

Acronym- EASSS (Except, Amend, Strike out, Special plea, Set aside irregular proceeding)

Strike out

- Vexatious, irrelevant, scandalous (VIS)
- Applies to motion and action proceedings
- Not to whole pleading but to relevant parts of pleading
- Opposing party must apply
- Instituted by notice of motion- interlocutory procedure

Amendments

- Correct errors, amplify cause of action, introduce further or alternate cause of action, extend or limit relief claimed
- Any party can apply
- Must amend their own documents not the opposing party's docs or pleadings
- Cannot amend affidavit
- Notice of intention to amend must be given to all parties concerned
- Can be made before and during the trial but before judgment
- Must not be made mala fide

Note: excipiable means that if pleading is amended, the meaning would change and it will not be allowed and can be excepted to eg. Will the amendment render it excipiable ?

Exception

- Instead of replying, party can except to the pleading if:
- Vague and embarrassing
- Or contains no cause of action or defence
- Adjudicated upon separately before trial
- Difference between an exception as opposed to a plea on the merits or special plea is that it must appear ex facie (on the face of it) the pleading which is being excepted to and can be brought against any pleading
- It is an argument-no fresh facts to be alleged
- Applies to the whole pleading
- If pleading is vague and embarrassing and a party wishes to except to it, they must by notice afford her opponent an opportunity to rectify it
- Instituted by notice of motion- interlocutory procedure

Special Plea

- Must still deliver a plea on the merits
- Plea on the merits deals with merits of plaintiff's claim. Special plea is a means of raising an objection based on facts that do not appear
- May only be pleaded to a declaration or particulars of claim, an exception can be brought against any pleading
- Will destroy or postpone the action
- Dilatory plea (postpones the action)
 - Lis pendens: if action already pending between parties & plaintiff brings another action in respect of the same cause or action whether in same or different courts
 - Arbitration: where parties have previously agreed to submit their dispute to arbitration
- Plea in abatement (will destroy the action)
 - Prescription (loss of rights, something has prescribed)
 - Non joinder or mis-joinder (non-joinder: omission of a person who ought to have been a plaintiff or defendant along with others)
 - Res iudicata (once a lawsuit is decided, parties are barred from raising the same issue again)
 - Plea in respect of jurisdiction of court

Set aside irregular proceedings

- Where party has taken irregular step
- Deals with formal irregularities like non compliance with formal requirements or procedural matters eg. failure to sign particulars of claim by advocate, premature set down of case, using the wrong type of summons

Note:

*No prejudice must be caused to the opposing party when applying for these processes to be carried out

*Notification of intention to defend must still be filed.