CHAPTER 611

ACTIONS

For Iowa court rules concerning substitution of parties, see R.C.P. 1.221 – 1.227

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611.1 Proceedings classified.

Every proceeding in court is an action, and is civil, special, or criminal.

[R60, §2605; C73, §2504; C97, §3424; C24, 27, 31, 35, 39, §**10938;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.1]

611.2 Civil and special actions.

A civil action is a proceeding in a court of justice in which one party, known as the plaintiff, demands against another party, known as the defendant, the enforcement or protection of a private right, or the prevention or redress of a private wrong. It may also be brought for the recovery of a penalty or forfeiture.

Every other proceeding in a civil case is a special action.

[R60, §2606, 2607, 2609; C73, §2505, 2506; C97, §3425; C24, 27, 31, 35, 39, §**10939;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.2]

611.3 Forms of action.

All forms of action are abolished, but proceedings in civil actions may be of two kinds, ordinary or equitable.

[R60, §2608, 2610; C73, §2507; C97, §3426; C24, 27, 31, 35, 39, §**10940;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.3]

611.4 Equitable proceedings.

The plaintiff may prosecute an action by equitable proceedings in all cases where courts of equity, before the adoption of this Code, had jurisdiction, and must so proceed in all cases where such jurisdiction was exclusive.

[R60, §2611; C73, §2508; C97, §3427; C24, 27, 31, 35, 39, §**10941;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.4]

611.5 Action on note and mortgage.

An action on a note, together with a mortgage or deed of trust for the foreclosure of the same, shall be by equitable proceedings. An action on the bond or note alone, without regard therein to the mortgage or deed of trust, shall be by ordinary proceedings.

[R60, §4179; C73, §2509; C97, §3428; C24, 27, 31, 35, 39, §**10942;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.5]

Actions on certain judgments prohibited, chapter 615
Related provision, §654.4

611.6 Ordinary proceedings.

In all other cases, unless otherwise provided, the plaintiff must prosecute an action by ordinary proceedings.

[R60, §2612; C73, §2513; C97, §3431; C24, 27, 31, 35, 39, §**10943;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.6]

611.7 Error — effect of.

An error of the plaintiff as to the kind of proceedings adopted shall not cause the abatement or dismissal of the action, but merely a change into the proper proceedings, and a transfer to the proper docket.

[R60, §2613; C73, §2514; C97, §3432; C24, 27, 31, 35, 39, §**10944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.7]

611.8 Correction by plaintiff.

Such error may be corrected by the plaintiff without motion at any time before the defendant has answered, or afterwards on motion in court.

[R60, §2614; C73, §2515; C97, §3433; C24, 27, 31, 35, 39, §**10945;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.8]

611.9 Correction on motion.

The defendant may have the correction made by motion at or before the filing of an answer, where it appears by the provisions of this Code wrong proceedings have been adopted.

[R60, §2615, 2616; C73, §2516; C97, §3434; C24, 27, 31, 35, 39, §**10946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.9]

611.10 Equitable issues.

Where the action has been properly commenced by ordinary proceedings, either party shall have the right, by motion, to have any issue heretofore exclusively cognizable in equity tried in the manner hereinafter prescribed in cases of equitable proceedings; and if all the issues were such, though none were exclusively so, the defendant shall be entitled to have them all tried as in cases of equitable proceedings.

[R60, §2617; C73, §2517; C97, §3435; C24, 27, 31, 35, 39, §**10947;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.10]

611.11 Court may order change.

If there is more than one party plaintiff or defendant, who fail to unite on the kind of proceedings to be adopted, the court, on its own motion, may direct such proceedings to be changed to the same extent as if the parties had united in asking it to be done.

[C73, §2518; C97, §3436; C24, 27, 31, 35, 39, §**10948;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.11]

611.12 Errors waived.

An error as to the kind of proceedings adopted in the action is waived by a failure to move for its correction at the time and in the manner prescribed in this chapter; and all errors in the decisions of the court are waived unless excepted to at the time, save final judgments and interlocutory or final decrees entered of record.

[R60, §2619; C73, §2519; C97, §3437; C24, 27, 31, 35, 39, §**10949;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.12]

611.13 Uniformity of procedure.

The provisions of this Code concerning the prosecution of a civil action apply to both ordinary and equitable proceedings unless the contrary appears, and shall be followed in special actions not otherwise regulated, so far as applicable.

[C51, §2516; R60, §2620, 4173; C73, §2520; C97, §3438; C24, 27, 31, 35, 39, §**10950;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.13]

611.14 Title of cause.

The title of the cause shall not be changed in any of its stages of transit from one court to another.

[R60, §2949; C73, §2721; C97, §3631; C24, 27, 31, 35, 39, §**10951;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.14]

611.15 Judgments annulled in equity.

Judgment obtained in an action by ordinary proceedings shall not be annulled or modified by any order in an action by equitable proceedings, except for a defense which has arisen or been discovered since the judgment was rendered. But such judgment does not prevent the recovery of any claim, though such claim might have been used by way of counterclaim in the action on which the judgment was recovered.

[R60, §2621; C73, §2522; C97, §3440; C24, 27, 31, 35, 39, §**10952;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.15]

See **R.C.P. 1.241**

611.16 Action to obtain discovery.

No action to obtain a discovery shall be brought, except, where a person or corporation is liable either jointly or severally with others by the same contract, an action may be brought against any parties who are liable, to obtain discovery of the names and residences of the others.

[R60, §4127; C73, §2523; C97, §3441; C24, 27, 31, 35, 39, §**10953;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.16]

611.17 Petition for discovery.

In such action the plaintiff shall state in the petition, in effect, that the plaintiff has used due diligence, without success, to obtain the information asked to be discovered, and that the plaintiff does not believe the parties to the contract who are known to the plaintiff have property sufficient to satisfy the plaintiff's claim. The petition shall be verified.

[R60, §4127; C73, §2523; C97, §3441; C24, 27, 31, 35, 39, §**10954;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.17]

611.18 Costs.

The cost of such action shall be paid by the plaintiff unless the discovery be resisted.

[R60, §4127; C73, §2523; C97, §3441; C24, 27, 31, 35, 39, §**10955;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.18]

611.19 Successive actions.

Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action has arisen thereon or therefrom.

[R60, §4128; C73, §2524; C97, §3442; C24, 27, 31, 35, 39, §**10956;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.19]

611.20 Actions survive.

All causes of action shall survive and may be brought notwithstanding the death of the person entitled or liable to the same.

[C51, §2502; R60, §3467; C73, §2525; C97, §3443; C24, 27, 31, 35, 39, §**10957;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.20]

Referred to in §611.22

611.21 Civil remedy not merged in crime.

The right of civil remedy is not merged in a public offense and is not restricted for other violation of law, but may in all cases be enforced independently of and in addition to the punishment of the former.

[C51, §2500; R60, §4110; C73, §2526; C97, §3444; C24, 27, 31, 35, 39, §**10958;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.21]

85 Acts, ch 197, §36

Referred to in §611.22

611.22 Actions by or against legal representatives — substitution.

Any action contemplated in sections 611.20 and 611.21 may be brought, or the court, on motion, may allow the action to be continued, by or against the legal representatives or successors in interest of the deceased. Such action shall be deemed a continuing one, and to have accrued to such representative or successor at the time it would have accrued to the deceased if the deceased had survived. If such is continued against the legal representative of the defendant, a notice shall be served on the legal representative as in case of original notices.

[C51, §1699; R60, §4111; C73, §2527; C97, §3445; C24, 27, 31, 35, 39, §**10959;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §611.22]

Manner of service, **R.C.P. 1.302 – 1.315**

611.23 Civil actions involving allegations of elder abuse, sexual abuse, or domestic abuse — counseling.

In a civil case in which a plaintiff is seeking relief or damages for alleged elder abuse as defined in section 235F.1, sexual abuse as defined in section 709.1, or domestic abuse as defined in section 236.2, the plaintiff may seek, and the court may grant, an order requiring the defendant to receive professional counseling, in addition to any other appropriate relief or damages.

91 Acts, ch 181, §1; 2014 Acts, ch 1107, §21