Connecticut Judicial Branch
Law Libraries

2020 Edition

Motion to Strike

A Guide to Resources in the Law Library

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See Also:

- Answer, Special Defense, Counterclaim and Setoff to a Civil Complaint
- Motion to Dismiss
- Oral Argument in Civil Matters
- Request to Revise
- Motion for Summary Judgment

- **Motion to Strike**: "shall be used whenever any party wished to contest: (1) the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more counts thereof, to state a claim upon which relief can be granted; or (2) the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint; or (3) the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof, because of the absence of any necessary party or, pursuant to Section 17-56(b), the failure to join or give notice to any interested person; or (4) the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts; or (5) the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein." Conn. Practice Book § 10-39(a) (2020).
- **Memorandum of Law**: "Each motion to strike must be accompanied by a memorandum of law citing the legal authorities upon which the motion relies." Conn. Practice Book § 10-39(c) (2020).
- **Opposition to Motion to Strike**: "Any adverse party shall have thirty days from the filing of the motion to strike to respond to a motion to strike filed pursuant to Section 10-39 by filing and serving in accordance with Sections 10-12 through 10-17 a memorandum of law in opposition." Conn. Practice Book § 10-40(a) (2020).
- **Non-Joinder of Parties**: "A motion to strike on the ground of the nonjoinder of a necessary party or noncompliance with Section 17-56(b) must give the name and residence of the missing party or interested person or such information as the moving party has as to the identity and residence of the missing party or interested person and must state the missing party's or interested person's interest in the cause of action." Conn. Practice Book § 10-39(d) (2020).
- **Standard of Review**: "Because a motion to strike challenges the legal sufficiency of a pleading and, consequently, requires no factual findings by the trial court, our review of the court's ruling...is plenary.... We take the facts to be those alleged in the complaint that has been stricken and we construe the complaint in the manner most favorable to sustaining its legal sufficiency.... Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied.... Moreover, we note that [w]hat is necessarily implied [in an allegation] need not be expressly alleged.... It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted.... Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically." Lawrence v. O & G Indus., Inc., 319 Conn. 641, 648-649, 126 A.3d 569 (2015).

- **Motion to Dismiss**: "There is a significant difference between asserting that a plaintiff *cannot* state a cause of action and asserting that a plaintiff *has not* stated a cause of action, and therein lies the distinction between the motion to dismiss and the motion to strike." Egri v. Foisie, 83 Conn. App. 243, 247, 848 A.2d 1266 (2004).

- **Motion for Summary Judgment**: "Our Supreme Court has set forth the appropriate circumstances in which a motion for summary judgment may be used instead of a motion to strike to challenge the legal sufficiency of a complaint. [T]he use of a motion for summary judgment to challenge the legal sufficiency of a complaint is appropriate [if] the complaint fails to set forth a cause of action and the defendant can establish that the defect could not be cured by repleading." (Internal quotation marks omitted.) Streifel v. Bulkley, 195 Conn. App. 294, 301, 224 A.3d 539 (2020).

- **After Motion to Strike Granted:** "The governing legal principles on motions to strike are very well established. [A]fter a court has granted a motion to strike, [a party] may either amend his pleading [pursuant to Practice Book § 10-44] or, on the rendering of judgment, file an appeal.... The choices are mutually exclusive [as the] filing of an amended pleading operates as a waiver of the right to claim that there was error in the sustaining of the [motion to strike] the original pleading...." (Internal quotation marks omitted.) Lund v. Milford Hospital, Inc., 326 Conn. 846, 848, 850, 168 A.3d 479 (2017).

- **Substitute Pleading**: "Within fifteen days after the granting of any motion to strike, the party whose pleading has been stricken may file a new pleading; provided that in those instances where an entire complaint, counterclaim or cross complaint, or any count in a complaint, counterclaim or cross complaint has been stricken, and the party whose pleading or a count thereof has been so stricken fails to file a new pleading within that fifteen day period, the judicial authority may, upon motion, enter judgment against said party on said stricken complaint, counterclaim or cross complaint, or count thereof. Nothing in this section shall dispense with the requirements of Sections 61-3 or 61-4 of the appellate rules." Conn. Practice Book § 10-44 (2020).

Section 1: Legal Sufficiency of Complaint

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion strike filed to contest the legal sufficiency of the allegations of any complaint, counterclaim or cross claim, or of any one or more count thereof, to state a claim upon which relief can be granted.

DEFINITIONS:

- **Complaint**: "The first pleading on the part of the plaintiff shall be known as the complaint. It shall contain a concise statement of the facts constituting the cause of action and, on a separate page of the complaint, a demand for relief which shall be a statement of the remedy or remedies sought. When money damages are sought in the demand for relief, the demand for relief shall include the information required by General Statutes § 52-91." Conn. Practice Book § 10-20 (2020).
- **Cause of Action**: "For the purposes of the regulation of pleadings and procedure in civil actions, a plaintiff's cause of action constitutes 'a single group of facts which are claimed to have brought about an unlawful injury to the plaintiff for which one or more of the defendants are liable, without regard to the character of the legal rights of the plaintiff which have been violated.'" JP Morgan Chase Bank v. Winthrop Properties, 312 Conn. 662, 684–85, 94 A.3d 622, 635–36 (2014).
- **Claims**: "[L]egal theories that arise out of and depend upon the group of facts that brought about a single primary breach of duty…". Ibid.
- "**In ruling on a motion to strike**, the court is limited to the facts alleged in the complaint. . . . A motion to strike is properly granted if the complaint alleges mere conclusions of law that are unsupported by the facts alleged." Novametrix Medical Systems, Inc. v. The BOC Group, Inc., 224 Conn. 210, 215, 618 A. 2d 25 (1992).
- **A "speaking" motion to strike** (one imparting facts outside the pleadings) will not be granted. Doe v. Marselle, 38 Conn. App. 360, 364, 660 A.2d 871 (1995), reversed on other grounds, 236 Conn. 845, 675 A.2d 835 (1996).

STATUTES:

- Conn. Gen. Stat. (2019)
  Chapter 898 – Pleading
  § 52-91. Pleadings; contents of complaint.

COURT RULES:

- Connecticut Practice Book (2020)
  § 10-6. Pleadings Allowed and Their Order.
  § 10-10. Supplemental Pleadings; Counterclaims.
  § 10-39. Motion to Strike; Grounds.
  § 10-40. –Opposition; Date for Hearing.
  § 10-43. –When Memorandum of Decision Required on

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

Motion to Strike.
§ 10-44. –Substitute Pleading; Judgment.
§ 10-45. –Stricken Pleading Part of Another Cause or Defense.

FORMS:

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.

- Figure 1: Motion to Strike

- 3 Connecticut Practice Series, *Connecticut Civil Practice Forms*, by Joel M. Kaye, 2004, Thomson West, with 2020 supplement (also available on Westlaw).
  Form 106.2 Motion to Strike

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, LexisNexis, 2019.
  § 7.30 Form: Motion to Strike

- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, Thomson West, 2020 (also available on Westlaw).
  § 1:48 Sample supporting and opposition briefs — Motion to strike portions of complaint (attorney's fees, punitive damages, and future disability benefits)
  § 1:49 Sample supporting and opposition briefs — Memorandum of law in support of motion to strike portions of complaint (attorney's fees, punitive damages, and future disability benefits)
  § 1:50 Sample supporting and opposition briefs — Motion to strike portions of complaint (cause of action) — Negligent investigation by employer — Motion
  § 1:51 Sample supporting and opposition briefs — Motion to strike portions of complaint (cause of action) — Negligent investigation by employer — Memorandum of points and authorities in support of motion to strike
  § 1:52 Sample supporting and opposition briefs — Motion to strike portions of complaint (cause of action) — Negligent investigation by employer — Memorandum of points and authorities in opposition to motion to strike
  § 1:53 Sample supporting and opposition briefs — Motion to strike portions of complaint (causes of action) — Breach of contract in medical malpractice — Motion
  § 1:54 Sample supporting and opposition briefs — Motion to strike portions of complaint (causes of action) — Breach of contract in medical malpractice context — Memorandum of points and authorities in opposition to motion to strike
  § 1:55 Sample supporting and opposition briefs — Motion to strike portions of complaint (causes

of action) — Breach of implied covenant of good faith, Unfair Insurance Practices Act claim, Unfair Trade Practices Act claim, and timeliness — Motion and order

§ 1:57 Sample supporting and opposition briefs — Motion to strike portions of complaint (causes of action) — Fraud, aiding and abetting breach of fiduciary duty, tortious interference, piercing corporate veil, theft, conspiracy, and unjust enrichment — Motion

§ 1:58 Motion to strike complaint (failure to join necessary party)--Memorandum of points and authorities in support of motion to strike

§ 1:59 Motion to strike complaint (causes of action)--Negligence and CUTPA violations against particular defendant--Memorandum of points and authorities in support of motion to strike

§ 1:60 Motion to strike complaint in its entirety — Memorandum of points and authorities in support of motion to strike — Breach of restrictive covenants in employment contract

§ 1:61 Objection to motion to strike and memorandum of law--Securities fraud by ratings agency

- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, LexisNexis, 2019.
  F-10-39 − Motion to Strike

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.

- Ventura v. Town of East Haven, 330 Conn. 613, 636, 199 A.3d 1 (2019). "We then concluded in Gordon as follows: It is the existence of a duty that is the dispositive factor concerning the motion to strike in this case. To survive a motion to strike, the court must determine that the [defendant] owed a duty to the [plaintiff]. The existence of this duty is a matter for the court to decide, not a jury. . . . The plaintiff's claim that the trial court was precluded from deciding on a motion to strike whether the [defendant] owed a duty to the [plaintiff] is unavailing." (Internal quotation marks omitted.)

- Town of Plainville v. Almost Home Animal Rescue & Shelter, Inc., 182 Conn. App. 55, 187 A.3d 1174 (2018). "Furthermore, to the extent that the plaintiffs argue that the court somehow engaged in impermissible fact-finding rather than limiting its review to those facts alleged in the pleadings, we are not persuaded. What the plaintiffs refer to in their brief as the court's 'findings' are actually legal conclusions germane to the court's evaluation of the legal sufficiency of the complaint. (p. 64)

  ...it was entirely proper for the trial court to have reviewed the statute that the plaintiffs asserted as the basis for the negligence per se count." (p. 66)

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- Sempey v. Stamford Hospital, 180 Conn. App. 605, 623, 184 A.3d 761 (2018). "As a direct consequence of this mistake, the court concluded that because the plaintiff *had not* stated a claim in counts two and three, the plaintiff *could not* state a claim. That is exactly the violation of strong policy this court warned against in *Egri* v. *Foisie*, supra, 83 Conn. App. at 247–50, 848 A.2d 1266."

- Binkowski v. Board of Education of City of New Haven, 180 Conn. App. 580, 592, 184 A.3d 279 (2018). [*Intentional Tort*] "In sum, the plaintiff failed to allege facts that, if proven, would be sufficient to allow recovery under either the actual intent standard or the substantial certainty standard. Accordingly, the trial court properly granted the defendants' motion to strike the plaintiff's complaint."

- Estela v. Leonhardt, Judicial District of Hartford at Hartford, No. HHD CV-17-6075937 S (Dec. 17, 2018) (67 Conn. L. Rptr. 489.) "...other courts have concluded that a motion to strike may be granted with prejudice. See *Montalbano* v. *363 Main St. Middletown, LLC,* Superior Court, judicial district of Hartford, Docket No. HHD CV 16 6066421 (November 2, 2018, Peck, J.T.R.) (court has authority to grant a motion to strike with prejudice); *Harmony Healthcare International, Inc.* v. *PARCC Healthcare, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV 07 5009225 (January 20, 2010, Keegan, J.) (granting motion to strike with prejudice due to the repetitive nature of parties' filings).

- Adipietro v. Kedersha, Judicial District of Fairfield at Bridgeport, No. FBTCV186073040S (Nov. 21, 2018) (2018 Conn. Super. LEXIS 6902). "Whenever a party moves to strike paragraphs, rather than an entire count of a pleading, the trial court must first determine if the motion to strike is procedurally proper. Motions to strike individual paragraphs are not expressly permitted under the Practice Book, and Superior Courts are divided over whether to apply motions to strike, rather than requests to revise, to eliminate single paragraphs. Indeed, Practice Book §10-35(2), which governs requests to revise, calls for them to be used for 'the deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading.' Nevertheless, Superior Courts have granted motions to strike individual paragraphs under particular circumstances." [See: *Pytlak* v. *Western Connecticut Medical Group*, *Inc*. below]

- Bruno v. Travelers Companies, 172 Conn. App. 717, 722–24, 161 A.3d 630 (2017). "The dispositive issue raised by the plaintiff concerns her claim that absolute immunity implicates the trial court's subject matter jurisdiction. She

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contends that the court erred by not ordering the defendants to file a motion to dismiss rather than permit them to raise the issue of absolute immunity and the court's subject matter jurisdiction in a motion to strike. We agree with the plaintiff's contention that absolute immunity implicates the trial court's subject matter jurisdiction....

"We disagree, however, on what was the appropriate action for the trial court to take once this issue, or a doctrine implicating subject matter jurisdiction, was raised. Here, once the defendants raised the issue of absolute immunity, based on the application of the litigation privilege, and the court then determined that the plaintiff's initial complaint was barred by the doctrine of absolute immunity, the court should have dismissed the case against the defendants, essentially treating the motion to strike as a motion to dismiss."

- 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) (2016 WL 1578076). "'[Ordinarily, [a] claim that an action is barred by the lapse of the statute of limitations must be plead as a special defense, and not raised by a motion to strike.' (Internal citation omitted. Internal quotations omitted.) *Greco v. United Technologies Corp*., 277 Conn. 337, 344 n. 12, 890 A.2d 1269 (2006). There are two exceptions to this rule however. *Forbes v. Ballaro,* 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. Id. 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.' Id. at 239–40, 624 A.2d 389, citing, *DeMartino v. Siemen*, 90 Conn. 527, 528–29, 97 A. 765 (1916)."

- Krayeski v. Greenwich Hospital, Superior Court, Judicial District of Stamford-Norwalk, No. FST-CV14-6022177-S (November 24, 2015) (2015 WL 9595345) (61 Conn. L. Rptr. 420). "Thus, although *Rowe v. Godou*, 209 Conn. 273, 279 (1988), is sometimes cited for the proposition that a motion to strike can only be used to attack the sufficiency of an entire count, the actual holding was that it had been improper to strike an entire count when the relevant count included legally-sufficient allegations as to at least some of the defendants. As was recognized in footnote 9 of that decision, despite the denial of a request to revise (presumably asking to have the complaint separated into

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counts directed to each of the defendants), the individual defendant 'still had the opportunity to move to strike the allegations of the complaint insofar as they purported to state a cause of action against it.'

"Thus, notwithstanding the complaint/count nomenclature, a motion to strike can be addressed to a portion of a count, so long as it is a portion that articulates a distinct cause of action."

- Pytlak v. Western Connecticut Medical Group., Inc., Superior Court, Judicial District of Waterbury, No. UWY-CV15-6026173-S (Nov. 16, 2015) (61 Conn. L. Rptr. 289) (2015 WL 9242055). "Whenever a party moves to strike paragraphs, rather than an entire count of a pleading, the trial court must first determine if the motion to strike is procedurally proper. In *Coe v. Board of Education*, supra, 301 Conn. at 121 n. 5, the court favorably cited *Cook v. Stender*, Superior Court, judicial district of Middlesex, Docket No. CV−04−0104110−S (December 22, 2004, Silbert, J.) (38 Conn. L. Rptr. 439, 440), and quoted parenthetically the following language from that case: 'Prior case law ought not to be read for the proposition that clearly improper allegations upon which relief may not be granted as a matter of law must remain in a complaint indefinitely, leading to confusion for the court, the parties and the jury, just because there are aspects of the complaint that are otherwise valid. If the motion to strike has merit as to certain allegations of the complaint ... the proper course for the court is to strike those allegations only ...' (Emphasis added.) In the present case, the defendants seek to strike the paragraphs on the ground that relief for those allegations may not be granted as a matter of law. These paragraphs fit into the exception to the general rule that a motion to strike cannot lie when it is directed toward a single paragraph of the pleading. Therefore, the court will consider the defendants' motion to strike the paragraphs of the complaint."

- Folsom v. Zoning Bd. of Appeals of City of Milford, 160 Conn. App. 1, 124 A.3d 928 (2015). "[E]ven though governmental immunity is generally raised by the defendant as a special defense, '[w]here it is apparent from the face of the complaint that the municipality was engaging in a governmental function while performing the acts and omissions complained of by the plaintiff, the defendant is not required to plead governmental immunity as a special defense and may attack the legal sufficiency of the complaint through a motion to strike.'"

- Beck & Beck, LLC v. Costello, 159 Conn. App. 203, 207-209, 122 A.3d 269 (2015). "In the court's memorandum of decision granting the plaintiff's motion to strike the

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defendant's counterclaim, the court referred to and relied on 'the record in the underlying case,' presumably the receivership action. In so doing, it strayed beyond the permissible bounds of its authority in assessing the legal sufficiency of a claim on a motion to strike. The plaintiff agreed in its argument before this court that the trial court had improperly relied upon evidence outside the four corners of the defendant's counterclaim in determining the legal sufficiency of that pleading. Because the court relied on facts that were not contained in the defendant's counterclaim in assessing its legal sufficiency, its judgment striking that pleading cannot stand."

- Parenti v. Rodriguez, Superior Court, Judicial District of Waterbury, No. CV-14-6024128-S (July 24, 2015) (60 Conn. L. Rptr. 655) (2015 WL 4965770). "Although the appellate courts have not ruled on this issue, in numerous cases, the judges of the Superior Court have concluded that the rules of practice preclude a party from filing successive motions to strike when the grounds raised in a later motion could have been raised in the initial motion...[T]he judges reason that Practice Book [§10-41] provides that each motion to strike shall set forth each such claim of insufficiency and shall distinctly specify the reason or reasons for each claimed insufficiency...Practice Book [§10-43] provides that a judge deciding a motion to strike in which more than one ground is asserted shall specify the ground relied upon in striking a claim . . . [Because] [t]he Practice Book provides for pleading multiple grounds in a single motion to strike and, further, provides that pleadings are to advance after the adjudication of each enumerated pleading, a defendant may not impede the progress of the suit by dividing his grounds and pleading them in consecutive motions to strike...[Therefore], a defendant who has failed to raise all grounds for striking a complaint may not [later] file a second motion to strike asserting additional grounds."

- Carr v. Hotshots Cafe, Superior Court, Judicial District of Windham, CV-146007736-S (July 30, 2014) (2014 WL 4494529). "Defendants have cited the more pertinent authorities on this procedural issue, namely *Wallace v. McCray*, Superior Court, judicial district of New Haven, Docket Number NNH CV11 6024667 (June 8, 2012; B. Fischer, J.), *Dumas v. Price Chopper, Inc.*, Superior Court, judicial district of Windham, Docket Number CV09 5004896 (March 31, 2010; Riley, J.), and *Collar v. DaCruz*, Superior Court, judicial district of Hartford, Docket Number CV03 0830138 (August 13, 2004; Booth, J.). Simply stated, these cases hold that when a party has mixed two or more causes of action in a single count, with severable paragraphs alleging the various causes involved, a defendant may address a motion to strike at the specific paragraphs

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embodying the matters which are deemed to be insufficiently pled."

- Historic Dist. Comm'n of Borough of Fenwick v. Sciame, 140 Conn. App. 209, 216, 58 A.3d 354, 359 (2013). "In their memorandum of law in opposition to the motion to strike, the defendants raised no objection to the form or content of the motion to strike regarding the second count of the counterclaim. In doing so, they waived any defectiveness in pleading regarding the second count. See *Morris v. Hartford Courant Co.,* 200 Conn. 676, 683 n. 5, 513 A.2d 66 (1986) (because Practice Book § 154 [now § 10–41] is not jurisdictional in nature, court will consider improperly pleaded motion to strike when opposing party does not object); see also *Bouchard v. People's Bank,* 219 Conn. 465, 468 n. 4, 594 A.2d 1 (1991) (same)."

- JP Morgan Chase Bank v. Rodrigues, 109 Conn. App. 125, 131, 952 A.2d 56, 59-60 (2008) " '[A] counterclaim is a cause of action existing in favor of the defendant against the plaintiff and on which the defendant might have secured affirmative relief had he sued the plaintiff in a separate action.... 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.' (Citations omitted; internal quotation marks omitted.) *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."

- Stuart v. Freiberg, 102 Conn. App. 857, 862, 927 A.2d 343, 346 (2007). "The motion itself failed to set forth separately each claim of insufficiency and failed to specify distinctly the reasons for each claimed insufficiency. Simply stating that all of the counts 'are legally insufficient' and that they 'fail to allege any facts that would indicate [that the] defendant is liable to [the] plaintiffs' cannot be considered compliance with Practice Book § 10–41. The complaint was in four counts, and the defendant gave several reasons for his challenge to the causes of action as alleged by the plaintiffs in his memorandum of law in support of the motion. Those reasons, however, were not contained in the motion itself, and the fact that they were provided in the accompanying memorandum of law does not save the motion from being considered 'fatally defective.' See *Barasso v. Rear Still Hill Road, LLC*, supra, 64 Conn.App. at 13–14, 779 A.2d 198.3."

- Ross v. Forzani, 88 Conn. App. 365, 369, 869 A.2d 682, 685 (2005). "Accordingly, a party has two mutually exclusive options: A party may file either an amended

pleading, thereby waiving the right to challenge the striking of the initial complaint; or a party may appeal from the judgment rendered regarding the initial stricken complaint. *Royce v. Westport*, [supra, 183 Conn. at 178-79, 439 A.2d 298]. The choice is left to the plaintiff, but once he files an amended pleading, the ruling on the [original motion to strike] ceases to be an issue. The rule is a sound one, as it serves to prevent the prolongation of litigation. *Good Humor Corp. v. Ricciuti,* [supra, 160 Conn. at 136, 273 A.2d 886]. However, there is an exception to the waiver rule. If the plaintiff pleads facts in the substitute complaint which are materially different from those in the original complaint, then the waiver rule does not apply. *Parsons v. United Technologies Corp*., 243 Conn. 66, 74, 700 A.2d 655 (1997)." (Internal quotation marks omitted.) *Parker v. Ginsburg Development CT, LLC,* supra, 85 Conn. App. at 780, 859 A.2d 46. Conversely, the waiver rule applies if the amended complaint does not contain allegations that are materially different from the allegations contained in the original complaint."

- Comm'r of Labor v. C.J.M. Servs., Inc., 268 Conn. 283, 293, 842 A.2d 1124, 1131 (2004). "Although we agree with the Appellate Court's statement that '[a] bald assertion that the defendant has a contractual obligation, without more, is insufficient to survive a motion to strike'; *Commissioner of Labor v. C.J.M. Services,* Inc., supra, 73 Conn. App. at 64, 806 A.2d 1105; upon reviewing the contents of the commissioner's amended complaint, we disagree with that court's characterization of the allegations found therein as a 'bald assertion.' Id. The commissioner alleged in count three that '[the general contractor] was required to pay prevailing wages to all mechanics, laborers, and workmen on said project pursuant to the contract for said public works project....' The commissioner set forth a specific contractual obligation and alleged that it had not been met. Whether the terms of the contract support that allegation is a factual question to be determined by the fact finder and, therefore, is not at issue when the trial court considers a motion to strike."

WEST KEY NUMBERS:

- *Pretrial Procedure*, Key Numbers 531-710

TREATISES:

- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
  - Chapter 12 Pleadings: Defendant's Motion to Strike and Plaintiff's Response.

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, LexisNexis, 2019.
  - Chapter 7. Pleadings
    - § 7.19 Motion to Strike

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- *LexisNexis Practice Guide: Connecticut Contract Litigation*, by David T. Martin, LexisNexis, 2019.
  - Chapter 2. Establishing the Elements and Pleading the Case
    - § 2.16[3] Motion to Strike.

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

- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, Thomson West, 2020 (also available on Westlaw).
  - Chapter 1. Motion to Strike
    - III. Failure to State Cause of Action or Claim

- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, LexisNexis, 2019.
  - Chapter 10. Pleadings.
    - 10-39.1 Function of the Motion to Strike
    - 10-39.2 Well-Plead Allegations Admitted
    - 10-44.1 Pleading Over After Motion to Strike
    - 10-44.2 Amendment of Pleading; Waiver of Right to Appeal

- *Stephenson's Connecticut Civil Procedure*, by Renee Bevacqua Bollier, 1997, Atlantic Law Book Company, with 2014 supplement.
  - Chapter 5. The Complaint
    - Sec. 41. Need to State a "Cause of Action"
  - Chapter 7. Motions Prior to Trial
    - Sec. 72. Function and Scope of Motion to Strike
    - Sec. 73. Defects Reached by Motion to Strike
    - Sec. 74. Procedure on Motions to Strike
    - Sec. 75. Effect of Ruling on Motion to Strike
  - Chapter 9. Disposition Short of Trial
    - Sec. 93. Motions to Strike

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Corey M. Dennis, Roadmap to Connecticut Procedure, 83 Connecticut Bar Journal 271 (2009).

- Wes Horton, Alice in Demurrerland, 51 Conn. B.J. 107 (1977).

Section 2: Legal Sufficiency of Prayer for Relief

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion strike filed to contest the legal sufficiency of any prayer for relief in any such complaint, counterclaim or cross complaint.

DEFINITIONS:

- **Prayer for relief:** "The first pleading on the part of the plaintiff shall be known as the complaint. It shall contain a concise statement of the facts constituting the cause of action and, on a separate page of the complaint, **a demand for relief which shall be a statement of the remedy or remedies sought.** When money damages are sought in the demand for relief, the demand for relief shall include the information required by General Statutes § 52-91." Conn. Practice Book § 10-20 (2020).

STATUTES:

- Conn. Gen. Stat. (2019)
  Chapter 898 – Pleading
  § 52-91. Pleadings; contents of complaint.

COURT RULES:

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

Connecticut Practice Book (2020)
§ 10-6. Pleadings Allowed and Their Order.
§ 10-39. Motion to Strike; Grounds.
§ 10-40. –Opposition; Date for Hearing.
§ 10-43. –When Memorandum of Decision Required on Motion to Strike.
§ 10-44. –Substitute Pleading; Judgment.
§ 10-45. –Stricken Pleading Part of Another Cause or Defense.

FORMS:

- Figure 1: Motion to Strike

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.

- 3 Connecticut Practice Series, *Connecticut Civil Practice Forms*, by Joel M. Kaye, 2004, Thomson West, with 2020 supplement (also available on Westlaw).
  Form 106.2 Motion to Strike

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, LexisNexis, 2019.
  § 7.30 Motion to Strike

- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, Thomson West, 2020 (also available on Westlaw).
  § 1:45 Sample supporting and opposition briefs — Motion to strike portions of complaint (attorney's fees)
  § 1:46 Sample supporting and opposition briefs — Motion to strike portions of complaint (attorney's fees) — Memorandum of points and

authorities in support of motion to strike portions of complaint

§ 1:47 Sample supporting and opposition briefs — Motion to strike portions of complaint (punitive damages arising from alcohol consumption in vehicle case) — Plaintiff's opposition to motion to strike

- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, LexisNexis, 2019.
  F-10-39 − Motion to Strike

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.

- Porta John's, LLC v. Burton, Judicial District of Danbury at Danbury, Docket No. DBDCV196030437S (Jan. 22, 2020) (2020 Conn. Super. LEXIS 141). "The defendant also seeks to strike portions of the prayer for relief seeking attorney's fees and cost. The American Rule clearly applies to bar recovery of attorney's fees unless the complaint identifies an exception to that rule. The plaintiff has not plead an exception to the rule. Absent a contractual or statutory exception, attorney's fees and other costs are not proper in a property damage suit."

- Collins v. Rogers, Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FSTCV166028664S, (March 27, 2018) (2018 WL 1936439). "The plaintiff moves to strike the prayer for relief seeking punitive damages or an award of attorney's fees. But the basis for that component of the plaintiff's motion rests on the assumption that the court would strike counts four and six. Since the court did not strike counts four and six the Motion to Strike the prayers for relief must also be denied."

- Mendez v. JP Morgan Chase Bank, N.A., Superior Court, Judicial District of Hartford, No. X04-HHD-CV14-6049524-S, (Feb. 10, 2015) (2015 WL 897253). "'Practice Book ... § 10−39, allows for a claim for relief to be stricken only if the relief sought could not be legally awarded.' *Pamela B. v. Ment*, 244 Conn. 296, 325, 709 A.2d 1089 (1998). '[I]t is fundamental to our law that a [party's] ability to recover is limited to the allegations of her complaint.' *DeCorso v. Calderaro*, 118 Conn. App. 617, 626−27, 985 A.2d 349 (2009). A prayer for relief must correspond to the allegations of the complaint and if it does not so correspond, it must be stricken. See, e.g., *Kavarco v. T.J.E., Inc.,* 2 Conn. App. 294, 298 n. 4, 478 A.2d 257 (1984) (a motion to strike a prayer for relief is proper if the 'relief sought could not be legally awarded to the plaintiff due to the failure to allege sufficient facts'); Krantz v. City & Field, LLC, Superior Court, judicial district of Litchfield, Docket No. CV−14−6009820−S (September 29, 2014, Danaher, J.) ('The motion to strike a prayer for relief should be granted if the prayer for relief does not correspond to

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allegations of the complaint')."

- Connecticut Light and Power Co. et al. v. Paradigm Health Center of Torrington, LLC et al, Superior Court, Judicial District of New Haven at New Haven, CV-14-6044661-S, (August 18, 2014) (58 Conn. L. Rptr. 856) (2014 WL 4746841). "Additionally, 'in order to award punitive damages, [the] evidence must reveal a reckless indifference to the rights of others or an intentional and wanton violation of those rights.' *Arnone v. Enfield*, 79 Conn.App. 501, 521, 831 A.2d 260 (2003). In the present case, the second and third prayer for relief stem from the plaintiff's allegation that the defendants failed to pay for utility services provided by the plaintiff. The plaintiff is not seeking attorney's fees pursuant to a contractual agreement between the parties or a statute. The plaintiff has not sufficiently alleged that the defendants had a reckless indifference to the plaintiff's rights or that the defendants engaged in wanton or wilful misconduct."

- Connecticut Podiatric Med. Ass'n v. Health Net of Connecticut, Inc., 49 Conn. Supp. 462, 468, 892 A.2d 1046, 1051 (2006). "Practice Book § 10−39(a)(2) provides a party 'may' file a motion to strike to contest, inter alia, the legal sufficiency of a prayer for relief; by its terms, it does not provide it is the exclusive vehicle particularly where, as here, the disputed issue is that of standing. *Housing Authority v. Local 1161*, 1 Conn.App. 154, 157, 468 A.2d 1251, cert. denied, 192 Conn. 802, 471 A.2d 244 (1984)."

- Central New Haven Dev. Corp. v. Potpourri, Inc., 39 Conn. Supp. 132, 133, 471 A.2d 681, 681 (1983). "A party may utilize a motion to strike in order to test the legal sufficiency of a prayer for relief. Practice Book § 152. A motion to strike admits all well pleaded allegations, and is construed most favorably to the plaintiff here. *Verdon v. Transamerica Ins. Co.*, 187 Conn. 363, 365, 446 A.2d 3 (1982)."

WEST KEY NUMBERS:

- *Pretrial Procedure*, Key Numbers 531-710

TREATISES:

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, LexisNexis, 2019.
  - Chapter 7. Pleadings
    - § 7.19 Motion to Strike

- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
  - Chapter 12 Pleadings: Defendant's Motion to Strike and Plaintiff's Response.

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.

- *Pleadings and Pretrial Practice: A Deskbook for Connecticut* , by Jeanine M. Dumont, Connecticut Law Tribune, 1998.
    - Chapter X. Motion to Strike

- *Stephenson's Connecticut Civil Procedure*, by Renee Bevacqua Bollier, 1997, Atlantic Law Book Company, with 2014 supplement.
    - Chapter 5. The Complaint
        - Sec. 51. Prayer for Relief
    - Chapter 7. Motions Prior to Trial
        - Sec. 72. Function and Scope of Motion to Strike
        - Sec. 73. Defects Reached by Motion to Strike
        - Sec. 74. Procedure on Motions to Strike
        - Sec. 75. Effect of Ruling on Motion to Strike
    - Chapter 9. Disposition Short of Trial
        - Sec. 93. Motions to Strike

- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, Thomson West, 2020 (also available on Westlaw).
    - Chapter 1. Motion to Strike
        - III. Failure to State Cause of Action or Claim
            - 1:24 Improper Prayer for Relief-Generally
            - 1:25 –Punitive Damage Allegations
            - 1:27 –Attorney's Fees

- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, LexisNexis, 2019.
    - Chapter 10. Pleadings.
        - 10-39.1 Function of the Motion to Strike
        - 10-39.2 Well-Plead Allegations Admitted
        - 10-44.1 Pleading Over After Motion to Strike
        - 10-44.2 Amendment of Pleading; Waiver of Right to Appeal

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Corey M. Dennis, Roadmap to Connecticut Procedure, 83 Connecticut Bar Journal 271 (2009).

- Wes Horton, Alice in Demurrerland, 51 Conn. B.J. 107 (1977).

Section 3: Non-Joinder or Misjoinder of Parties

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to strike filed to contest the legal sufficiency of any such complaint, counterclaim or cross complaint, or any count thereof, because of the absence of any necessary party, or pursuant to section 17-56(b), the failure to join or give notice to any interested person.

DEFINITIONS:

- **Misjoinder:** "Naming an improper person as a party in a legal action constitutes misjoinder." Bloom v. Miklovich, 111 Conn. App. 323, 958 A.2d 1283 (2008).
- "The exclusive remedy for **misjoinder** of parties is by motion to strike." Zanoni v. Hudon, 42 Conn. App. 70, 73, 678 A.2d 12 (1996).
- **Indispensable parties:** "Parties are considered indispensable when they not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such condition that its final [disposition] may be...inconsistent with equity and good conscience." Kosiorek v. Smigelski, 138 Conn. App. 695, 54 A.3d 564 (2012).
- **Necessary parties:** "Necessary parties, in contrast, are those [p]ersons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it.... [B]ut if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties." Ibid.
- "In the past, there had been a distinction between '**necessary**' and '**indispensable**' parties. See *Shields v. Barrow*, 58 U.S. (17 How.) 130, 139, 15 L. Ed. 158 (1855) (defining both terms). Over time, however, this distinction has become less pronounced; see *Sturman v. Socha*, 191 Conn. 1, 6, 463 A.2d 527 (1983) (recognizing that misleading nature of terms `has resulted in a blurring of the distinction typically drawn between them'); and provisions of our Practice Book and General Statutes currently refer only to necessary parties. See, e.g., Practice Book §§ 9-6 and 9-24; General Statutes §§ 8-8 (f) and 12-638n. *In re Devon B.*, 264 Conn. 572, 580 n.12, 825 A.2d 127 (2003). We use those terms interchangeably throughout this opinion." Izzo v. Quinn, 170 Conn. App. 631, (footnote 5) (2017).

STATUTES:

You can visit your local law library or search the most recent statutes and public acts on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2019)
  Chapter 898 – Pleading
  - § 52-107. Additional parties may be summoned in.
  - § 52-108. Nonjoinder and misjoinder of parties

COURT RULES:

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

- Connecticut Practice Book (2020)
  - § 9-3. Joinder of Parties and Actions; Interested Persons as Plaintiffs.
  - § 9-4. –Joinder of Plaintiffs in One Action.
  - § 9-18. Addition or Substitution of Parties.
  - § 9-19. Addition or Substitution of Parties--Nonjoinder and Misjoinder of Parties.
  - § 10-6. Pleadings Allowed and Their Order.
  - § 10-39. Motion to Strike; Grounds.
  - § 10-40. –Opposition; Date for Hearing.
  - § 10-43. –When Memorandum of Decision Required on Motion to Strike.
  - § 10-44. –Substitute Pleading; Judgment.
  - § 10-45. –Stricken Pleading Part of Another Cause or Defense.
  - § 11-3. Motion for Misjoinder of Parties.
  - § 17-56(b). Declaratory Judgment; Scope—Procedure for Declaratory Judgment.

FORMS:

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.

- Figure 1: Motion to Strike
- Figure 2: Misjoinder of Parties
- 3 Connecticut Practice Series, *Connecticut Civil Practice Forms*, by Joel M. Kaye, 2004, Thomson West, with 2020 supplement (also available on Westlaw).
  Form 106.2 Motion to Strike
  Form 106.7 Misjoinder of parties—Motion to strike
- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, LexisNexis, 2019.
  § 4.10 Motion to Strike for Failure to Join Necessary Party
  § 4.11 Motion to Strike for Misjoinder of Parties
- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, Thomson West, 2020 (also available on Westlaw).
  § 1:58. Motion to strike complaint (failure to join necessary party)--Memorandum of points and authorities in support of motion to strike
- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, LexisNexis, 2019.
  F-10-39 – Motion to Strike

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.

- Garden Homes Profit Sharing Trust, L.P. v. Cyr, 189 Conn. App. 75, 84, 206 A.3d 230 (2019). Practice Book § 9-19, which largely mirrors General Statutes § 52-108, makes clear that '[e]xcept as provided in Sections 10-44 and 11-3 *no action shall be defeated by the nonjoinder* or misjoinder of parties. New parties may be added and summoned in, and parties misjoined may be dropped, by order of the judicial authority, at any stage of the cause, as it deems the interests of justice requires.' (Emphasis added.) The rules of practice also make clear that 'the exclusive remedy for nonjoinder of parties is by motion to strike.' Practice Book § 11-3."

- Izzo v. Quinn, 170 Conn. App. 631, 638-639 (2017). "As this court previously has observed: '[T]he nonjoinder of an indispensable party . . . would create a jurisdictional defect, and therefore require dismissal, only if a statute mandates the naming and serving of [a particular] party.' (Emphasis altered; internal quotation marks omitted.) *Yellow Cab Co. of New London & Groton, Inc. v. Dept. of Transportation,* 127 Conn. App. 170, 176–77, 13 A.3d 690, cert. denied, 301 Conn. 908, 19 A.3d 178 (2011). For example, our Supreme Court held in *Simko v. Zoning Board of Appeals*, 205 Conn. 413, 533 A.2d 879 (1987), that the failure to name the town clerk in a zoning appeal deprived the trial court of subject matter jurisdiction because General Statutes (Rev. to 1986) § 8-8 (b), at that time, provided in relevant part that '[n]otice of such appeal shall be given by . . . serving a true and attested copy upon the clerk of the municipality.' Id., 414 n.2. 'Conversely, when a party is indispensable but is not required by statute to be made a party, the [trial] court's subject matter jurisdiction is not implicated and dismissal is not required.' *Demarest v. Fire Dept.,* 76 Conn. App. 24, 31, 817 A.2d 1285 (2003); see *D'Appollonio v. Griffo-Brandao*, 138 Conn. App. 304, 313, 53 A.3d 1013 (2012); *Yellow Cab Co. of New London & Groton, Inc. v. Dept. of Transportation*, supra, 176–77."

- Pelletier Mech. Servs., LLC v. G & W, Mgmt., Inc., 162 Conn. App. 294, 303, 131 A.3d 1189 (2016). "The motion to strike and the accompanying memorandum of law did not contain an analysis of why the property owners were absolutely required to be made parties in order to assure a fair and equitable trial, nor did they demonstrate that the presence of the property owners was needed for the court to issue a decree and do complete and final justice. See, e.g., *Biro v. Hill*, 214 Conn. 1, 7, 570 A.2d 182 (1990). Given these deficiencies in the motion to strike and the memorandum of law, we conclude that the judgment of the trial court denying the motion to strike must be affirmed."

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- Arnold v. Thermospas, Inc., 49 Conn. Supp. 103, 105-06, 863 A.2d 250, 253 (2004) "In the present case, however, there are common questions of law. For example, one predominant issue here is whether Tournas' conduct was extreme and outrageous. This issue is, preliminarily, a question for the court. *Appleton v. Board of Education*, 254 Conn. 205, 210, 757 A.2d 1059 (2000). The plaintiffs have alleged that Tournas has taken similar actions toward all of them. The plaintiffs will have to prove that the defendants engaged in a pattern of behavior that amounted to retaliation against the plaintiffs for complaints made about Tournas. When deciding a motion to strike on the ground of misjoinder of parties, the court may properly consider the economical uses of judicial resources. See *Balog v. Shelton Restaurant*, Superior Court, judicial district of Ansonia–Milford, Docket No. CV–04 0084313S, 2004 WL 1965919 (August 2, 2004) (Lager, J.). Mindful of this decisional authority, this court is of the opinion that joinder is appropriate here."

- McCart v. City of Shelton, 81 Conn. App. 58, 62, 837 A.2d 872 (2004) "The individual differences between the plaintiffs, i.e., the differences in their properties, go to the very heart of the issue-whether the defendants reached the correct result with the method of assessment. Cf. *Bertelson v. Norwich*, supra, Superior Court, Docket No. 119199, 2001 WL 1429167 (fact in dispute for each party, whether appropriate formula applied to reach valuation, was common to each plaintiff). To answer that question, each of the plaintiffs must provide individual evidence. The plaintiffs' common facts are tangential, and the crucial facts differ for each plaintiff. There is no common question of fact or law. Therefore, the court properly granted the defendants' motion to strike the plaintiffs' complaint for improper joinder."

WEST KEY NUMBERS:

- *Pretrial Procedure*, Key Numbers 531-710

TREATISES:

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, LexisNexis, 2019.
  - Chapter 4. Parties
    - § 4.07[3] Joinder of Parties-Motion to Strike
  - Chapter 7. Pleadings
    - § 7.19 Motion to Strike

- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
  - Chapter 12 Pleadings: Defendant's Motion to Strike and Plaintiff's Response.

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

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1998.
  - Chapter X. Motion to Strike

- *Stephenson's Connecticut Civil Procedure*, by Renee Bevacqua Bollier, 1997, Atlantic Law Book Company, with 2014 supplement.
  - Chapter 6. Dilatory Please
    - Sec. 61. Defects of Parties
      - c. Nonjoinder of Parties
      - d. Misjoinder of Parties
  - Chapter 7. Motions Prior to Trial
    - Sec. 72. Function and Scope of Motion to Strike
    - Sec. 73. Defects Reached by Motion to Strike
    - Sec. 74. Procedure on Motions to Strike
    - Sec. 75. Effect of Ruling on Motion to Strike
    - Sec. 78. Motions Involving Parties
  - Chapter 9. Disposition Short of Trial
    - Sec. 93. Motions to Strike

- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, Thomson West, 2020 (also available on Westlaw).
  - Chapter 1. Motion to Strike

- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, LexisNexis, 2019.
  - Chapter 10. Pleadings.
    - 10-39.1 Function of the Motion to Strike
    - 10-39.2 Well-Plead Allegations Admitted
    - 10-44.1 Pleading Over After Motion to Strike
    - 10-44.2 Amendment of Pleading; Waiver of Right to Appeal
  - Chapter 11. Motions, Requests
    - 11-3.1 Misjoining Parties Who Cannot be Joined in the Same Action

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Corey M. Dennis, Roadmap to Connecticut Procedure, 83 Connecticut Bar Journal 271 (2009).

- Wes Horton, Alice in Demurrerland, 51 Conn. B.J. 107 (1977).

Section 4: Joining of Causes of Action

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to strike filed to contest the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts.

DEFINITIONS:

- **Cause of Action**: "A cause of action is that single group of facts that is claimed to have brought about an unlawful injury to the plaintiff and that entitles the plaintiff to relief.... Even though a single group of facts may give rise to rights to several different kinds of relief, it is still a single cause of action." C & H Mgmt., LLC v. City of Shelton, 140 Conn. App. 608, 616, 59 A.3d 851, 857 (2013).
- "If **several causes of action** are united in the same complaint, they shall all be brought to recover, either 1) upon contract, express or implied, or (2) for injuries, with or without force, to person and property, or either, including a conversion of property to the defendant's use, or (3) for injuries to character, or (4) upon claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same, or (5) upon claims to recover personal property specifically, with or without damages for the withholding thereof, or (6) claims arising by virtue of a contract or by operation of law in favor of or against a party in some representative or fiduciary capacity, or (7) upon claims, whether in contract or tort or both, arising out of the same transaction or transactions connected with the same subject of action." Conn. Gen. Stat. § 52-97 (2019).
- "Whenever any party wishes to contest the joining of two or more causes of action which cannot properly be united in one complaint, whether the same be stated in one or more counts, that party may do so by filing a motion to strike." Hartzheim v. Derekseth Corp., Superior Court, Judicial District of Hartford-New Britain at Hartford, Docket No. 320693 (April 10, 1987) (2 CSCR 537).
- **Transaction**: "A 'transaction' has been defined as 'something which has taken place whereby a cause of action has arisen.' 'It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered.' *DeFelippi v. DeFelippi,* 23 Conn. Supp. 352, 353, 183 A.2d 630 (1962), quoting *Craft Refrigerating Machine Co. v. Quinnipiac Brewing Co.*, 63 Conn. 551, 560, 29 A. 76 (1893); see *Goggins v. Fawcett*, 145 Conn. 709, 711, 147 A.2d 187 (1958)." Bailey v. Thomas, Superior Court, Judicial District of Hartford, Docket No. CV980577916 (June 18, 1999) (24

Conn. L. Rptr. 687) (1999 WL 482640).

STATUTES:

- Conn. Gen. Stat. (2019)
  Chapter 898 – Pleading
  § 52-97. Union of legal and equitable causes of action; limitation.

COURT RULES:

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

Connecticut Practice Book (2020)

§ 10-6. Pleadings Allowed and Their Order.
§ 10-21. Joinder of Causes of Action.
§ 10-22. –Transactions Connected with Same Subject.
§ 10-23. –Joinder of Torts.
§ 10-24. –Legal and Equitable Relief.
§ 10-39. Motion to Strike; Grounds.
§ 10-40. –Opposition; Date for Hearing.
§ 10-43. –When Memorandum of Decision Required on Motion to Strike.
§ 10-44. –Substitute Pleading; Judgment.
§ 10-45. –Stricken Pleading Part of Another Cause or Defense.

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- Figure 1: Motion to Strike

- 3 Connecticut Practice Series, *Connecticut Civil Practice Forms*, by Joel M. Kaye, 2004, Thomson West, with 2020 supplement (also available on Westlaw).
  Form 106.2 Motion to Strike

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, LexisNexis, 2019.
  § 7.30 Motion to Strike

- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, LexisNexis, 2019.
  F-10-39 – Motion to Strike

- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, Thomson West, 2020 (also available on Westlaw).
  - Chapter 1. Motion to Strike

CASES:

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- Costello v. Goldstein & Peck, P.C., 187 Conn. App. 486, 493, 203 A.3d 611 (2019). "The plaintiffs argue that the court improperly granted the defendants' motion to strike the plaintiffs' second amended complaint on the basis of improper joinder. We disagree, because the plaintiffs' underlying action concerns two separate and distinct transactions: the Epstein matter and the Lynwood matter. As recited previously, the Epstein matter was litigation between Smulley and her prior attorney, which arose initially from a fee dispute, whereas the Lynwood matter involved Costello's relationship and dealings with a condominium association."

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- Persaud v. Harris, Superior Court, Judicial District of Hartford at Hartford, No. HHD CV 18-6092289-S (September 6, 2018) (67 Conn. L. Rptr. 31). "Guided by these principles, the court holds that Harris and Pulcini's causes of action are properly joined. The court is mindful that there is a split of opinion among judges of the superior court regarding the interpretation of the phrase 'shall affect all the parties to the action,' employed in both §52-97 and Practice Book §10-21. Some courts adopt a strict interpretation of the phrase, holding that there must be a 'commonality' between all parties such that the existence of different defendants, as is the case here, defeats joinder. Other courts construe the phrase more liberally and only require joined parties to have an interest in the outcome of each claim. See *Rivera* v. *Schwager*, Superior Court, judicial district of New Britain, Docket No. 16-6033541-S, 2016 WL 7443905, at *3 (Nov. 22, 2016, Wiese, J.) 63 Conn. L. Rptr. 395] (listing cases demonstrating split of opinion in superior court). The principles governing the court's construction of pleadings and §52-97 counsel adoption of the more liberal approach."

- Rivera v. Schwager, Superior Court, Judicial District of New Britain, No. CV-16-6033541S (Nov. 22, 2016) (63 Conn. L. Rptr. 395) (2016 WL 7443905). "Based upon the language in the relevant sections of the General Statutes and Practice Book, 'courts ... are to consider first whether the present circumstances fall under one of the seven categories enumerated by [General Statutes § 52–97 and] Practice Book § 10–21, and second, whether the causes of action affect all the parties to the action. Finally, courts often focus on the "if it appears to the [court] that they cannot all be conveniently heard together" language ... and decide whether to permit joinder based on the equitable considerations in the situation rather than on a strict application of [§ 52–97 and] § 10–21.' *Mills v. Rita H. Carter Revocable Trust*, Superior Court, judicial district of New London, Docket No. CV–12–6015038–S (February 19, 2013, Devine, J.) (55 Conn. L. Rptr. 605, 606).

  "The second requirement will be addressed first because, in the present case, Schwager and Mac Motors move to strike on the ground that the claims arising from both accidents do not affect all the parties to the action. As recognized by these defendants, there is a split of authority as to the meaning of 'shall affect all the parties to the action.' A number of courts have adopted a strict interpretation of the language, and have held that there must be commonality between the parties as to all the claims....

  "Other courts have concluded that 'shall affect all the parties' does not require that all parties must be common

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to all the causes of action, but rather that 'affect' only requires joined parties to have an interest in the outcome of each claim…."

- Ocasio v. Buchanan, Superior Court, Judicial District of Hartford No. CV-15-6059597S (Jan. 13, 2016) (61 Conn. L. Rptr. 624) (2016 WL 550820). "Although the parties disagree as to whether subsection (2) or (7) of both General Statutes § 52–97 and Practice Book § 10–21 applies to the alleged facts of this case, this court can resolve the dispute between the parties by turning to the second requirement established both by statute and our rules of practice, that is, whether the causes of action 'affect all the parties to the action.' Here, it is undisputed that each count in the plaintiff's complaint names a separate defendant and each count alleges negligence based upon conduct that took place on separate and distinct dates. Although this court recognizes that reasonable minds have diverged as to how the language, 'shall affect all the parties to the action,' should be read, this court finds those opinions that follow Judge Alvord's interpretation as contained in 1 E. Stephenson, Connecticut Civil Procedure, (3d Ed.1997), § 47(c), p. 147, to be more persuasive. As noted by Judge Alvord, "in addition to the requirement that all claims must fall within a single one of the categories listed, the rule of joinder of actions requires that all plaintiffs and all defendants must be common to all the claims and that all counts be triable at the same place under the rules as to venue." (Emphasis added). *Cianciolo v. Musumano,* supra, Superior Court, Docket No. CV–08–5008286–S. As alleged, the plaintiff here fails to meet this requirement."

- Swaney v. Estrella, Superior Court, Judicial District of New London at New London, No. CV15-6023670 (October 27, 2015) (61 Conn. L. Rptr. 175) (2015 WL 7421348). "Construing the complaint in favor of its sufficiency, including as to joinder of claims and defendants, in this case requires liberal interpretation of the phrase in General Statutes §52-97(7), 'arising out of the same transaction or transactions connected with the same subject of action.' The court cannot accept the movants' shared claim that this part of the statute, and of the rules of practice, should be interpreted to mean '[arising] out of the same transaction or occurrence' as the other claims with which a claim is joined. Instead, the law regarding motions to strike requires interpretation of 'arising out of the same . . . transactions connected with the same subject of action' to focus first on the subject of the action. If the facts provable in the complaint would support joinder, the motion to strike must be denied. See *Bouchard v. People's Bank*, 219 Conn. 465, 471, 594 A.2d 1 (1991)."

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.

- Voris v. Molinaro, 302 Conn. 791, 798, 31 A.3d 363, 367 (2011). "Although we repeatedly have articulated and relied on the principle that the settlement of the underlying injury claim bars the derivative action for loss of consortium, we recognize that neither *Hopson*, *Jacoby*, nor *Ladd* had a procedural posture identical to the present one. Accordingly, we take this opportunity to articulate the strong policy reasons that support the application of this rule to claims such as the plaintiff's. The same rationale that mandates the joinder of loss of consortium claims with the claims of the directly injured party also should apply to bar a claim for loss of consortium once the predicate action has been settled."

- Cianciolo v. Musumano, Superior Court, Judicial District of Waterbury, CV08-5008286S, (Aug. 12, 2008) (2008 WL 4070160). "The joinder statute permits any number of counts to be joined in one complaint if they fall within one of the categories. Category (2) emphasized above applies here because both counts involve personal injury. However, '[i]n addition to the requirement that all claims must fall within a single one of the categories listed, the rule of joinder of actions requires that all plaintiffs and all defendants must be common to all the claims and that all counts be triable at the same place under the rules as to venue.' 1 Stephenson's Connecticut Civil Procedure (3rd Ed., 1997) § 47(c) citing Practice Book § 133 (now 10-21) (sentence emphasized above following category 7).

  "Commonality does not exist here, as there are two different events with different defendants. Category (7) emphasized above then becomes relevant and applicable, provided the joined claims arise out of the 'same transaction or transactions connected with the same subject of action.'"

- Delavega v. Eleftheriou, Superior Court of Connecticut, Judicial District of Stamford, CV95-0145179 (Jan. 9, 1996) (1996 WL 33890) (15 Conn. L. Rptr. 541). "'The purpose of joinder is to "enable parties to settle all their controversies in a single action."' *Hutchings v. Hutchings*, Superior Court, Judicial District of Litchfield, Docket No. 054449 (February 22, 1993) (Dranginis, J. 8 Conn. L. Rptr. 433) quoting *Veits v. Hartford*, 134 Conn. 428, 436, 58 A.2d 389 (1948). Section 133 is to be liberally construed. *Goggins v. Fawcett*, 145 Conn. 709, 710, 147 A.2d 187 (1958). Different causes of action are properly joined in one complaint 'if both arose out of the same transaction, or if, while one arose out of one transaction and the other out of another, both these transactions were "connected with the same subject matter."' *Hratko v. Bethel Board of Education*, Superior Court, Judicial District of Danbury, Docket No. 317836 (March 7, 1995) (Leheny, J.) quoting *Craft Refrigerating*

Machine Co. v. Quinnipiac Brewing Co., 63 Conn. 551, 560, 29 A 76 (1983)."

WEST KEY NUMBERS:

- *Pretrial Procedure*, Key Numbers 531-710

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.

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, LexisNexis, 2019.
  - Chapter 7. Pleadings
    - § 7.15[2] Complaints-Joinder of Causes of Action
    - § 7.19 Motion to Strike
- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
  - Chapter 12 Pleadings: Defendant's Motion to Strike and Plaintiff's Response.
- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, LexisNexis, 2019.
  - Chapter 10. Pleadings.
    - B.2 Joining Several Causes of Action
    - 10-39.1 Function of the Motion to Strike
    - 10-39.2 Well-Plead Allegations Admitted
    - 10-44.1 Pleading Over After Motion to Strike
    - 10-44.2 Amendment of Pleading; Waiver of Right to Appeal
- *Stephenson's Connecticut Civil Procedure*, by Renee Bevacqua Bollier, 1997, Atlantic Law Book Company, with 2014 supplement.
  - Chapter 5. The Complaint.
    - Sec. 47. Joinder of Causes of Action
  - Chapter 7. Motions Prior to Trial
    - Sec. 72. Function and Scope of Motion to Strike
    - Sec. 73. Defects Reached by Motion to Strike
    - Sec. 74. Procedure on Motions to Strike
    - Sec. 75. Effect of Ruling on Motion to Strike
  - Chapter 9. Disposition Short of Trial
    - Sec. 93. Motions to Strike

LAW REVIEWS:

Public access to law review databases is available on-site at each of our law libraries.

- Corey M. Dennis, *Roadmap to Connecticut Procedure*, 83 Connecticut Bar Journal 271 (2009).
- Wes Horton, Alice in Demurrerland, 51 Conn. B.J. 107 (1977).

Section 5: Legal Sufficiency of Answer

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a motion to strike filed to contest the legal sufficiency of any answer to any complaint, counterclaim or cross complaint, or any part of that answer including any special defense contained therein, that party may be by filing a motion to strike the contested pleading or part thereof.

SEE ALSO:

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

DEFINITIONS:

- "The defendant in the answer shall specially deny such allegations of the complaint as the defendant 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 (2020).
- **Legal sufficiency**: "means whether the allegations stated constitute a legally recognized defense if that defense is ultimately proven at trial." Chen v. Sikorsky, CV 970082165, 1998 WL 272800 (Conn. Super. Ct. May 18, 1998).
- "[A] plaintiff can [move to strike] a special defense". Nowak v. Nowak, 175 Conn. 112, 116, 394 A.2d 716 (1978).
- "[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." Braffman v. Bank of America Corp., 297 Conn. 501, 519, 998 A.2d 1169 (2010).

COURT RULES:

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

- Connecticut Practice Book (2020)
  - § 10-6. Pleadings Allowed and Their Order.
  - § 10-21. Joinder of Causes of Action.
  - § 10-39. Motion to Strike; Grounds.
  - § 10-40. –Opposition; Date for Hearing.
  - § 10-43. –When Memorandum of Decision Required on Motion to Strike.
  - § 10-44. –Substitute Pleading; Judgment.
  - § 10-45. –Stricken Pleading Part of Another Cause or Defense.
  - § 10-46. The Answer; General and Special Denial
  - § 10-50. –Denials; Special Defenses

FORMS:

- Figure 1: Motion to Strike
- 3 Connecticut Practice Series, *Connecticut Civil Practice Forms*, by Joel M. Kaye, 2004, Thomson West, with 2020 supplement (also available on Westlaw).

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Form 106.2 Motion to Strike

- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, LexisNexis, 2019.
  § 7.30 Motion to Strike

- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, Thomson West, 2020 (also available on Westlaw).
  § 1:56. Motion to strike portions of complaint (special defense) − Plaintiff's failure to respond to Defendant − Motion

- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, LexisNexis, 2019.
  F-10-39(3) Motion to Strike (Another Form)
  F.17-32(2) Motion to Strike Defaulted Defendant's Responsive Pleadings

- *Library of CT Collection Law Forms*, 2nd ed, by Robert M. Singer, Connecticut Law Tribune, 2015.
  9-004 Motion to Strike
  9-005 Memorandum in Support of Motion to Strike

- *Library of CT Personal Injury Law Forms*, 2nd ed, by Joshua Koskoff, Connecticut Law Tribune, 2014.
  5-002 Motion to Strike Defendant's Special Defense

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.

- Zmarzlak v. Sanchez, Superior Court, Judicial District of Fairfield at Bridgeport, No. FBT166058884S (June 29, 2017) (2017 WL 3251305). "There is a split of authority in the Superior Court as to whether the defense of 'failure to state a claim upon which relief may be granted' properly states a special defense where no facts are alleged that would constitute a recognizable special defense."

- Ferraiuolo v. Dean, Superior Court, Judicial District of New Haven, No. NNH-CV-14-6047444-S (February 26, 2015) (2015 WL 1283383) (59 Conn. L. Rptr. 829). "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.' *U.S. Bank National Ass'n v. Ascenzia*, Superior Court, judicial district of New Haven, Docket No. CV-08-5022527 (July 30, 2009, Abrams, J.) (48 Conn. L. Rptr. 345, 346).

  "Nonetheless, a failure to plead facts in support of a special defense may be ruled on via a motion to strike; *see East Greyrock, LLC v. OBC Associates, Inc.*, supra, 45 Conn. L. Rptr. 754-55; and this court has held previously that "[t]he total absence of any factual allegations specific to the

dispute renders [the special defense] legally insufficient." (Internal quotation marks omitted.) *Carriage Drive East, LLC v. Ritchie*, Superior Court, judicial district of New Haven, Docket No. CV-13-6038364 (April 22, 2014, Nazzaro, J.)."

- R.S. Silver Enterprises, Inc. v. Pascarella, 148 Conn. App. 359, 365-66, 86 A.3d 471, 474 (2014). "If proven, the facts set forth in the defendants' twenty-first special defense would establish that the plaintiff had no right to sue the defendants for breach of the participation agreement. Because such allegations were not inconsistent with the allegations of the plaintiff's complaint, but, nevertheless, if proven, would have defeated the plaintiff's claims against them, the trial court improperly struck that special defense."

- JP Morgan Chase Bank v. Rodrigues, 109 Conn. App. 125, 129-30, 952 A.2d 56, 59 (2008). "'The granting of a motion to strike a special defense is not a final judgment and is therefore not appealable.... The striking of special defenses neither terminates a separate proceeding nor so concludes the rights of the parties that further proceedings cannot affect them.' (Citation omitted; internal quotation marks omitted.) *Mechanics Savings Bank v. Townley Corp*., 38 Conn.App. 571, 573, 662 A.2d 815 (1995). Accordingly, we cannot consider that portion of the defendants' appeal that pertains to the striking of their special defenses. That issue must await review, if at all, in an appeal from the final decision on the merits of the case. See id., at 574, 662 A.2d 815."

WEST KEY NUMBERS:

- *Pretrial Procedure*, Key Numbers 531-710

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- *LexisNexis Practice Guide: Connecticut Civil Pretrial Practice*, by Margaret Penny Mason, LexisNexis, 2019.
  - Chapter 7. Pleadings
    - § 7.19 Motion to Strike

- *Civil Litigation in Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson, Prentice Hall, 1998.
  - Chapter 12 Pleadings: Defendant's Motion to Strike and Plaintiff's Response.

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

- *Stephenson's Connecticut Civil Procedure*, by Renee Bevacqua Bollier, 1997, Atlantic Law Book Company, with 2014 supplement.

- Chapter 7. Motions Prior to Trial
  - Sec. 72. Function and Scope of Motion to Strike
  - Sec. 73. Defects Reached by Motion to Strike
  - Sec. 74. Procedure on Motions to Strike
  - Sec. 75. Effect of Ruling on Motion to Strike
- Chapter 8. The Answer, Counterclaims
  - Sec. 87. Objections to Answer
- Chapter 9. Disposition Short of Trial
  - Sec. 93. Motions to Strike

- 18 Connecticut Practice Series, *Summary Judgment & Related Termination Motions*, by Erin Carlson, Thomson West, 2020 (also available on Westlaw).
  - Chapter 1. Motion to Strike
    - III. Failure to State Cause of Action or Claim
      - 1:29 Striking other Pleadings-Answer or Cross Complaint

- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, LexisNexis, 2019.
  - Chapter 10. Pleadings.
    - 10-39.1 Function of the Motion to Strike
    - 10-39.2 Well-Plead Allegations Admitted
    - 10-44.1 Pleading Over After Motion to Strike
    - 10-44.2 Amendment of Pleading; Waiver of Right to Appeal
    - 10-44.3 Stricken Pleading; Preserving Appellate Rights by Offer Evidence at Trial

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- Corey M. Dennis, Roadmap to Connecticut Procedure, 83 Connecticut Bar Journal 271 (2009).

- Wes Horton, Alice in Demurrerland, 51 Conn. B.J. 107 (1977).

Figure 1: Motion to Strike (Form)

Form 105.1, Heading and *Form 106.2*, Motion to Strike*,* 2 Conn. Practice Book (1997)

No. _____ Superior Court

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

_____ _____
(First Named Defendant) (Date)

Motion to Strike

The plaintiff (*or* defendant) in the above entitled matter moves to strike (*describe specific pleading or prayer for relief to be stricken)* filed by the adverse party (*or name of party)*

because it fails to state a claim upon which relief can be granted.

(*Set forth claim of insufficiency and specify the reasons therefor*.)

or

because of the absence of a necessary party. (*Set forth name and residence of such party and must state his interest in the cause of action.)*

or

because the two (or more) causes of action stated therein cannot properly be united in one (cross) complaint (*or* counterclaim) (*set forth reasons*)

or

State any other facts and reasons to show material to be stricken is legally insufficient.

Supporting memorandum of law citing legal authorities on which the motion relies is required*. See Rules, Sec.* 10-39(c)*.*

Figure 2: Misjoinder of Parties (Form)

Form 105.1, Heading and *Form 106.7*, Misjoinder of parties*,* 2 Conn. Practice Book (1997)

No. _____ Superior Court

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

_____ _____
(First Named Defendant) (Date)

Misjoinder of parties

(*Name*), named in the writ and complaint as a coplaintiff in the above entitled action is not properly a party because

(s*tate reasons*)

Wherefore it is moved that (*name*) be dropped as a plaintiff.

Order

(*date*)

It appearing to the court that the foregoing motion should be granted, it is hereby

Ordered that (*name*) be dropped as a plaintiff in this action.

By the Court (,J.)

_____
Assistant Clerk

(P.B. 1963, Form 245)