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2011 Edition

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

A Guide to Resources in the Law Library

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- The purpose of pleadings is to apprise the court and opposing counsel of the issues to be tried, not to conceal basic issues until after the close of the evidence. [Biller v. Harris](#), 147 Conn. 351, 357 (1960).
- Pleadings are intended to "limit the issues to be decided at the trial of a case and [are] calculated to prevent surprise." [Birchard v. City of New Britain](#), 103 Conn. App. 79, 83, 927 A.2d 985, cert. denied, 284 Conn. 920, 933 A.2d 721 (2007).
- **The Answer; General and Special Denial.** The defendant in the answer shall specially deny such allegations of the complaint as the defendant intends to controvert, admitting the truth of the other allegations, unless the defendant intends in good faith to controvert all the allegations, in which case he or she may deny them generally. Any defendant who intends to controvert the right of the plaintiff to sue as executor, or as trustee, or in any other representative capacity, or as a corporation, or to controvert the execution or delivery of any written instrument or recognizance sued upon, shall deny the same in the answer specifically. CONN. PRACTICE BOOK [§ 10-46](#) (2011)
- Generally speaking, facts must be pleaded as a special defense when they are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action. Practice Book § 10-50. [Almada v. Wausau Business Insurance Company](#), 274 Conn. 449, 456, 876 A. 2d 535 (2005).
- A counterclaim arises out of the same transaction described in the complaint. A set-off is independent thereof. [Bank of New London v. Santaniello](#), 130 Conn. 206, 210, 33 A.2d 126 (1943).
- **Time to Plead.** Commencing on the return day of the writ, summons and complaint in civil actions, pleadings, including motions and requests addressed to the pleadings, shall first advance within thirty days from the return day, and any subsequent pleadings, motions and requests shall advance at least one step within each successive period of fifteen days from the preceding pleading or the filing of the decision of the judicial authority thereon if one is required, except that in summary process actions the time period shall be three days and in actions to foreclose a mortgage on real estate the initial time period shall be fifteen days. CONN. PRACTICE BOOK [§ 10-8](#) (2011)
- **Penalty for Failing to Plead.** Parties failing to plead according to the rules and orders of the judicial authority may be nonsuited or defaulted, as the case may be. (See General Statutes § 52-119 and annotations.) CONN. PRACTICE BOOK [§ 10-18](#) (2011)

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These guides are provided with the understanding that they represent only a beginning to research.

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# Section 1: Admissions and Denials

*A Guide to Resources in the Law Library*

## SCOPE:

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

## SEE ALSO:

- [Default Motions and Judgments](#) (Research Guide)

## DEFINITIONS:

- "The defendant in the answer shall specially deny such allegations of the complaint as the defendant 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](#) (2011).
- **Evasive Denials:** "Denials must fairly meet the substance of the allegations denied. Thus, when the payment of a certain sum is alleged, and in fact a lesser sum was paid, the defendant cannot simply deny the payment generally, but must set forth how much was paid to the defendant; and where any matter of fact is alleged with divers circumstances, some of which are untruly stated, it shall not be sufficient to deny it as alleged, but so much as is true and material should be stated or admitted, and the rest only denied." CONN. PRACTICE BOOK [§ 10-47](#) (2011).
- **Implied Admissions:** "Every material allegation in any pleading which is not denied by the adverse party [the Defendant] shall be deemed to be admitted, unless such party avers that he or she has not any knowledge or information thereof sufficient to form a belief." CONN. PRACTICE BOOK [§ 10-19](#) (2011).
- "An admission in a defendant's answer to an allegation in a complaint is binding as a judicial admission. . . ." [Berty v. Gorelick](#), 59 Conn. App. 62, 756 A.2d 856, cert. denied, 254 Conn. 933, 761 A.2d 751 (2000).

## COURT RULES:

- CONN. PRACTICE BOOK (2011)
  - [Chapter 10: Pleadings](#)
    - § 10-1. Fact Pleading
    - § 10-5. Untrue Allegations or Denials
    - § 10-7. Waiving the Right to Plead
    - § 10-12. Service of the Pleading and Other Papers...
    - § 10-13. Method of Service
    - § 10-14. Proof of Service
    - § 10-19. Implied Admissions
    - § 10-39. Motion to Strike
    - § 10-46. **The Answer**; General and Special Denial

- § 10-47. Evasive Denial
- § 10-48. Express Admissions and Denials to be Direct and Specific
- § 10-56. Subsequent Pleadings; Plaintiff's Response to Answer
- § 10-57. Matter in Avoidance of Answer
- § 10-58. Pleadings Subsequent to Reply
- § 10-60. Amendment by Consent, Order of Judicial Authority, or Failure to Object

Chapter 17: Judgments

- § 17-32. Default for Failure to Plead

Chapter 24: Small Claims

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

Chapter 25: Family Matters

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

**STATUTES:**

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

**CASES:**

- Birchard v. City of New Britain, 103 Conn. App. 79, 927 A.2d 985, cert. denied, 284 Conn. 920, 933 A.2d 721 (2007).  
"In response to each allegation of a complaint, a defendant has three options. It may admit, deny, or plead that it 'has not any knowledge or information thereon sufficient to form a belief.' Practice Book § 10-19 . . ."
- Birchard v. City of New Britain, 103 Conn. App. 79, 927 A.2d 985, cert. denied, 284 Conn. 920, 933 A.2d 721 (2007).  
"The question before us, then, is whether a trial court is bound by an implied admission pursuant to Practice Book § 10-19 that is not brought to its attention at any stage of the proceedings . . . . We think it is both unfair and unworkable to

require the trial court, in each and every civil action before it, to scour the pleadings in search of implied admissions . . . We therefore conclude that the burden rests with the parties to bring to the court's attention an allegedly implied admission pursuant to Practice Book § 10-19."

- [Rudder v. Mamasco Lake Park Association](#), 93 Conn.App. 759, 890 A. 2d 645 (2006). "Accordingly, [t]he admission of the truth of an allegation in a pleading is a judicial admission conclusive on the pleader . . . . A judicial admission dispenses with the production of evidence by the opposing party as to the fact admitted, and is conclusive upon the party making it . . . . *Solomon v. Connecticut Medical Examining Board*, 85 Conn.App. 854, 866, 859 A.2d 932 (2004), cert. denied, 273 Conn. 906, 868 A.2d 748 (2005); see also 71 C.J.S. 246, supra, § 196 (admission in a plea or answer is binding on the party making it, and may be viewed as a conclusive or judicial admission). It is axiomatic that the parties are bound by their pleadings." (Internal quotation marks omitted.)
- [Nationwide Mutual Ins. Co. v. Allen](#), 83 Conn. App. 526, 541, 850 A.2d 1047, cert. denied, 271 Conn. 907 (2004). "The distinction between judicial admissions and mere evidentiary admissions is a significant one that should not be blurred by imprecise usage.... While both types are admissible, their legal effect is markedly different; judicial admissions are conclusive on the trier of fact, whereas evidentiary admissions are only evidence to be accepted or rejected by the trier." (Internal quotation marks omitted.)
- [Postemski v. Watrous](#), 151 Conn. 183, 185, 195 A. 2d 425 (1963). "The answer pleaded no information to allegations that the state prevented the plaintiff from filling, grading and paving the land unless he eliminated the culvert in a manner proposed by the state, which he has done at considerable expense. The pleading of no knowledge or information to these allegations is in effect a denial."

**WEST KEY NUMBER:**

- *Pleading*, Key Numbers 112 – 129

**CIVIL JURY INSTRUCTIONS:**

- *Connecticut Judicial Branch Civil Jury Instructions (2008)*
  - Part 2.4 — Types of Evidence
    - [2.4-4 Admissions from Pleadings](#)
    - [2.4-6 Admissions from Superseded Pleadings](#)

**TEXTS & TREATISES:**

- [Stephenson's Connecticut Civil Procedure](#), by Irene Bevacqua Bollier et al. (3rd ed. 1997). [Vol. 1]
  - Chapter 8. The answer, counterclaim; subsequent pleadings
    - § 80. Determining Defense Strategy
    - § 81. The Answer: Structure and Service
    - § 82. Denials
    - § 83. Special Defenses
- [Connecticut Practice Series, Connecticut Civil Practice Forms](#),

by Joel M. Kaye et al. (4th ed. 2004). [Vol. 1]

- General-Responsive Pleadings
  - Comments to Forms 105.1, 105.2, 105.2-A, 105.2-B, 105.2-C, 105.3
- [Connecticut Practice Series, Superior Court Civil Rules](#), by Wesley W. Horton and Kimberly A. Knox (2011). [Vol. 1]
  - Chapter 10. Pleadings
    - Authors' Comments to §§ 10-46 et seq.
- [Dupont on Connecticut Civil Practice](#), by Ralph P. Dupont (2011 ed.) [Vol. 1]
  - Chapter 10. Pleadings
    - Commentaries to §§ 10-46 et seq.
- [Civil Litigation In Connecticut: Anatomy of a Lawsuit](#), by Kimberly A. Peterson (1998).
  - Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response.
- [Connecticut Practice, Family Law and Practice with Forms](#), by Arnold H. Rutkin et al. (3d ed. 2010).
  - Chapter 19, Pleadings
    - § 19:9 Answer, cross-complaint and claims for relief by defendant
- [Library of Connecticut Collection Law Forms](#), by Robert M. Singer (2009).
  - Chapter 10 - Answer and Counterclaim
    - 10-000 Commentary
- [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#), by Jeanine M. Dumont (1998 ed.).
  - Chapter 6. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings
- Civil Forms - [Responding to a Civil Lawsuit](#) (Connecticut Judicial Branch)
- Family Forms – [Responding to a Divorce](#) (Connecticut Judicial Branch)
- Housing Forms - Summary Process (Eviction), Answer to Complaint, [JD-HM-5](#)
- [Table 1: Treatises with Sample Answer Forms](#)
  - *Civil Litigation In Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson (1998).
  - *Connecticut Practice Series, Connecticut Civil Practice Forms*, by Joel M. Kaye et al. (4th ed. 2004). [Vol. 1]
  - *Connecticut Practice Series, Connecticut Elements of an Action*, by Thomas B. Merritt (2010-2011 ed.). [Vol. 16]

**FORMS:**

- *Connecticut Landlord and Tenant with Forms*, Noble F. Allen (2008).
- *Connecticut Law of Torts*, by Douglass B. Wright et al. (3rd ed. 1991).
- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont (2011 ed.). [Vol. 1]
- *Library of Connecticut Collection Law Forms*, by Robert M. Singer (2009).
- *Library of Connecticut Family Law Forms*, edited by Thomas Colin (2008).
- *Library of Connecticut Personal Injury Forms*, edited by Joshua D. Koskoff (2007).

**ENCYCLOPEDIAS:**

- 61A [Am. Jur. 2d](#) *Pleading* (2010)
  - VI. Answers, Pleas, and Defenses  
§ 211 – 290
- 71 [C.J.S.](#) *Pleading* (2011)
  - III. Plea or Answer  
§ 158 – 208

**COMPILED BY:**

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860-515-5110. [Email](#).

**Table 1: Treatises with Sample Answer Forms**

(Hyperlinked titles go to our online catalog, which provides further bibliographic information.)

Treatises with Sample Answer Forms	
<p style="text-align: center;"><u><a href="#">Dupont on Connecticut Civil Practice</a></u></p> <p>F.8-1(9) Answer in Replevin by Officer, Special Defense, Counterclaim</p> <p>F.10-46 General Denial</p> <p>F.10-46(1) Admissions and Denials</p> <p>F.10-46(2) Denial of Right to Sue in Representative Capacity</p> <p>F.10-46(3) Denial of Execution or Delivery of Written Instrument</p> <p>F.10-47 Denial of Indebtedness, in Part</p> <p>F.10-47(1) Denial of Performance of Specific Condition of Contract</p> <p>F.10-54(1) Answer, and Set-Off</p> <p>F.10-56(3) Reply and Answer to Counterclaim for Assault</p> <p>F.10-56(4) Reply of the Plaintiff to Defendant's Answer and Special Defenses (Another Form)</p> <p>F.10-58 Defendant's Rejoinder to Answer to Counterclaim</p> <p>F.10-76(5) Answer to Reasons of Appeal From Decree Refusing to Admit Will to Probate</p> <p>F.14-7(3) Answer and Return of Zoning Board of Appeals</p> <p>F.17-56(4A) Answer and Claim of Certain Defendants in Action for Construction of Will</p> <p>F.23-43(1A) Answer to Complaint for Interpleader</p> <p>F.23-45(2A) Answer to Mandamus to Enforce Public Duty</p> <p>F.23-50.11(1) Answer to Complaint in Quo Warranto</p> <hr/> <p style="text-align: center;"><u><a href="#">Library of Connecticut Family Law Forms</a></u></p> <p>Form 001-010: Answer and Cross-Complaint</p>	<p style="text-align: center;"><u><a href="#">Connecticut Practice Series, Connecticut Civil Practice Forms, 4th</a></u></p> <p>Form 105.9: Answer, and set-off</p> <p>Form 504.1-Q: Answer and cross complaint — Dissolution of marriage</p> <p>Form 504.1-S: Withdrawal of answer and cross complaint — Dissolution of marriage</p> <p>Form 504.1-V: Motion to remove from uncontested list and permission to file an answer</p> <p>Form 604.1-A: Answer and counterclaim in action of replevin</p> <p>Form 605.3: Answer to complaint for interpleader</p> <p>Form 605.6: Answer in replevin by officer, with special defense and counterclaim</p> <p>Form 605.9: Answer to mandamus to enforce public duty</p> <p>Form 605.10: Answer to complaint in quo warranto</p> <p>Form 704.13-F: Answer and defenses to complaint for private receivership of tenement house</p> <p>Form 805.3: Reply and answer to counterclaim for assault</p> <p>Form 805.4: Defendant's rejoinder to answer to counterclaim</p> <p>Form 1005.1: Answer and claim of certain defendants in action for construction of will</p> <p>Form 1005.4: Answer to reasons of appeal from decree refusing to admit will to probate</p> <p>Form S-144: Answer to small claim</p> <hr/> <p style="text-align: center;"><u><a href="#">Connecticut Law of Torts, 3d</a></u></p> <p>Form 8: Answer</p> <p>Form 9: Special Defense</p> <p>Form 10: Reply</p>

<p align="center"><b><u><a href="#">Library of Connecticut Collection Law Forms</a></u></b></p>	<p align="center"><b><u><a href="#">Connecticut Practice Series, Connecticut Elements of an Action</a></u></b></p>
<p>10-001 Answer and Special Defenses</p> <p>10-002 Counterclaim for Fraud</p> <p>10-003 Counterclaim for Unfair Trade Practices</p> <p>10-004 Answer to Special Defenses</p> <p>10-005 Counterclaim on Consumer Collection—Outside of Proper Federal District Suit Under FDCPA</p>	<p>Chapter 1: False Imprisonment, § 1:10</p> <p>Chapter 2: Animal Actions — Dog Bites, § 2:12</p> <p>Chapter 3: Tortious Interference with Contractual Relations, § 3:11</p> <p>Chapter 4: Contract Actions — Promissory Estoppel, § 4:39</p> <p>Chapter 6: Employment Actions — Wrongful Discharge, § 6:10</p>
<p align="center"><b><u><a href="#">Connecticut Landlord and Tenant with Forms</a></u></b></p> <p>Form 2-009: Answer and Defense to Action for Private Receivership of Tenement House</p>	<p>Chapter 7: Abuse of Process, § 7:10</p> <p>Chapter 8: Breach of Fiduciary Duty, § 8:9</p> <p>Chapter 9: Misrepresentation, § 9:11</p> <p>Chapter 10: Governmental Tort Liability, § 10:10</p>
<p align="center"><b><u><a href="#">Civil Litigation In Connecticut: Anatomy of a Lawsuit</a></u></b></p> <p>Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response. (pp. 134-138)</p>	<p>Chapter 11: Connecticut Unfair Trade Practices Act (CUTPA), § 11:12</p> <p>Chapter 12: Intentional Infliction of Emotional Distress, § 12:9</p> <p>Chapter 13: Negligent Infliction of Emotional Distress, § 13:10</p>
<p align="center"><b><u><a href="#">Library of Connecticut Personal Injury Forms</a></u></b></p> <p>Form 6-006. Objection to Defendants' Request for Leave to File Amended Answer and Special Defenses</p>	<p>Chapter 14: Libel and Slander Actions (Defamation Actions), § 14:14</p> <p>Chapter 15. Malicious Prosecution/Vexatious Litigation, § 15:10</p>
<p align="center"><b><u><a href="#">Connecticut Practice Series, Connecticut Environmental Protection Act</a></u></b></p> <p>Form § 11:2—Special Defense, 22a-16 Action</p>	<p>Chapter 16. Medical Malpractice, § 16:11</p> <p>Chapter 17. Negligence Actions, § 17:11</p> <p>Chapter 18. Nuisance Actions, § 18:10</p> <p>Chapter 19. Premises Liability, § 19:11</p> <p>Chapter 20. Privacy Actions, § 20:10</p> <p>Chapter 21. Product Liability: The Product Liability Act, § 21:12.</p> <p>Chapter 22. Wrongful Death/Survival Actions, § 22:10</p> <p>Chapter 23. The Connecticut Antitrust Act, § 23:10</p>

**Figure 1: Admissions and Denials (Form)**

*Forms 105.1, Heading and Form 105.3, Admissions and Denials, 2 CONN. PRACTICE BOOK (1997)*

No. \_\_\_\_\_

Superior Court

\_\_\_\_\_  
(First Named Plaintiff)

Judicial District of \_\_\_\_\_

v.

at \_\_\_\_\_

\_\_\_\_\_  
(First Named Defendant)

\_\_\_\_\_  
(Date)

ANSWER

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

# Section 2: Special Defenses

*A Guide to Resources in the Law Library*

## **SCOPE:**

Bibliographic resources relating to special defenses to a complaint.

## **DEFINITIONS:**

- “Generally speaking, facts must be pleaded as a special defense when they are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action.” [Almada v. Wausau Business Insurance Company](#), 274 Conn. 449, 456, 876 A. 2d 535 (2005).
- “. . . Thus, accord and satisfaction, arbitration and award, coverture, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded, while advantage may be taken, under a simple denial, of such matters as the statute of frauds, or title in a third person to what the plaintiff sues upon or alleges to be the plaintiff’s own.” CONN. PRACTICE BOOK [§ 10-50](#) (2011).
- “We agree, however, with the plaintiff’s observation that the list of special defenses in § 10-50 is illustrative rather than exhaustive.” [Kosinski v. Carr](#), 112 Conn.App. 203, 962 A. 2d 836 (2009). [Footnote 6]
- “Where several matters of defense are pleaded, each must refer to the cause of action which it is intended to answer, and be separately stated and designated as a separate defense, as, *First Defense*, *Second Defense*, etc. Where the complaint or counterclaim is for more than one cause of action, set forth in several counts, each separate matter of defense should be preceded by a designation of the cause of action which it is designed to meet, in this manner: *First Defense to First Count*, *Second Defense to First Count*, *First Defense to Second Count*, and so on. Any statement of a matter of defense resting in part upon facts pleaded in any preceding statement in the same answer may refer to those facts as thus recited, without otherwise repeating them.” CONN. PRACTICE BOOK [§ 10-51](#) (2011).
- “No special defense shall contain a denial of any allegation of the complaint or counterclaim unless that denial is material to such defense. An admission of any allegation of the complaint or counterclaim in a special defense will be deemed to incorporate such allegation in the defense.” CONN. PRACTICE BOOK [§ 10-52](#) (2011).
- “If contributory negligence is relied upon as a defense, it shall be affirmatively pleaded by the defendant and the defendant shall specify the negligent acts or omissions on which the defendant relies. (See General Statutes § 52-114 and annotations.)” CONN. PRACTICE BOOK [§ 10-53](#) (2011).
- “A defendant’s failure to plead a special defense precludes the admission of evidence on the subject. . . . It would be

fundamentally unfair to allow any defendant to await the time of trial to introduce an unpleaded defense. Such conduct would result in trial by ambush to the detriment of the opposing party." (Citations omitted; internal quotation marks omitted.) [Oakland Heights Mobile Park, Inc. v. Simon](#), 36 Conn. App. 432, 436-37, 651 A.2d 281 (1994).

**COURT RULES:**

- CONN. PRACTICE BOOK (2011)
  - [Chapter 10: Pleadings](#)
    - § 10-3. Allegations Based on Statutory Grounds
    - § 10-12. Service of the Pleading and Other Papers...
    - § 10-13. Method of Service
    - § 10-14. Proof of Service
    - § 10-39. Motion to Strike
    - § 10-46. The Answer; General and Special Denial
    - § 10-47. Evasive Denial
    - § 10-48. Express Admissions and Denials to be Direct and Specific
    - § 10-50. **Denials; Special Defenses**
    - § 10-51. **Several Special Defenses**
    - § 10-52. **Admissions and Denials in Special Defense**
    - § 10-53. **Pleading Contributory Negligence**
    - § 10-56. Subsequent Pleadings; Plaintiff's Response to Answer
    - § 10-57. Matter in Avoidance of Answer
    - § 10-58. Pleadings Subsequent to Reply
    - § 10-60. Amendment by Consent, Order of Judicial Authority, or Failure to Object

**STATUTES:**

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

**CASES:**

- [Bedrick v. Bedrick](#), 300 Conn. 691, 17 A.3d 17 (2011). “In fact, Practice Book § 25-9 is applicable to family relations cases, and does not require that any defenses be pleaded specifically.” [Footnote 3]
- [Singhaviroj v. Board of Education of Fairfield](#), 124 Conn.App. 228, 4 A.3d 851 (2010). “It is well established that res judicata and collateral estoppel are affirmative defenses that may be waived if not properly pleaded . . . ([c]ollateral estoppel, like res judicata, must be specifically pleaded by a defendant as an affirmative defense’); cf. Practice Book § 10-50 (‘res judicata must be specially pleaded’ as defense). The defendants failed to comply with that requirement.

That is not to say that the defendants are foreclosed from pursuing such a defense in every instance. As this court explained years ago, ‘[t]here is, however, an exception to this general rule. The defendants’ failure to file a special defense may be treated as waived where the plaintiff fails to make appropriate objection to the evidence and argument offered in support of that defense. See *Tedesco v. Stamford*, 215 Conn. 450, 462-63, 576 A.2d 1273 (1990); *Pepe v. New Britain*, 203 Conn. 281, 286, 524 A.2d 629 (1987).’”

- [Braftman v. Bank of America Corporation](#), 297 Conn. 501, 998 A. 2d 1169 (2010). “The plaintiffs claim that the trial court improperly applied and allocated the burden of proof because it did not require the defendant to prove its special defense of payment in accordance with Practice Book § 10-50, and improperly failed to require the defendant to produce evidence of payment once the plaintiffs had presented a prima facie case of nonpayment by having introduced the uncanceled passbooks into evidence.”
- [Kosinski v. Carr](#), 112 Conn.App. 203, 962 A. 2d 836 (2009). “The defendant notes that Practice Book § 10-50 ‘specifically does not require that the special defense of “unclean hands” be specially [pleaded]. . . .’ We agree, however, with the plaintiff’s observation that the list of special defenses in § 10-50 is illustrative rather than exhaustive.” [Footnote 6]
- [Beckenstein Enterprises v. Keller](#), 115 Conn.App. 680, 974 A. 2d 764 (2009). “This court has previously concluded that the continuing course of conduct doctrine is a matter that must be pleaded in avoidance of a statute of limitations special defense. *Bellemare v. Wachovia Mortgage Corp.*, 94 Conn.App. 593, 607 n. 7, 894 A.2d 335 (2006), aff’d, 284 Conn. 193, 931 A.2d 916 (2007); see also Practice Book § 10-57.”
- [Brown v. Robishaw](#), 282 Conn. 628, 922 A. 2d 1086 (2007). “We begin our analysis by noting that it is well established that the defense of self-defense is available to a defendant faced with the intentional torts of civil assault and battery, provided that there is sufficient evidence in support of that defense. See, e.g., *Manning v. Michael*, 188 Conn. 607, 610, 452 A.2d 1157 (1982); *Hanauer v. Coscia*, 157 Conn. 49, 51, 244 A.2d 611 (1968); *Laffin v. Apalucci*, 130 Conn. 153, 154, 32 A.2d 648 (1943). Moreover, although the specific issue of whether

the special defense of self-defense is available in an action wherein the plaintiff pleads only negligence is a question of first impression for this court, the courts of Illinois and Louisiana have considered the relationship between this defense and a plaintiff's negligence claim."

- [Ramondetta v. Amenta](#), 97 Conn. App. 151, 903 A.2d 232 (2006). "They pleaded the defense as follows: 'The [d]efendant's claims are barred by the applicable [s]tatute of [l]imitations.' That pleading is inadequate. A similar situation arose in *Avon Meadow Condominium Assn., Inc. v. Bank of Boston Connecticut*, 50 Conn. App. 688, 719 A.2d 66, cert. denied, 247 Conn. 946, 723 A.2d 320 (1998), in which the defendant failed to plead specifically a statute of limitations defense. We held: 'Practice Book § 10-3 (a) provides that "[w]hen any claim made . . . in a . . . special defense . . . or other pleading is grounded on a statute, the statute shall be specifically identified by its number." . . . .'"
- [Parente v. Pirozzoli](#), 87 Conn.App. 235, 866 A. 2d 629 (2005). "Relying on that principle, our Supreme Court has refused to find improper in a trial court's consideration of an unpleaded special defense that was first argued by the defendant in its posttrial brief when the evidence relied on in support of that defense was introduced at trial by the plaintiff in support of its claim. See *Web Press Services Corp. v. New London Motors, Inc.*, 203 Conn. 342, 349, 525 A.2d 57, following remand, 205 Conn. 479, 533 A.2d 1211 (1987). The court noted that in introducing the evidence, the plaintiff did not request any limitation on its use, and the defendant did not object to its introduction. *Id.* Essentially, by introducing the evidence itself, the plaintiff effectively waived any objection to the defendant's reliance on it in support of a special defense."
- [Dow & Condon, Inc. v. Brookfield Development Corp.](#), 266 Conn. 572, 585, 833 A. 2d 908 (2003). "We do not condone the practice of waiting until the day of trial to raise an important legal issue for the first time. Under the circumstances of the present case, however, we conclude that it was well within the trial court's discretion to grant the defendant's request to amend its answer."
- [Bennett v. Automobile Ins. Co. of Hartford](#), 230 Conn. 795, 802, 646 A.2d 806 (1994). "Whether facts must be specially pleaded depends on the nature of those facts in relation to the contested issues."
- [Pawlinski v. Allstate Ins. Co.](#), 165 Conn. 1, 327 A.2d 583 (1973). "If, however, a party seeks the admission of evidence which is consistent with a prima facie case, but nevertheless would tend to destroy the cause of action, the 'new matter' must be affirmatively pleaded as a special defense. *Biller v. Harris*, supra; James, loc. cit.; 1 Stephenson, op. cit., pp. 518-19, § 127. Practice Book § 120 lists some of the defenses which must be specially pleaded and proved. Historically, the special defense plea is an outgrowth of the common-law plea of 'confession and avoidance.' 1 Stephenson, op. cit., p. 521, § 127 (c), explains the plea with an apt illustration: D is liable to

P if a, b, and c are true unless d is also true. If d contradicts a, b, or c, then evidence of d may be admitted under a denial. If, however, the existence of d does not negate the existence of a, b, or c, but independently destroys liability, then evidence of d may be admitted only under a special defense. The distinction is significant since pleading is more than a mere procedural formality. Generally, it allocates the burden of proof on a particular issue. *DuBose v. Carabetta*, supra, 262; 1 Stephenson, op. cit., p. 523, § 127 (e); James, op. cit. § 4.10."

- [DuBose v. Carabetta](#), 161 Conn. 254, 287 A. 2d 357 (1971). "The inherent difficulty in drawing the line between what can be shown under a general denial and what must be specially pleaded is recognized by 1 Stephenson, Conn. Civ. Proc. (2d Ed.) § 126 (g)."

**WEST KEY NUMBER:**

- *Pleading*, Key Numbers 132 – 137

**CIVIL JURY INSTRUCTIONS:**

- *Connecticut Judicial Branch Civil Jury Instructions (2008)*
  - Part 2.6 — Burden of Proof
    - [2.6-2 Burden of Proof - Affirmative Defenses](#)
  - Part 3.3 – Torts — Defenses
    - [3.3-1 Statute of Limitation Defense - General](#)
  - [Part 3.5 – Torts — Comparative Negligence](#)
  - Part 3.9 – Torts — Premises Liability
    - [3.9-20 Plaintiff's Duty to Use Facilities](#)
  - Part 3.10 – Torts — Product Liability
    - [3.10-3 Product Liability - Comparative Responsibility \(Causation\)](#)
    - [3.10-4 Product Liability - Misuse of a Product](#)
  - Part 4.4 – Contracts — Legal Relationships
    - [4.4-1 Minors](#)
    - [4.4-3 Mental Illness or Defect](#)

**TEXTS & TREATISES:**

- [Stephenson's Connecticut Civil Procedure](#), by Irene Bevacqua Bollier et al. (3rd ed. 1997). [Vol. 1]
  - Chapter 8. The answer, counterclaim; subsequent pleadings
    - § 83. Special Defenses
    - § 84. Multiple Defenses
- [Connecticut Practice Series, Connecticut Civil Practice Forms](#), by Joel M. Kaye et al. (4th ed. 2004). [Vol. 1]
  - General-Responsive Pleadings
    - Comments to Forms 105.1 and 105.4 et seq.
- [Connecticut Practice Series, Superior Court Civil Rules](#), by Wesley W. Horton and Kimberly A. Knox (2011). [Volume 1]

- Chapter 10. Pleadings
    - Authors' Comments to § 10-50, including "Table of Defenses" **[This table lists many defenses requiring pleading of special defense.]**
- [Dupont on Connecticut Civil Practice](#), by Ralph P. Dupont, (2011 ed.). [Vol. 1]
  - Chapter 10. Pleadings
    - Commentaries to §§ 10-50 et seq.
- [Civil Litigation In Connecticut: Anatomy of a Lawsuit](#), by Kimberly A. Peterson (1998).
  - Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response.
- [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), by Denis R. Caron and Geoffrey K. Milne (4th ed. 2004).
  - Chapter 28: Defenses to Foreclosure (see also, 2010 supplement)
- [Connecticut Summary Process Manual](#), by Paul J. Marzinotto (2002).
  - IX. Special Defenses, page 99
- [Library of Connecticut Collection Law Forms](#), by Robert M. Singer (2009).
  - Chapter 11 – Special Defenses
    - 11-000 Commentary—General and Special Defenses, page 490
- [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#), by Jeanine M. Dumont (1998 ed.).
  - Chapter 6. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings

**FORMS:**

- Civil Forms - [Responding to a Civil Lawsuit](#) (Connecticut Judicial Branch)
- Housing Forms - Summary Process, Eviction (Connecticut Judicial Branch)
  - Answer to Complaint, [JD-HM-5](#)
  - Reply to Special Defenses, [JD-HM-16](#)
- [Table 2: Treatises with Sample Special Defense Forms](#)
  - *Civil Litigation In Connecticut: Anatomy of a Lawsuit*, by Kimberly A. Peterson (1998).
  - *Connecticut Practice Series, Connecticut Civil Practice Forms*, 4th, by Joel M. Kaye et al. (2004). [Vol.2]
  - *Connecticut Practice Series, Connecticut Elements of an Action*, by Thomas B. Merritt (2010-2011 edition).
  - *Connecticut Practice Series, Connecticut Environmental Protection Act*, by David F. Sherwood and Janet P.

Brooks (2006).

- *Connecticut Landlord and Tenant with Forms*, by Noble F. Allen (2008).
- *Connecticut Summary Process Manual*, by Paul J. Marzinotto (2002).
- *Dupont on Connecticut Civil Practice*, by Ralph P. Dupont, (2011 ed.). [Vol. 1]
- *Library of Connecticut Collection Law Forms*, by Robert M. Singer (2009).
- *Library of Connecticut Personal Injury Forms*, edited by Joshua D. Koskoff (2007).

**ENCYCLOPEDIAS:**

- 61A [Am. Jur. 2d](#) *Pleading* (2010)
  - VI. Answers, Pleas, and Defenses  
Affirmative Defenses, §§ 260, 270 – 289
- 71 [C.J.S.](#) *Pleading* (2011)
  - III. Plea or Answer  
D. Matter in Avoidance, § 196 – 198

**COMPILED BY:**

Christopher Roy, Connecticut Judicial Branch Law Library at New Britain, 20 Franklin Square, New Britain, CT 06051.  
860-515-5110. [Email](#).

**Table 2: Treatises with Sample Special Defense Forms**

(Hyperlinked titles go to our online catalog, which provides further bibliographic information.)

Treatises with Sample Special Defense Forms	
<p><a href="#"><u>Dupont on Connecticut Civil Practice</u></a></p>	<p><a href="#"><u>Connecticut Practice Series, Connecticut Civil Practice Forms, 4th</u></a></p>
F.10-50 Accord and Satisfaction -- Unliquidated Claim	Form 105.4 (Denial of Right to Sue in Representative Capacity)
F.10-50(1) Accord and Satisfaction	Form 105.5 (Discharge in Bankruptcy)
F.10-50(2) Release of Guarantor Because of Impairment of Collateral	Form 105.6 (Statute of Limitations)
F.10-50(3) Release of Guarantor Because of Impairment of Collateral	Form 105.7 (Invalidity of Judgment)
F.10-50(4) Probate Appeal (Another Form); Special Defenses	Form 105.9 (Answer, and Set-Off)
F.10-50(5) Forged or Unauthorized Signature	Form 105.10 (Reply—Denial)
F.10-50(6) Special Defenses (Commonly Pled)	Form 105.11 (Res Adjudicata)
F.10-50(7) Statute of Limitations	<p><a href="#"><u>Library of Connecticut Collection Law Forms</u></a></p>
F.10-50(8) Adverse Possession of Real Estate	11-001 - Statute of Limitations—Negligence Claim
F.10-50(9) Title to Right of Way by Prescription	11-002 - Statute of Limitations—Breach of Contract Claim
F.10-50(10) Insanity	11-003 - Lack of Capacity—Under the Age of Majority
F.10-50(11) Duress	11-004 - Lack of Capacity—Mental Incapacity
F.10-50(12) Against Holder in Due Course	11-005 - Fraud
F.10-50(13) Misrepresentation as Regards to Insurance Policy	11-006 - Waiver
F.10-50(14) Note -- Induced by Fraud	11-007 - Mutual Mistake
F.10-50(15) Fraud in Recovery of Judgment With Counterclaim for Equitable Relief	11-008 - Statute of Frauds—Answering for the Debt of Another
F.10-50(16) Invalidity of Judgment	11-009 - Statute of Frauds—Work Taking Longer Than One Year to Perform
F.10-50(17) Usury	11-010 - Defective Goods
F.10-50(18) Note – Illegality	11-011 - Disputing Amount of Debt
F.10-50(19) Truth-In-Lending Violation, in Action or Note	11-012 - Failure to Perform Services
F.10-50(20) Res Adjudicata	<p><a href="#"><u>Connecticut Summary Process Manual</u></a></p>
F.10-50(21) Payment	Form 9.1 – Special Defenses, Payment in Full
F.10-50(22) Infancy	Form 9.2 – Special Defenses, Refusal of Timely Rent Payment
F.10-50(23) Contributory Negligence, Under Statute	

*DuPont on  
Connecticut Civil Practice (Cont.)*

F.10-50(24) Answer in Replevin by Officer, With Special Defense and Counterclaim

F.10-50(25) Mistake in Amount of Note

F.10-50(26) By Surety, Alleging Alteration of Agreement

F.10-50(27) To Action Against Carrier, That Injury to Goods Was by Plaintiff's Fault

F.10-50(28) That Loss of Goods by Common Carrier Was Due to Risk for Which Defendant Was Not Liable

F.10-50(30) Unauthorized Completion of Instrument

F.10-50(31) Mistake in Amount of Note

F.10-50(32) Alteration of Negotiable Instrument

F.10-50(33) Failure to Make Presentment for Payment: Resultant Discharge of Endorser

F.10-50(34) Defense Against Acceleration of Note Under Insecurity Clause

F.10-50.35 F.10-50(35) Defense and Counterclaim in Action for Assault

F.10-50(36) Defense Against Common Law Claim for Personal Injuries by an Employee of a Subcontractor Within the Workmen's Compensation Act

F.10-50(37) By Sheriff to Complaint for Illegal Seizure

F.10-50(38) Lien for Storage

F.10-50(39) Defective Fence

F.10-50(40) To Action for Waste

F.10-50(41) Defense, in Action of Ejectment; License

F.10-50(42) Equitable Title in Defendant

F.10-50(43) Special Defense and Counterclaim to Foreclosure; Mistake, Fraud or Accident in Failure to Make Payments

F.10-50(44) Discharge in Bankruptcy

F.10-50(45) Tender

F.10-50(46) Mutual Rescission of Contract

F.10-50(47) Rescission After Repudiation by Plaintiff

*Connecticut  
Summary Process Manual (Cont.)*

Form 9.3 – Special Defenses, Rent Dispute

Form 9.4 – Special Defenses, Housing Code Enforcement

Form 9.5 – Special Defenses, Tender, Acceptance and Waiver

Form 9.6 – Special Defenses, General Uninhabitability (Conn. Gen. Stat. § 47a-4a)

Form 9.7 – Special Defenses, General Uninhabitability

Form 9.8 – Special Defenses, Smoke Detector

Form 9.9 – Special Defenses, Defense of Lead Paint

Form 9.10 – Special Defenses, Certificate of Occupancy

Form 9.11 – Special Defenses, Termination Prior to Expiration of Lease

Form 9.12 – Special Defenses, Retaliatory Eviction

Form 9.13 – Special Defenses, For Cause Eviction

*Connecticut Practice Series,  
Connecticut Elements of an Action*

Chapter 2: Animal Actions — Dog Bites, § 2:12

Chapter 4: Contract Actions — Promissory Estoppel, § 4:39

Chapter 6: Employment Actions — Wrongful Discharge, § 6:10

Chapter 8: Breach of Fiduciary Duty, § 8:9

Chapter 9: Misrepresentation, § 9:11

Chapter 10: Governmental Tort Liability, § 10:10

Chapter 11: Connecticut Unfair Trade Practices Act (CUTPA), § 11:12

Chapter 12: Intentional Infliction of Emotional Distress, § 12:9

Chapter 13: Negligent Infliction of Emotional Distress, § 13:10

Chapter 14: Libel and Slander Actions (Defamation Actions), § 14:14

<p style="text-align: center;"><u><a href="#">Dupont on Connecticut Civil Practice (Cont.)</a></u></p> <p>F.10-50(48) That Plaintiff Made Fraudulent Proof of Loss</p> <p>F.10-50(49) Transfer of Interest of Insured</p> <p>F.10-50(50) Failure to Make Proof of Loss</p> <p>F.10-50(51) Failure to Give Timely Notice of Dishonor: Resultant Discharge of Endorse</p> <hr/> <p style="text-align: center;"><u><a href="#">Library of Connecticut Personal Injury Forms</a></u></p> <p>Form 6-006. Objection to Defendants' Request for Leave to File Amended Answer and Special Defenses</p> <hr/> <p style="text-align: center;"><u><a href="#">Connecticut Practice Series, Connecticut Environmental Protection Act</a></u></p> <p>Form § 11:2—Special Defense, 22a-16 Action</p> <hr/> <p style="text-align: center;"><u><a href="#">Connecticut Law of Torts, 3d</a></u></p> <p>Form 9: Special Defense</p> <p>Form 10: Reply</p>	<hr/> <p style="text-align: center;"><u><a href="#">Connecticut Practice Series, Connecticut Elements of an Action (Cont.)</a></u></p> <p>Chapter 15. Malicious Prosecution/Vexatious Litigation, § 15:10</p> <p>Chapter 16. Medical Malpractice, § 16:11</p> <p>Chapter 17. Negligence Actions, § 17:11</p> <p>Chapter 19. Premises Liability, § 19:11</p> <p>Chapter 20. Privacy Actions, § 20:10</p> <p>Chapter 21. Product Liability: The Product Liability Act, § 21:12.</p> <p>Chapter 22. Wrongful Death/Survival Actions, § 22:10</p> <p>Chapter 23. The Connecticut Antitrust Act, § 23:10</p> <hr/> <p style="text-align: center;"><u><a href="#">Civil Litigation In Connecticut: Anatomy of a Lawsuit</a></u></p> <p>Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response. (pp. 134-138)</p>
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**Figure 2: Discharge in Bankruptcy (Form)**

*Form 105.5: Discharge in Bankruptcy, 2 CONN. PRACTICE BOOK (1997)*

SPECIAL DEFENSE

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

# Section 3: Counterclaims and Setoffs

*A Guide to Resources in the Law Library*

## SCOPE:

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

## DEFINITIONS:

- [Bank of New London v. Santaniello](#), 130 Conn. 206, 210, 33 A.2d 126 (1943). "A counterclaim arises out of the same transaction described in the complaint. A set-off is independent thereof."
- "In any action for legal or equitable relief, any defendant may file counterclaims against any plaintiff and cross claims against any codefendant provided that each such counterclaim and cross claim arises out of the transaction or one of the transactions which is the subject of the plaintiff's complaint; and if necessary, additional parties may be summoned in to answer any such counterclaim or cross claim. A defendant may also file a counterclaim or cross claim under this section against any other party to the action for the purpose of establishing that party's liability to the defendant for all or part of the plaintiff's claim against that defendant." CONN. PRACTICE BOOK [§ 10-10](#) (2011).
- "In any case in which the defendant has either in law or in equity or in both a counterclaim, or right of setoff, against the plaintiff's demand, the defendant may have the benefit of any such setoff or counterclaim by pleading the same as such in the answer, and demanding judgment accordingly; and the same shall be pleaded and replied to according to the rules governing complaints and answers. (See General Statutes §§ 52-139 to 52-142.)" CONN. PRACTICE BOOK [§ 10-54](#) (2011).

## COURT RULES:

- CONN. PRACTICE BOOK (2011)
  - [Chapter 9: Parties](#)
    - § 9-21. Counterclaim; Third Parties
  - [Chapter 10: Pleadings](#)
    - § 10-1. Fact Pleading
    - § 10-5. Untrue Allegations or Denials
    - **§ 10-10. Supplemental Pleadings; Counterclaims**
    - § 10-11. Impleading of Third Party by Defendant in Civil Action
    - § 10-39. Motion to Strike
    - § 10-46. The Answer; General and Special Denial
    - § 10-47. Evasive Denial
    - § 10-48. Express Admissions and Denials to be Direct and Specific
    - **§ 10-54. Pleading of Counterclaim and Setoff**
    - **§ 10-55. Withdrawal of Action after**

### **Counterclaim**

- § 10-57. Matter in Avoidance of Answer
- § 10-59. Amendments; Amendments as of Right by Plaintiff
- § 10-60. Amendment by Consent, Order of Judicial Authority, or Failure to Object

### Chapter 17: Judgments

- § 17-44. Summary Judgments; Scope of Remedy

### Chapter 18: Fees and Costs

- § 18-12. Costs where Several Issues
- § 18-16. Costs on Complaint and Counterclaim
- § 18-17. Costs on Counterclaim

### Chapter 24: Small Claims

- § 24-19. Claim of Setoff or Counterclaim
- § 24-20. Amendment of Claim or Answer, Setoff or Counterclaim; Motion to Dismiss
- § 24-33. Costs in Small Claims

### Chapter 25: Family Matters

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

### **STATUTES:**

- Chapter 898 - Pleading
  - § 52-99. Untrue allegations or denials. Costs.
  - § 52-119. Pleading to be according to rules and orders of court.
  - § 52-120. Pleading filed by consent after expiration of time.
  - § 52-121. Pleading may be filed after expiration of time fixed, but prior to hearing on motion for default judgment or nonsuit. Judgment or penalty for failure to plead.
  - § 52-123. Circumstantial defects not to abate pleadings.
  - § 52-130. Amendment of defects, mistakes or informalities.
  - **§ 52-139. Set-off of mutual debts; procedure.**
  - **§ 52-140. Set-off by defendant in suit by assignee.**
  - **§ 52-141. Set-off in action for trespass or tort.**
  - **§ 52-142. Joint debtors; discharge; set-off.**
  - § 52-584. Limitation of action for injury to person or property caused by negligence, misconduct or malpractice.

**CASES:**

- [Morgan Chase Bank v. Rodrigues](#), 109 Conn.App. 125, 952 A. 2d 56 (2008). "A motion to strike tests the legal sufficiency of a cause of action and may properly be used to challenge the sufficiency of a counterclaim . . . *Fairfield Lease Corp. v. Romano's Auto Service*, 4 Conn. App. 495, 496, 495 A.2d 286 (1985); see also Practice Book § 10-39. Accordingly, we conclude that a motion to strike was the proper procedural vehicle to test the sufficiency of the defendants' counterclaim. (Citations omitted; internal quotation marks omitted.)"
- [Morgera v. Chiappardi](#), 74 Conn. App. 442, 813 A. 2d 89 (2007). "The 'transaction test' is one of practicality, and the trial court's determination as to whether that test has been met ought not be disturbed except for an abuse of discretion . . . . Where the underlying purposes of Practice Book § [10-10], to wit, judicial economy, avoidance of multiplicity of litigation, and avoidance of piecemeal disposition of what is essentially one action, are thwarted rather than served by the filing of a cross claim, the cross claim may properly be expunged. . . .  
  
"We conclude, therefore, that the necessary nexus existed such that the complaint and counterclaim were so related that they satisfied the practical test of our transaction rule stated in Practice Book § 10-10. Having satisfied the transaction test, the defendant also is entitled legitimately to invoke equitable relief." (Citation omitted; internal quotation marks omitted.)
- [Urich v. Fish](#), 97 Conn.App. 797, 907 A. 2d 96 (2006). "The plaintiff cites no case law, statute or rule of practice that supports his position. Here, prejudgment interest was awarded on the defendant's counterclaim. A counterclaim is an independent action. Practice Book §§ 10-10, 10-54, 10-55; *Ceci Bros., Inc. v. Five Twenty-One Corp.*, 81 Conn.App. 419, 428, 840 A.2d 578, cert. denied, 268 Conn. 922, 846 A.2d 881(2004). In its discretion, the court declined to award the plaintiff prejudgment interest on his claims but granted the defendant's request to award prejudgment interest on his claims. The court properly refused to set off the defendant's award against the plaintiff's award. To set off one claim against the other before calculating interest would, in effect, award § 37-3a interest to the plaintiff when the plaintiff had not been awarded such interest and was not entitled to such interest."
- [Mulcahy v. Mossa](#), 89 Conn.App. 115, 872 A. 2d 453 (2005). "Section 52-584 expressly provides that a counterclaim may be filed at any time prior to the close of pleadings, irrespective of whether the statute of limitations governing the counterclaim has run."
- [OCI Mortgage Corp. v. Marchese](#), 255 Conn. 448, 463, 774 A. 2d 940 (2001). "In Connecticut, a setoff may be legal or equitable in nature. See *Connecticut Bank & Trust Co. v. Winters*, 225 Conn. 146, 162, 622 A.2d 536 (1993); *Savings Bank of New London v. Santaniello*, 130 Conn. 206, 211, 33 A.2d 126 (1943). Legal setoff is governed by General Statutes

§ 52-139 et seq. and involves mutual debts between parties in any action: (1) to recover on a debt pursuant to § 52-139; (2) by an assignee of a nonnegotiable chose in action pursuant to General Statutes § 52-140; (3) for trespass to real or personal property or other tort committed without force pursuant to General Statutes § 52-141; or (4) involving joint debtors pursuant to General Statutes § 52-142. See also Practice Book § 10-54.

When the statutes governing legal setoff do not apply, a party may be entitled to equitable setoff, nonetheless, 'only to enforce the simple but clear natural equity' in a given case. *Connecticut Bank & Trust Co. v. Winters*, supra, 225 Conn. 162, quoting *Spurr v. Snyder*, 35 Conn. 172, 174 (1868)."

- [Northern Homes Distributors, Inc. v. Grosch](#), 22 Conn. App. 93, 96, 575 A.2d 711 (1990). "The defendant first asserts that the prior pending action doctrine cannot be applied in this situation. Contrary to the defendant's contention, the prior pending action doctrine applies with equal force to counterclaims. *Cole v. Associated Construction Co.*, 141 Conn. 49, 53, 103 A.2d 529 (1954). In this instance, the court must compare the allegations made in the counterclaim with those contained in the complaint brought by the party bringing the counterclaim. Id. If the counterclaim and the party's complaint contain 'essentially the same allegations,' the latter of the two must be dismissed."
- [225 Associates v. Connecticut Housing Finance Authority](#), 65 Conn. App. 112, 782 A. 2d 189 (2001). "'Traditionally, the distinction between a setoff and a counterclaim centers around whether the claim arises from the same transaction described in the complaint. If the claim involves a debt which is mutual and liquidated, even though it arises from separate transactions, it is characterized as a setoff. See General Statutes § 52-139. If the claim arises out of the same transaction described in the complaint, it is characterized as a counterclaim. *Savings Bank of New London v. Santaniello*, 130 Conn. 206, [210], 33 A.2d 126 (1943). The title of the pleading is not controlling. The issue is, rather, whether sufficient facts are pleaded that would allow recovery either as a setoff or as a counterclaim. *Peters Production, Inc. v. Dawson*, 182 Conn. 526, 528, 438 A.2d 747 (1980).'  
[Northwestern Electric, Inc. v. Rozbicki](#), 6 Conn. App. 417, 426, 505 A.2d 750 (1986)."
- [Hope's Architectural Products, Inc. v. Fox Steel Co.](#), 44 Conn. App. 759, 692 A. 2d 829 (1997). "A defendant is in the position of a plaintiff with respect to a set-off or a counterclaim. See Practice Book § 168; *Yale University School of Medicine v. McCarthy*, 26 Conn. App. 497, 499 n.2, 602 A.2d 1040 (1992). The law of set-off is governed by General Statutes § 52-139 (a), the relevant portion of which provides that '[i]n any action brought for the recovery of a debt, if there are mutual debts between the plaintiff ... and the defendant ... one debt may be set-off against the other.' 'A condition precedent to the application of § 52-139 is that the defendant's claim arise from a debt due by the plaintiff.' *Ellis v.*

*Rogers*, 15 Conn. App. 362, 365, 544 A.2d 633 (1988). While a counterclaim arises out of the same transaction described in the complaint, a set-off is independent thereof. *Savings Bank of New London v. Santaniello*, 130 Conn. 206, 210, 33 A.2d 126 (1943)."

- [Northeast Sav., F.A. v. Plymouth Commons Realty Corp.](#), 229 Conn. 634, 642, 642 A.2d 1194 (1994). "The plaintiff relies on dictum in *Savings Bank of New London v. Santaniello*, 130 Conn. 206, 211, 33 A.2d 126 (1943), for the proposition that the defendants, by raising their legal claims as a counterclaim in the plaintiff's equitable action rather than filing a separate suit, have waived their right to a jury trial. To the extent that our dictum in *Savings Bank of New London* is inconsistent with the principles set forth in our subsequent cases; see, e.g., *Texaco, Inc. v. Golart*, supra, 206 Conn. 458-59; *United States Trust Co. v. Bohart*, supra, 197 Conn. 44-45; we decline to follow it."
- [Colonial Bank & Trust Co. v. Matoff](#), 18 Conn. App. 20, 29, 556 A. 2d 619 (1989). "It was ... [defendant's] burden to demonstrate his right of setoff by affirmatively and adequately alleging his claim in his pleadings."
- [Bank of New London v. Santaniello](#), 130 Conn. 206, 210, 33 A.2d 126 (1943). "A counterclaim arises out of the same transaction described in the complaint. A set-off is independent thereof."

**WEST KEY NUMBER:**

- *Pleading*, Key Numbers 138 – 149

**RECORDS & BRIEFS:**

- CONNECTICUT APPELLATE COURT RECORDS AND BRIEFS (April 2006). [Ramondetta v. Amenta](#), 97 Conn. App. 151 (2006).
  - Answer and Counterclaim ([Figure 3](#))

**CIVIL JURY INSTRUCTIONS:**

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

**TEXTS & TREATISES:**

- [Stephenson's Connecticut Civil Procedure](#), by Irene Bevacqua Bollier et al. (3rd ed. 1997). [Vol. 1]
  - Chapter 8. The answer, counterclaim; subsequent pleadings
    - § 85. Recoupment, Setoff, Counterclaim
    - § 86. Cross-Claims and Third Parties
- [Connecticut Practice Series, Connecticut Civil Practice Forms](#), by Joel M. Kaye et al. (4th ed. 2004). [Vol. 1]
  - General-Responsive Pleadings
    - Comments to Forms 105.8 and 105.9
- [Connecticut Practice Series, Superior Court Civil Rules](#), by Wesley W. Horton and Kimberly A. Knox (2011). [Volume 1]

- Chapter 10. Pleadings
      - Authors' Comments to §§ 10-10, 10-54, 10-55
  - [\*Connecticut Practice Series, Connecticut Elements of an Action\*](#), by Thomas B. Merritt (2010-2011 edition).
    - Chapter 4. Contract Actions
      - § 4:22. Counterclaims
    - Chapter 9. Misrepresentation
      - § 9:8. Counterclaims
  - [\*Dupont on Connecticut Civil Practice\*](#), by Ralph P. Dupont, (2011 ed.). [Vol. 1]
    - Chapter 10. Pleadings
      - Commentaries to §§ 10-10, 10-54, 10-55
  - [\*Civil Litigation In Connecticut: Anatomy of a Lawsuit\*](#), by Kimberly A. Peterson (1998).
    - Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response.
  - [\*Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure\*](#), by Denis R. Caron and Geoffrey K. Milne (4th ed. 2004).
    - Chapter 28
      - § 28.06: Counterclaims (see also, 2010 supplement)
  - [\*Library of Connecticut Collection Law Forms\*](#), by Robert M. Singer (2009).
    - Chapter 10 - Answer and Counterclaim
      - 10-000 Commentary—Counterclaims
  - [\*Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators\*](#), by Jeanine M. Dumont (1998 ed.).
    - Chapter 6. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings
- FORMS:**
- Civil Forms - [\*Responding to a Civil Lawsuit\*](#) (Connecticut Judicial Branch)
  - [\*Civil Litigation In Connecticut: Anatomy of a Lawsuit\*](#), by Kimberly A. Peterson (1998).
    - Chapter 13, Pleadings: Defendant's Answer, Special Defenses, Counter-claims and Plaintiffs Response.
  - [\*Connecticut Practice Series, Connecticut Civil Practice Forms\*](#), by Joel M. Kaye et al. (4th ed. 2004).
    - Form 105.8 (Setoff, with Prayer for Affirmative Relief)
    - Form 105.9 (Answer, and Set-Off)
    - Form 105.10 (Reply—Denial)
  - [\*Connecticut Practice Series, Connecticut Elements of an Action\*](#), by Thomas B. Merritt (2010-2011 ed.).

- **Sample answers containing counterclaims**
  - Chapter 4: Contract Actions — Breach of Contract, § 4:25 (Breach of Fiduciary Duty)
  - Chapter 11: Connecticut Unfair Trade Practices Act (CUTPA), § 11:12
  - Chapter 20: Privacy Actions, § 20:10
- [Dupont on Connecticut Civil Practice](#), by Ralph P. Dupont, (2011 ed.). [Vol. 1]
  - F.8-1(9) Answer in Replevin by Officer, Special Defense, Counterclaim
  - F.8-1(12) Prejudgment Remedy by Defendant After Filing Set-Off or Counterclaim
  - F.10-10 Counterclaim in Action on Building Contract
  - F.10-50(15) Fraud in Recovery of Judgment With Counterclaim for Equitable Relief
  - F.10-50(35) Defense and Counterclaim in Action for Assault
  - F.10-50(43) Special Defense and Counterclaim to Foreclosure; Mistake, Fraud or Accident in Failure to Make Payments
  - F.10-56(3) Reply and Answer to Counterclaim for Assault
  - F.10-58 Defendant's Rejoinder to Answer to Counterclaim
- [Library of Connecticut Collection Law Forms](#), by Robert M. Singer (2009).
  - Chapter 10 - Answer and Counterclaim
    - 10-002 Counterclaim for Fraud
    - 10-003 Counterclaim for Unfair Trade Practices
    - 10-005 Counterclaim on Consumer Collection— Outside of Proper Federal District Suit Under FDCPA

**ENCYCLOPEDIAS:**

- 61A [Am. Jur. 2d Pleading](#) (2010)
  - VIII. Cross Complaints and Cross Claims, § 355 – 362
- 71 [C.J.S. Pleading](#) (2011)
  - III. Plea or Answer
    - E. Setoffs, Counterclaims, and Cross-Claims, §§ 199 – 206

**COMPILED BY:**

Christopher Roy, Connecticut Judicial Branch Law Library at New Britain, 20 Franklin Square, New Britain, CT 06051. 860-515-5110. [Email](#).

**Figure 3: Answer and Counterclaim (Form)**

*CONNECTICUT APPELLATE COURT RECORDS AND BRIEFS (April 2006).*  
*Ramondetta v. Amenta, 97 Conn. App. 151, 903 A.2d 232 (2006).*

NO. CV-03-0825102-S

JOSEPH J. RAMONDETT A II, ET AL.

SUPERIOR COURT

v.

JUDICIAL DISTRICT OF  
HARTFORD

SALVATORE AMENTA

AUGUST 12, 2003

ANSWER AND COUNTERCLAIM

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

FIRST COUNT

1. Admitted.

2. Admitted.

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

Trustee in maintaining the Trust premises or in connection with the improvement, sale, lease or mortgage of the Trust premises by the Trustee would be borne equally by the parties to the Trust in their individual capacities. Trustee Amenta denies the remainder of the allegations in paragraph 3.

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

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

6. Admitted.

7. Denied.

8. Denied.

### THIRD COUNT

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

8. Admitted.

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

10. Denied.

11. Denied.

COUNTERCLAIM

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

COUNT ONE: Unjust Enrichment

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

WHEREFORE, Trustee Amenta respectfully requests:

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

DEFENDANT -  
SALVATORE AMENTA, TRUSTEE

By \_\_\_\_\_

His Attorneys