookshop.com

(b) *Application to dispute jurisdiction* – Where a defendant applies under O 12 r 8 disputing the jurisdiction of the court, the time for service of the defence is suspended: O 18 r 2(3). However, an O 12 r 8 application will not have that effect if an unless order had already been made giving a final deadline for service of the defence: *Tremendous Success Holdings Ltd v Sinosoft Technology Group Ltd* (HCA 2345/2013; DHCJ Anita Yip SC; 11.07.2016) (CFI) (para 553).

(c) *Amendment of statement of claim* – Where the plaintiff amends its statement of claim without leave under O 20 r 3(1), the time for service of the defence (or amended defence) is extended to 14 days after service of the amended statement of claim if that is later than the period which would otherwise apply: see O 20 r 3(2)(b).

Prior to the amendment of r 2 with effect from 2009, the period for service of a defence was only 14 days. The increase to 28 days was recommended in the final report of the Chief Justice's Working Party on Civil Justice Reform (para 244) because more time would be required on implementation of the reforms for defendants to deal substantively with the plaintiff's allegations and verify the case with a statement of truth. It was suggested that without the increase there would be more applications for extension of time, adding to costs. It seems odd that the 14-day period prescribed in cases where the statement of claim is amended (see above) was not extended at the same time.

The lengthened period does not apply to certain proceedings which were underway when the amendment came into force: see the transitional provision in O 18 r 24.

A defendant who is unable to file a defence within time may seek an extension of time, as to which see the commentary below. Even in the absence of an extension of time a defence may be filed late, provided, of course, that judgment in default has not been entered under Order 19. This is despite the fact that the rules do not expressly say so. Leave of court is not required. See *A-G v Matthews* [2011] UKPC 38 (paras 12–14). Note that *Matthews* concerned a failure to file a defence within the time prescribed by the rules. The result would likely to be different if a defendant fails to file a defence within the time prescribed by a court order, especially if it is in the form of an unless order.

[18.2.2] Filing of defence

Although O 18 r 2 refers only to service of a defence, the practice in Hong Kong is to file the defence in court as well. See O 18 r 5A which provides that pleadings shall be filed in court within the time limited for service of the same.

[18.2.3] Multiple defendants – severance of defences

Where more than one defendant is named in a writ and their interests are identical, they may file and serve a common defence. However, separate or 'severed' defences will be required in other cases, in particular, where one defendant seeks to shift liability to another.

[18.2.4] Extension of time for filing and service of defence

The court's general discretion to order an extension of time under O 3 r 5 extends to the filing and service of a defence. The power may be exercised even where the application is not brought until after expiration of time. See the commentary under O 3 r 5.

The issue of a summons seeking an extension of time to file and serve a defence does not stop the time from running. If the time has already expired, and notice has

been given pursuant to O 19 r 8A, it is open to the plaintiff to enter default judgment pending the hearing of the summons. See *Schindler Lifts (HK) Ltd v Ocean Joy Investments Ltd* [2002] 1 HKLRD 279, [2002] HKCU 37 (CFI) (para 10); *Stevenson, Wong & Co (a firm) v Goldsense Technology Ltd* [2007] 1 HKLRD 217, [2006] HKCU 1974 (HCA 2050/2005; Saunders J; 29.11.2006) (CFI) (para 16). Such a default judgment is not irregular and is not liable to be set aside save on the usual principles: see the commentary under O 19 r 9. Likewise, time continues to run pending an application for transfer to the District Court, meaning that the defendant is not relieved of its obligation to serve a defence unless an express stay is ordered: *Tai Chao Cheng v Cheung Chun* (HCA 770/2003; Recorder Jat SC; 07.05.2004) (CFI) (para 23).

On an application for extension of time to serve a defence, the court will consider the reasons for the delay and the merits of the proposed defence. See *Lam Chi Ming (Executor) v Leung Hop Fook & Ors* (HCA 1590/2011; Registrar KW Lung; 04.09.2012) (CFI).

[18.2.5] Form of application for extension of time to file and serve defence

An application for extension of time to file and serve a defence is made by summons returnable before a master. A form of summons which may be used as a reference has been made available in the Forms section of the judiciary website at www.judiciary.gov.hk.

3. Service of reply and defence to counterclaim (O. 18, r. 3)

(1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 8; and if no reply is served, rule 14(1) will apply.

(2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 28 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 28 days after the service on him of the counterclaim to which it relates. ***(L.N. 152 of 2008)***

NOTES

[18.3.1] Where reply or defence to counterclaim must be served

Order 18 rule 3 deals with the circumstances in which the plaintiff may respond to the defendant's pleading.

It is not necessary for the plaintiff to respond to the defendant's defence in most cases because O 18 r 14 deems there to be joinder of issue in the absence of a response. Non-admission of the defence is deemed by that rule. However, if the plaintiff intends at trial to challenge any part of the defence with an allegation which is of the type which must be pleaded under O 18 r 8, then he must respond with a 'reply': O 18 r 3(1). Furthermore, if the defendant has counterclaimed, the plaintiff must serve a

Professional Bookshop
www.pbookshop.com

defence to counterclaim if he intends to defend the same: O 18 r 3(2).

A reply is the plaintiff's response to the defence. It should not be used to plead a new cause of action. Amendment of the statement of claim is the appropriate way to introduce a new cause of action. See *First Laser Ltd v Fujian Enterprises (Holdings) Co Ltd & Anor* [2010] HKCU 1502 (CACV 126/2008; Cheung, Yeung & Yuen JJA; 08.07.2010) (CA) (paras 8.1–8.3). That enables the defendant to seek consequential leave to amend its defence so as to defend the new claim. With regard to consequential amendments, see the commentary under O 20 r 5.

A reply which is inconsistent with a party's own previous pleading is liable to be struck out as a 'departure' under O 18 r 10: *Tao Soh Ngun v HSBC Int'l Trustee Ltd* [2018] HKCU 3534, [2018] HKCA 691 (paras 3, 9–16).

With regard to counterclaims generally, see O 15 rr 2 and 3 and the commentary thereunder.

[18.3.2] Time for serving reply or defence to counterclaim

Order 18 rule 3 was amended with effect from 2009 as part of the civil justice reforms to extend the time for serving a reply or defence to counterclaim from 14 days to 28 days. This is in line with the increase of the time under r 2 for service of a defence, implemented at the same time. See the commentary under that rule. As is the case with r 2, the lengthened period under r 3 does not apply to some proceedings which were underway at the time the amendment came into force: see the transitional provision in O 18 r 24.

4. Pleadings subsequent to reply (O. 18, r. 4)

No pleading subsequent to a reply or a defence to counter-claim shall be served except with the leave of the Court.

NOTES

[18.4.1] Leave to serve subsequent pleadings

At one time, pleadings commonly continued for round after round. Nowadays, O 18 r 20 deems them to close no later than 14 days after service of the reply and/or defence to counterclaim. Order 18 rule 4 requires leave for any subsequent pleading. Leave will not be granted unless there is a real need for the subsequent pleading: *Great Tower Development Ltd v IO Luso Apartments* [2021] HKCU 1135, [2021] HKDC 338 (paras 6–11). In *First Laser Ltd v Fujian Enterprises (Holdings) Co Ltd & Anor* [2010] HKCU 1502 (CACV 126/2008; Cheung, Yeung & Yuen JJA; 08.07.2010) (CA) (paras 8.5–8.8), the court considered that it would be appropriate to grant leave to a defendant to serve a rejoinder pleading a point of foreign law in response to the plaintiff's reply. This was appropriate because foreign law is a matter which must be specifically pleaded under O 18 r 8. Where there is a split trial, r 4 may be used to enable the parties to refine issues on quantum following trial on liability, but any such subsequent pleading may not make claims outside the scope of the indorsement of claim and statement of claim: *Magic Score Ltd v Hongkong & Shanghai Banking Corp Ltd* (HCA 11077/1994; Lam J; 23.06.2006) (CFI). The court may also make orders to streamline the pleadings process. In *Zhao Long & Anor v Berpu Technology Co Ltd & Anor* [2023] HKCU 2958, [2023] HKCFI 1795, the parties had filed five sets of pleadings up to an Amended Surrejoinder. Leave was sought to file a Rebutter which would necessitate a Surrebutter (as the plaintiff should have the last word). Instead of requiring the judge at a trial to adjudicate on seven sets of pleadings from only two camps of protagonists, which would be undesirable, the court gave directions to

amalgamate the pleadings into three sets, comprising a Fresh Statement of Claim, a Fresh Defence and a Fresh Reply.

5. Service of pleadings in Summer Vacation (O. 18, r. 5)

Pleadings or amended pleadings shall not be served during the Summer Vacation, except with the leave of the Court or with the consent of all the parties to the action.

NOTES

[18.5.1] Effect of Order 18 rule 5

By virtue of O 18 r 5, pleadings are not to be served during the court's summer vacation, which is the month of August. The rule should be read together with O 3 r 3 and s 31 of the High Court Ordinance (Cap 4) by which the running of time during the month of August is suspended.

The English equivalent of O 18 r 5 was repealed in 1990 along with companion legal provisions there suspending the running of time during the court vacation in that jurisdiction.

5A. Filing of pleadings and originating process (O. 18, r. 5A)

(L.N. 122 of 2017)

(1) Subject to Order 3, rule 5(3) and subject to the provisions of this rule, every pleading and originating process shall be filed in the Registry within the time during which that pleading or originating process may be served by him on any other party.

(2) A party may apply to the court for further time to file a pleading or originating process on a summons stating the further time required.

(3) If a party fails to file a pleading or originating process within the time allowed under paragraph (1) or further time allowed under paragraph (2), he shall not be at liberty to file that pleading or originating process without the leave of the Court.

NOTES

[18.5A.1] Origin and scope of Order 18 rule 5A

Order 18 rule 5A provides for the filing of originating process and pleadings in the court registry. The rule is unique to Hong Kong in the sense that there was no equivalent in the former English Rules of the Supreme Court. When the Hong Kong rules were amended to bring them into line with the then English rules in 1988, pleadings were not required to be filed in England, but Hong Kong chose a filing requirement. England has now followed Hong Kong in this regard. The Civil Procedure Rules 1998 introduced filing requirements for some documents. See, for example, CPR 7.4(3) for particulars of claim and CPR 15.2 for defences.

See also PD 24.1, para 9 which provides that certain other documents generated for use in the litigation process, specifically lists of documents, hearsay notices, witness statements and expert reports, need not be filed unless there is a specific direction of the court.

Professional Bookshop www.hkbookshop.com

6. Pleadings: formal requirements (O. 18, r. 6)

(1) Every pleading in an action must bear on its face—

(a) the year in which the writ in the action was issued and the number of the action,

(b) the title of the action,

(d) the description of the pleading, and

(e) the date on which it was served.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

(4) Every pleading must be indorsed—

(a) where the party sues or defends in person, with his name and address;

(b) in any other case, with the name or firm and business address of the solicitor by whom it was served, and also (if the solicitor is the agent of another) the name or firm and business address of his principal.

(5) Every pleading must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

NOTES

[18.6.1] Practice Direction 19.1 – formal requirements of pleadings

Part I of PD 19.1, in effect since 1 February 1999 stipulates, pursuant to O 18 r 6, that pleadings which are required to be served must, when presented for filing in the High Court Registry, bear the date or dates on which served. The full text of the Practice Direction can be viewed on the judiciary's website at www.judiciary.gov.hk, or that of the Hong Kong Legal Information Institute at www.hklii.org, both of which are accessible by the general public free-of-charge.

[18.6.2] Rule 6(5) – pleadings must be signed

The requirement of O 18 r 6(5) that every pleading be signed by counsel or solicitor, or by the party if in person, is not to be read literally. In *Max Share Ltd & Anor v Ng Yat Chi (No 1)* [1998] 1 HKC 123 (CFA), the Court of Final Appeal dismissed an application to set aside a party's case which appeared not to have been signed in accordance with the equivalent rule in the CFA Rules, referring to the following authorities:

(a) *London County Council v Agricultural Food Products Ltd* [1955] 2 QB 218 where it was said 'at common law a person sufficiently signs a document if it is signed in his name with his authority by somebody else'.

(b) *R v Kent Justices* (1873) LR 8 QB 305 – where a statute requires that a document be signed it is a question of construction whether the statute displaces the common law rule and 'makes a personal signature indispensable'.

(c) *Goodman v J Eban Ltd* [1954] 1 QB 550 – where a rubber stamp facsimile signature was considered sufficient.

The CFA considered the common practice of printing counsel's name at the end of a pleading to be acceptable.

[18.6.3] Language of pleadings

Pleadings may be in either Chinese or English: Basic Law, art 9; High Court Civil Procedure (Use of Language) Rules (Cap 5A), r 4. However, a pleading should not be written in a mixture of the two languages: if in an English pleading it is necessary to include Chinese words, such as allegedly defamatory words spoken in Chinese, an English translation should be provided. See *Cheung Kong (Holdings) Ltd v Chan Wai Yip Albert* [2000] 4 HKC 591, approved by the Court of Appeal in *Chan Kong v Chan Li Chai Medical Factory (HK) Ltd* [2009] 2 HKLRD 455, [2008] HKCU 1407 (CA) (para 21). See also the commentary under O 63 r 3A concerning the language of documents filed in court.

In *True One Design & Decoration Co Ltd v Ho Po Yin* [2015] 6 HKC 260 (DCCJ 304/2015; DDJ Ludwig Ng; 21.07.2015) (DC) (para 19), the writ and statement of claim were in English, but the defence was filed in Chinese. The court dismissed an application to require the defendant to provide an English translation. Although it was 'undesirable' for the pleadings to be in different languages, the court put more weight on convenience and cost-effectiveness given the fact the plaintiff had not been able to identify any concrete prejudice or confusion.

7. Facts, not evidence, to be pleaded (O. 18, r. 7)

(1) Subject to the provisions of this rule and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation must not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

Professional Bookshop
www.hkbookshop.com

NOTES

[18.7.1] The general rules of pleading – Order 18 rule 7(1)

The general rules of pleading are expressed in O 18 r 7(1), which should be read in the context of the Order as a whole. They may be expressed as follows:

(1) *Plead only material facts relied upon*

The first general rule of pleading which can be discerned from O 18 r 7(1) is that a party should plead 'only ... the material facts' relied upon. This is taken to mean that it is not appropriate to plead averments of an argumentative nature or submissions. See *Excel Concrete Ltd v Concrete Producers Ass'n of HK Ltd* [2014] HKCU 1520 (CACV 233/2013; Lam VP, McWalters JA & Poon J; 25.06.2014) (CA) (paras 12–13). In that case, the Court of Appeal also highlighted the requirement in r 7(1) that the material facts be pleaded 'in a summary form' and that every pleading 'must be as brief as the nature of the case admits'. Reference may also be made to *Middlesex County Council v Nathan* [1937] 2 KB 272 where an allegation that X was 'legally liable' to support Y was said to be a 'submission of law rather than a statement of fact' and was ignored by the court.

This aspect of r 7(1) has also been taken to mean that a pleading need not set out the conclusions, or legal result, it is hoped to persuade the court to draw. See *Philipps v Philipps* (1878) 4 QBD 127. In the frequently cited case of *Re Vandervell's Trusts (No 2)* [1974] Ch 269, [1974] 3 All ER 205, 213, Lord Denning MR said:

> It is sufficient for the pleader to set out the material facts. He need not state the legal result. If, for convenience, he does so, he is not bound by, or limited to, what he has stated. He can present, in argument, any legal consequence of which the facts permit.

See also *Drane v Evangelou* [1978] 2 All ER 437, 440, [1978] 1 WLR 455, 458, quoted with approval in *Yeung Wah James v Alfa Sea Ltd* [1993] 1 HKC 440 (HCA 426/1992; DHCJ Yeung; 08.06.1993) (HC).

In *Vandervell*, it was held that a claim that property was held in trust could be founded on a pleading that one person gave the property to another to hold for his former's benefit; it was not necessary to plead 'trust' expressly.

The *Vandervell* line of authorities was called into question in the Hong Kong Court of Appeal in *Mui So Bing v Wan Chi Shing & Ors* [2020] 1 HKC 85, [2019] HKCA 1341 (para 21.1 et seq). There (at para 22.3), Yuen JA noted that O 18 r 7 'does not refer to legal consequences'; that O 18 r 11 'provides that a party may raise any point of law in a pleading', and continued (para 23.1):

> ... legal practice has changed significantly in the 45 years since those passages in *Re Vandervell*, and the notion that a legally qualified pleader may plead only the facts (or plead the facts with a specific legal consequence), leaving his opponent and the court to have to second-guess what legal consequence (or other legal consequences) he may choose to argue at trial or on appeal, is in my view inimical to the underlying objectives of the Civil Justice Reform.

The above comments are probably obiter dicta, as the appeal appears to have been decided on another point. However, pleaders should certainly take note.

(2) *Plead facts, not evidence*

Order 18 r 7(1) expressly provides that a pleading should set out 'material facts', 'but not the evidence by which those facts are to be proved'. A pleading should not contain matters in the nature of a witness statement: *Excel Concrete* (above) (para 13). In *Shun Lin Weaving Factory v Eva Siu Cheng Yee Wah* [1980] HKC 605, 613 (HCA 4950/1979; Zimmern J; 17.01.1980) (HC) (para 19), the court set out the following passage from *Williams v Wilcox* (1838) 9 A&E 331, 112 ER 857, 863:

> It is an elementary rule in pleading that when a state of facts is relied on, it is enough to allege it simply without setting out the subordinate facts which are the means of proving it or the evidence sustaining the allegation.
>
> (Note - the wording in the ER report is slightly different).

In *Shun Lin* (above), the Hong Kong court held that pleading the contents of a telephone conversation offended this part of r 7(1) as it was no more than a set of subordinate facts to sustain the pleaded case of an oral contract. See also *Mehul v Avijit Nayak* [2018] HKCU 4234, [2018] HKCFI 2683 (para 8). Pleas which infringe this aspect of the rule may be struck out. See *TotalLubricants HK Ltd & Ors v de Chanterac & Ors* (HCA 1694/2008; Poon J; 15.12.2009) (CFI) (para 18).

(3) *All the material facts must be pleaded*

Order 18 rule 7(1) requires that the 'material facts' on which a party relies be pleaded. 'Material' facts for this purpose are facts 'necessary for the purpose of formulating a complete cause of action': *Bruce v Odhams Press, Ltd* [1936] 1 All ER 287, 294 (CA, Eng). Evidence is not admissible at trial to prove an allegation which has not been pleaded. As Ma CJ said in *Kwok Chin Wing v 21 Holdings Ltd* (2013) 16 HKCFAR 663, [2013] HKCU 2272 (para 21), it is 'the pleaded issues that define the scope of the evidence, and not the other way round'. If there is no allegation of an essential element, no evidence thereon will be admissible and the claim or defence cannot succeed: *Bruce* (above) (at 294), *Waghorn v George Wimpey & Co Ltd* [1969] 1 WLR 1764, 1771F. To put it another way, all the material facts must be pleaded. As Ribeiro PJ said in *Sinoearn Int'l Ltd v Hyundai-CCECC Joint Venture (a firm)* (2013) 16 HKCFAR 632, [2013] HKCU 2273 (CFA) (para 30):

> A party must raise all the issues he wishes to raise to be dealt with at the trial. Parties are not entitled to have issues recently thought up dealt with separately and piecemeal. The other party is entitled to know from a clear pleading what is the entire case he has to meet so that he can decide whether particulars should be sought; how he should plead in response; what discovery he is entitled to; what evidence he should adduce to meet it; and what points of law should be taken.

These aspects of r 7(1) applies expressly to a 'claim or defence'. A defendant who wishes to put forward a positive defence (as opposed to simply putting the plaintiff to proof) must plead all the facts material to that defence. Failure to do so may result in the party being barred from relying on the defence at trial under O 18 r 13(5). A party who discovers at trial that facts material to its claim or defence have not been pleaded will need to seek leave to amend its pleading, and will likely face costs consequences including costs thrown away, as in *Davie v New Merton Board Mills Ltd* [1956] 1 All ER 379, [1956] 1 WLR 233.

For discussion of some specific types of facts that are expressly required to be pleaded, see also the commentary under O 18 r 8.

[18.7.2] What pleadings should do

A useful *precis* of the law and practice relating to pleadings can be found in the judgment of Bokhary JA in *Aktieselskabet Dansk Skibsfinansiering v Wheelock Marden* [1994] 2 HKC 264, 269–70 (CACV 24/1994; Bokhary JA & Liu J; 13.07.1994) (CA) (para 24). The learned judge said:

> Our procedure aims to ensure that litigation, particularly the trial itself, is conducted fairly, openly, free from surprise, and without unnecessary delay or expense. In the attainment of that objective, pleadings have a fundamental role to play. Accordingly, there are a number of things which pleadings should do. Ideally, they would do them from the outset. In any event, they must do them by the time they have been properly

Professional Bookshop www.pbookshop.com