RULE 8. GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief which the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, comparative fault, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, immunity, injury by co-employee, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

(g) Pleadings by Agreement. An action may be commenced and issue joined therein, without the filing or service of a complaint and answer, by the filing of a statement, signed and acknowledged by all the parties or signed by their attorneys, specifying plainly and concisely the claims and defenses between the parties and the relief requested. Signing constitutes a certificate that the issues are genuine.

Advisory Committee's Notes
May 1, 2000

The summary sheet requirement of Rule 8(a) is moved to Rule 5(h).

In subdivision (c), the reference to contributory negligence is changed to comparative fault, a reference to immunity is added, "co-employee" is substituted for "fellow servant" and, a meaningless reference to "on terms" is eliminated.

Advisory Committee's Note
April 15, 1975

The Law Court has now held that the defendant has the burden of proof on the issue of contributory negligence in all circumstances. *Crocker v. Coombs*, 328 A.2d 389 (Me. 1974); *Isaacson v. Husson College*, 332 A.2d 757 (Me.1975). It is appropriate to make contributory negligence also an affirmative defense for pleading purposes in all instances.

Reporter's Notes
December 1, 1959

This rule is substantially the same as Federal Rule 8, but very different from present Maine practice. The "short and plain statement of the claim showing that the pleader is entitled to relief" demands less particularity of allegation than is necessary in Maine to survive a demurrer. *See, e. g., Reynolds v. W. H. Hinman Co.*, 145 Me. 343, 75 A.2d 802 (1950). Form 9 in the Appendix of Forms illustrates that a general allegation of negligence at a stated time and place will suffice in a motor vehicle tort case. The intent and effect of the rule is to permit a claim to be stated in general terms, but the pleader must nevertheless supply adequate factual information to disclose the basis of his claim for relief. To compel detailed particularization would encourage fruitless battles over the mere form of statement and might stop a plaintiff at the threshold of the litigation by dismissal for failure to state a claim when the facts upon which he must rely are known only to the defendant and will have to be elicited by discovery. The rule must be read with awareness that if the defendant needs more information than the complaint discloses, the discovery devices are designed for this purpose.

Despite the permitted generality of allegation, a plaintiff may well find it in his enlightened self-interest to make his allegations more informative than the rules require. By use of the discovery devices the defendant will be able to get any needed additional information, and the plaintiff may often spare himself the time and cost involved in discovery by stating his claim in more specific terms than necessary to defeat either a motion to dismiss or a motion for a more definite statement under Rule 12.

Rule 8(b) is intended to prevent the indiscriminate use of the general issue or general denial in the typical situation where much of the plaintiff's complaint is in fact not in controversy.

Rule 8(c) lists affirmative defenses which must be specially pleaded. In general, these are matters not open under the general issue which are now raised by brief statement. R.S.1954, Chap. 113, Sec. 36. Payment, which is now open under the general issue, *Hibbard v. Collins*, 127 Me. 383, 143 A. 600 (1928), would have to be pleaded as an affirmative defense under the rule. This subdivision is like

Federal Rule 8(c) except that it incorporates R.S.1954, Chap. 113, Sec. 50,[*] which makes contributory negligence an affirmative defense only in wrongful death cases and personal injury actions where the plaintiff has died before trial. Under the federal rule, the burden of pleading contributory negligence is on the defendant in all cases.

Rule 8(e) (2) permits pleading in the alternative or in hypothetical form. This is a change in Maine law. *Macurda v. Lewiston Journal Co*., 104 Me. 554, 72 A.490 (1908).

Rule 8(g) is not in the federal rule. The idea is borrowed from a recent New York statute, N.Y.Civil Practice Act, Sec. 218-a, and the phraseology follows closely a revision of the statute recommended by the New York Temporary Commission on the Courts in 1957.

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[*] [Field, McKusick & Wroth note: "Repealed by 1959 Laws, c. 317, § 176, and substantially re-enacted in 1967 as 14 M.R.S.A. § 160. *See* § 8.7." 1 Field, McKusick & Wroth, *Maine Civil Practice* at 191 (2d ed. 1970).]