

CAYMAN ISLANDS



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**THE GRAND COURT LAW (1995 REVISION)
THE GRAND COURT (AMENDMENT) RULES 1996**

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These Rules are made by the Rules Committee pursuant to Section 19(3)(d) of the Grand Court Law (1995 Revision).

1. Citation, Commencement and Interpretation

(1) These Rules shall be cited as the Grand Court (Amendment) Rules 1996.

(2) (a) These Rules shall come into operation on the 20th day of January, 1997, referred to in this rules as the "Commencement Date".

(b) These Rules shall apply to every proceeding which is pending or commenced in the Court on or after the Commencement Date.

(3) Words and expressions in these Rules which are also used in the Grand Court Rules 1995 shall have the same meaning in these Rules as in the Grand Court Rules 1995.

2. Revocation and Replacement of Orders 14, 15, 18, 22, 28, 32 and 82

GCR Orders 14, 15, 18, 22, 28, 32 and 82 are hereby revoked and replaced by the orders contained in Schedule 1 hereto.

MADE by the Rules Committee on the 23rd day of December, 1996.

The Hon. George Harre,
Chief Justice

The Hon. Richard Coles
Attorney General

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Explanatory Note

1. Order 14 (Summary Judgment) is amended to allow applications to be made in cases involving an allegation of fraud.
2. Order 15 (Causes of Action, Counterclaims and Parties) is amended to add rule 12A which sets out rules applicable to derivative actions. A consequential amendment is made to Order 18, rule 2.
3. Order 22 (Payment into and out of Court) is amended to add a new rule 8(4).
4. Order 28 (Originating Summons Procedure) is amended by substituting a new rule 10.
5. Order 32 (Applications and Proceedings in Chambers) is amended by substituting a new rule 3.
6. Order 82 (Defamation Actions) is amended by substituting a new rule 3 and adding rule 3A.
7. Subscribers to the Gazette should remove page numbers 1-36 (Index), 77-81 (Order 14), 83-94 (Order 15), 105-112 (Order 18), 124-128 (Order 22), 150-154 (Order 28), 166-169 (Order 32), 365-367 (Order 82) and 368 (No Order) from their binders and substitute the new pages contained in Schedule 1.

SCHEDULE 1

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THE GRAND COURT LAW (1995 REVISION)

THE GRAND COURT RULES, 1995

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ORDER 14**SUMMARY JUDGMENT****I. APPLICATION BY PLAINTIFF****Application by plaintiff for summary judgment (O.14, r.1)**

1. - (1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against the defendant.

(2) This rule applies to every action begun by writ in the Court other than -

- (a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment;
- (b) an admiralty action in rem; or
- (c) an action to which Order 86 applies.

Manner in which application under rule 1 must be made (O.14, r.2)

2. - (1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of the claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of any damages claimed.

(2) Unless the Court otherwise directs, an affidavit for the purpose of this rule may contain statements of information or belief with the sources and grounds thereof.

(3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

Judgment for plaintiff (O.14, r.3)

3. - (1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or that part of the claim, to which the application relates that there is an issue or question in dispute which ought to be tried, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

(2) The Court may by order, and subject to such conditions, if any, as may be just, stay execution of any judgment given against a defendant under this rule until after the trial of any counterclaim made or raised by the defendant in the action.

Leave to defend (O.14, r.4)

4. - (1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

(2) Rule 2(2) applies for the purpose of this rule as it applies for the purposes of that rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity -

- (a) to produce any document;
- (b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

Application for summary judgment on counterclaim (O.14, r.5)

5. - (1) Where a defendant to an action begun by writ has served a counterclaim on the plaintiff, then, subject to paragraph (3) the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part.

(2) Rules 2, 3 and 4 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications, that is to say -

- (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
- (b) the words in rule 3(2) "any counterclaim made or raised by the defendant in" shall be omitted; and
- (c) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

Directions (O.14, r.6)

6. - Where the Court -

- (a) orders that a defendant or a plaintiff have leave (whether conditional or unconditional) to defend an action or counterclaim, as the case may be, with respect to a claim or a part of a claim; or
- (b) gives judgment for a plaintiff or a defendant on a claim or part of a claim but also orders that execution of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court shall give directions as to the further conduct of the action and Order 25, rules 2 to 7 shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 of this Order or rule 5, as the case may be, on which the order was made were a summons for directions.

Costs (O.14, r.7)

7. - (1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, the Court may dismiss the application with costs and may, if the plaintiff is not a legally aided person, require the costs to be paid by him forthwith.

(2) The Court shall have the same power to dismiss an application under rule 5 as it has under paragraph (1) to dismiss an application under rule 1, and that paragraph shall apply accordingly with the necessary modifications.

Right to proceed with residue of action or counterclaim (O.14, r.8)

8. - (1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

(2) Where on an application under rule 5 a defendant obtains judgment on a claim or part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim as respects any other claim or as respects the remainder of the claim or against any other defendant to the counterclaim.

Judgment for delivery up of chattel (O.14, r.9)

9. - Where the claim to which an application under rule 1 or rule 5 relates is for the delivery of a specific chattel and the Court gives judgment under this Order for the applicant, it shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

Relief against forfeiture (O.14, r.10)

10. - A tenant shall have the same right to apply for relief after judgment for possession of land on the ground of forfeiture for non-payment of rent has been given under this Order as if the judgment had been given after trial.

Setting aside judgment (O.14, r.11)

11. - Any judgment given against a party who does not appear at the hearing of an application under rule 1 or rule 5 may be set aside or varied by the Court on such terms as it thinks just.

II. APPLICATION BY DEFENDANT**Application by defendant for summary judgment (O.14, r.12)**

12. - (1) Where in an action to which this rule applies a defence has been served by any defendant, that defendant may, on the ground that the plaintiff's claim has no prospect of success or that the plaintiff has no prospect of recovering more than nominal damages, apply to the Court for the plaintiff's claim to be dismissed and judgment entered for that defendant.

(2) An application under this rule may not be made on the ground that part only of the plaintiff's claim has no prospect of success or that a plaintiff has no prospect of recovering more than nominal damages in respect of part only of his claim.

(3) This rule applies to every action begun by writ in the Court other than one of a kind mentioned in rule 1(2).

Manner in which application under rule 12 must be made (O.14, r.13)

13. - (1) An application under rule 12 must be made by summons supported by an affidavit verifying the facts pleaded in the defence and stating the deponent's belief that the plaintiff's claim has no prospect of success or that the plaintiff has no prospect of recovering more than nominal damages, as the case may be.

(2) Rule 2(2) shall apply to applications under rule 12.

(3) A plaintiff may show cause against an application under rule 12 by -

(a) filing and serving a reply; or

(b) filing and serving an affidavit in reply.

Judgment for defendant (O.14, r.14)

14. - (1) Unless on the hearing of an application under rule 12 either the Court dismisses the application or the plaintiff satisfies the Court that he has a prospect of succeeding on the whole or part of his claim and, where the claim includes a claim for damages, that he has a prospect of recovering more than nominal damages, the Court may dismiss the claim and give judgment for the defendant.

(2) Where the Court dismisses an application under rule 12 and allows the plaintiff to proceed with his claim, it shall give directions as to the further conduct of the action and Order 25, rules 2 to 7 shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 of this Order or rule 5 thereof, as the case may be, on which the order was made were a summons for directions.

ORDER 15**CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES****Joinder of causes of action (O.15, r.1)**

1. - (1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action -
- (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action; or
 - (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others; or
 - (c) with the leave of the Court.

(2) An application for leave under this rule must be made ex parte by affidavit before the issue of the writ or originating summons, as the case may be, and the affidavit must state the grounds of the application.

Counterclaim against plaintiff (O.15, r.2)

2. - (1) Subject to rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter, and where he does so he must add the counterclaim to his defence.
- (2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.
- (3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.
- (4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that the provision shall not be taken as affecting the Court's discretion with respect to costs.

Counterclaim against additional parties (O.15, r.3)

3. - (1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along

with the plaintiff in respect of the subject matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject matter of the action, then, subject to rule 5(2) he may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim and, in the case of a person who is not already a party to the action, a form of acknowledgment of service in Form No. 8 of Appendix I with such modification as the circumstances may require; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which, by virtue of Order 18, rule 2, he must serve on the plaintiff the defence to which the counterclaim is added.

(4) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these Rules, namely, Order 5, rule 1, Orders 10 to 13 and Order 75, rule 4, shall, subject to the last foregoing paragraph, apply in relation to the counterclaim and the proceedings arising from it as if -

- (a) the counterclaim were a writ and the proceedings arising from it an action; and
- (b) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.

(5A) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on any person other than the plaintiff who, before service is already a party to the action, the provisions of Order 14, rule 5, shall apply in relation to the counterclaim and the proceedings arising therefrom, as if the party against the counterclaim is made were the plaintiff in the action.

(6) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice in Form No. 10 of Appendix I addressed to that person.

Joinder of parties (O.15, r.4)

4. - (1) Subject to rule 5(1) two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where -

- (a) if separate actions were brought by or against each of them, as the case may be, some common question of law of fact would arise in all the actions; and
- (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any Law and unless the Court gives leave to the contrary, be parties to the action and any of them who do not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant. This paragraph shall not apply to a probate action.

Court may order separate trials, etc. (O.15, r.5)

5. - (1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or may make such other order as may be expedient.

Misjoinder and nonjoinder of parties (O.15, r.6)

6. - (1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interest of the persons who are parties to the cause or matter.

(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application -

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party, namely -
 - (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that

all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

- (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

(4) No person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(5) No person shall be added or substituted as a party after the expiry of any relevant statutory period of limitation unless either -

- (a) the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added, or substituted; or
- (b) the relevant period arises under the provisions of Section 13 or 16 of the Limitation Law 1991 and the Court directs that those provisions should not apply to the action by or against the new party.

In this paragraph "any relevant period of limitation" means a time limit under the Limitation Law 1991.

(6) The addition or substitution of a new party shall be treated as necessary for the purposes of paragraph (5) if, and only if, the Court is satisfied that -

- (a) the new party is a necessary party to the action in that property is vested in him at law or in equity and the plaintiff's claim in respect of an equitable interest in that property is liable to be defeated unless the new party is joined; or
- (b) the relevant cause of action is vested in the new party and the plaintiff jointly but not severally; or
- (c) the new party is the Attorney General and the proceedings should have been brought by relator proceedings in his name; or

- (d) the new party is a company in which the plaintiff is a shareholder and on whose behalf the plaintiff is suing to enforce a right vested in the company; or
- (e) the new party is sued jointly with the defendant and is not also liable severally with him and failure to join the new party might render the claim unenforceable.

Proceedings against estates (O.15, r.6A)

6A. - (1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), an action brought against "the personal representatives of A.B. deceased" shall be treated, for the purpose of that paragraph, as having been brought against his estate.

(3) An action purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1) whether or not a grant of probate or administration was made before its commencement.

(4) In any such action as is referred to in paragraph (1) or (3) -

(a) the plaintiff shall, during the period of validity for service of the writ or originating summons, apply to the Court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

(b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4), rules 7(4) and 8(3) and (4) shall apply as if the order had been made under rule 7 on the application of the plaintiff.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

Change of parties by reason of death, etc. (O.15, r.7)

7. - (1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

An application for an order under this paragraph may be ex parte.

(3) An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record, or on the same side but in different capacity; but -

- (a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side; and
- (b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this rule must procure the order to be filed in the Register of Writs, and after the order has been filed that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun and a form of acknowledgment of service in Form No. 8 or Form No. 9 of Appendix I, whichever is appropriate.

Any application to the Court by a person served with an order made ex parte under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

Provisions consequential on making of order under rule 6 or 7 (O.15, r.8)

8. - (1) Where an order is made under rule 6 the writ by which the action in question was begun must be amended accordingly and must be indorsed with -

(a) a reference to the order in pursuance of which the amendment is made; and

(b) the date on which the amendment is made,

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be filed in the Register of Writs.

(3) Where by an order under rule 6 or 7 a person is to be made a defendant the rules as to acknowledgment of service shall apply accordingly to acknowledgment of service by him subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for acknowledging service shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is to be filed in the Register of Writs.

(4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until -

(a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him; or

(b) where the order is made under rule 7, the order has been served on him under rule 7(4) or, if the order is not required to be served on him, the order has been filed in the Register of Writs,

and where by virtue of the foregoing provision a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old, except that acknowledgment of service by the old party shall not dispense with acknowledgment of service by the new.

(5) The foregoing provisions of this rule shall apply in relation to an action begun by originating summons as they apply in relation to an action begun by writ.

Failure to proceed after death of party (O.15, r.9)

9. - (1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time

as may be specified in the order the action shall be struck out as against the plaintiff or the defendant, as the case may be, who has died; but where it is the plaintiff who has died the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

(2) Where in any action a counterclaim is made by a defendant, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

Actions for possession of land (O.15, r.10)

10. - (1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.

(2) An application by any person for an order under this rule may be made ex parte, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him. The affidavit shall specify the applicant's address for service and Order 12, rule 3(2) and (3) shall apply as if the affidavit were an acknowledgment of service.

(3) A person added as a defendant by an order under this rule shall serve a copy of the order on the plaintiff giving the added defendant's address for service specified in accordance with paragraph (2).

Actions in detinue, conversion or for trespass to goods (O.15, r.10A)

10A.- (1) Where the plaintiff in an action in detinue, conversion or for trespass to goods is one of two or more persons having or claiming any interest in the goods, then, unless he has the written authority of every other such person to sue on the latter's behalf, the writ or originating summons by which the action was begun shall be indorsed with a statement giving particulars of the plaintiff's title and identifying every other person who to his knowledge, has or claims any interest in the goods.

This paragraph shall not apply to an action arising out of an accident on land due to collision or apprehended collision involving a vehicle.

(2) A defendant to an action in detinue, conversion or for trespass to goods who desires to show that a third party has a better right than the plaintiff as respects all or any part of the interest claimed by the plaintiff may, at any time after giving notice of intention to defend, and before any judgment or order is given or made on the plaintiff's claim, apply for directions as to whether any person named in the application (not being a person whose written authority the plaintiff has to sue on his behalf) should be joined with a view to establishing whether he has a better right than the plaintiff, or has a claim as a result of which the defendant might be doubly liable.

(3) An application under paragraph (2) shall be made by summons, which shall be served personally on every person named in it as well as being served on the plaintiff.

(4) Where a person named in an application under paragraph (2) fails to appear on the hearing of the summons or to comply with any direction given by the Court on the application, the Court may by order deprive him of any right of action against the defendant for the wrong, either unconditionally or subject to such terms and conditions as the Court thinks fit.

Relator actions (O.15, r.11)

11. - Before the name of any person is used in any action as a relator, that person must give a written authorisation so to use his name to his attorney and the authorisation must be filed in the Court office.

Representative proceedings (O.15, r.12)

12. - (1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings under this rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings; and where in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under rule 6 adding that person as a defendant.

(3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of leave under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Derivative actions (O.15, r.12A)

12A.- (1) This rule applies to every action begun by writ by one or more shareholders of a company where the cause of action is vested in the company and relief is accordingly sought on its behalf (referred to in this rule as a "derivative action").

(2) Where a defendant in a derivative action has given notice of intention to defend, the plaintiff must apply to the Court for leave to continue the action.

(3) The application must be supported by an affidavit verifying the facts on which the claim and the entitlement to sue on behalf of the company are based.

(4) Unless the Court otherwise orders, the application must be issued within 21 days after the relevant date, and must be served, together with the affidavit in support and any exhibits to the affidavit, not less than 10 clear days before the return day on all defendants who have given notice of intention to defend; any defendant so served may show cause against the application by affidavit or otherwise.

(5) In paragraph (4), the relevant date means the later of -

- (a) the date of service of the statement of claim;
- (b) the date when notice of intention to defend was given, provided that, where more than one notice of intention to defend is given, that date shall be the date when the first notice was given.

(6) Nothing in this rule shall prevent the plaintiff from applying for interlocutory relief pending the determination of an application for leave to continue the action.

(7) In a derivative action, Order 18, rule 2(1) (time for service of defence) shall not have effect unless the Court grants leave to continue the action and, in that case, shall have effect as if it required the defendant to serve a defence within 14 days after the order giving leave to continue, or within such other period as the Court may specify.

(8) On the hearing of the application under paragraph (2), the Court may -

- (a) grant leave to continue the action, for such period and upon such terms as the Court may think fit;
- (b) subject to paragraph (11), dismiss the action;
- (c) adjourn the application and give such directions as to joinder of parties, the filing of further evidence, discovery, cross examination of deponents and otherwise as it may consider expedient.

(9) If the plaintiff does not apply for leave to continue the action as required by paragraph (2) within the time laid down in paragraph (4), any defendant who has given notice of intention to defend may apply for an order to dismiss the action or any claim made in it by way of derivative action.

(10) On the hearing of such an application for dismissal, the Court may -

- (a) subject to paragraph (11), dismiss the action;
- (b) if the plaintiff so requests, grant the plaintiff (on such terms as to costs or otherwise as the Court may think fit) an extension of time to apply for leave to continue the action; or
- (c) make such other order as may in the circumstances be appropriate.

(11) Where only part of the relief claimed in the action is sought on behalf of the company, the Court may dismiss the claim for that part of the relief under paragraphs (8) and (10), without prejudice to the plaintiff's right to continue the action as to the remainder of the relief and Order 18, rule 2(1) shall apply as modified by paragraph (7).

(12) If there is a material change in circumstances after the Court has given leave to the plaintiff to continue the action in pursuance of an application under paragraph (2), any defendant who has given notice of intention to defend may make an application supported by affidavit requiring the plaintiff to show cause why the Court should not dismiss the action or any claim made in it by way of derivative action. On such application the Court shall have the same powers as it would have had upon an application under paragraph (2).

(13) The plaintiff may include in an application under paragraph (2) an application for an indemnity out of the assets of the company in respect of costs incurred or to be incurred in the action and the Court may grant such indemnity upon such terms as may in the circumstances be appropriate.

(14) So far as possible, any application under paragraph (13) and any application by the plaintiff under Order 14 shall be made so as to be heard at the same time as the application under paragraph (2).

Representation of interested persons who cannot be ascertained, etc. (O.15, r.13)

13. - (1) In any proceedings concerning -

- (a) the estate of a deceased person; or
- (b) property subject to a trust; or
- (c) the construction of a written instrument, including a Law,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions of the exercise of the power conferred by paragraph (1) are as follows -

- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
- (b) that the person, class or some member of the class, though ascertained, cannot be found;
- (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

(4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons) but -

- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise; or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

Notice of action to non-parties (O.15, r.13A)

13A.- (1) At any stage in an action to which this rule applies, the Court may, on the application of any party or of its own motion, direct that notice of the action be served on any person who is not a party thereto but who will or may be affected by any judgment given therein.

(2) An application under this rule may be made ex parte and shall be supported by an affidavit stating the grounds of the application.

(3) Every notice of an action under this rule shall be in Form No. 11 of Appendix I and accompanied by a copy of the originating summons or writ and a form of

acknowledgment of service in Form No. 8 or Form No. 9 of Appendix I with such modifications as may be appropriate.

(4) A person may, within 14 days of service on him of a notice under this rule, acknowledge service of the writ or originating summons and shall thereupon become a party to the action, but in default of such acknowledgment and subject to paragraph (5) shall be bound by any judgment given in the action as if he were a party thereto.

(5) If at any time after service of such notice on any person the writ or originating summons is amended so as substantially to alter the relief claimed the Court may direct that the judgment shall not bind such person unless a further notice together with a copy of the amended writ or originating summons is served on him under this rule.

(6) This rule applies to any action relating to -

- (a) the estate of a deceased person; or
- (b) property subject to a trust.

Representation of beneficiaries by trustees, etc. (O.15, r.14)

14. - (1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

Representation of deceased person interested in proceedings (O.15, r.15)

15. - (1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no estate representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased to the same extent as it would have been bound had an estate representative of that person been a party to the proceedings.

(2) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

Declaratory judgment (O.15, r.16)

16. - No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

Conduct of proceedings (O.15, r.17)

17. - The Court may give the conduct of any action, inquiry or other proceedings to such person as it thinks fit.

ORDER 18**PLEADINGS****Service of statement of claim (O.18, r.1)**

1. - Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend.

Service of defence (O.18, r.2)

2. - (1) Subject to paragraph (2), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for acknowledging service of the writ or after the statement of claim is served on him, whichever is the later.

(2) If a summons under Order 14, rule 1 or under Order 86, rule 1 is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 14 days after the making of the order or within such other period as may be specified therein.

(3) Where an application is made by a defendant under Order 12, rule 8(1), paragraph (1) of this rule shall not have effect in relation to the defendant unless the application is dismissed or no order is made on the application and, in that case, paragraph (1) shall have effect as if it required him to serve his defence within 14 days after the final determination of the application or within such other period as may be specified by the Court.

(4) Paragraph (1) is subject to the provisions of Order 15, rule 12A(7) (derivative actions).

Service of reply and defence to counterclaim (O.18, r.3)

3. - (1) A plaintiff on whom a defendant serves a defence must serve a reply on that defendant if it is needed for compliance with rule 8, and if no reply is served, rule 14(1) will apply.

(2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 14 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 14 days after the service on him of the counterclaim to which it relates.

Pleadings subsequent to reply (O.18, r.4)

4. - No pleading subsequent to a reply or a defence to counterclaim shall be served except with the leave of the Court.

No rule (O.18, r.5)

Pleadings: formal requirements (O.18, r.6)

6. - (1) Every pleading in an action must bear on its face -

- (a) the cause number;
- (b) the title of the action; and
- (c) the date on which it was filed.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

- (4) Every pleading of a party must be indorsed -

- (a) where the party sues or defends in person, with his name and address;
- (b) in any other case, with the name or firm and business address of the attorney by whom it was served.

(5) Every pleading of a party must be signed by an attorney or firm of attorneys, if settled by him or them, or by the party, if he sues or defends in person.

Facts, not evidence, to be pleaded (O.18, r.7)

7. - (1) Subject to the provisions of this rule, and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except insofar as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

Conviction, etc. to be adduced in evidence: matters to be pleaded (O.18, r.7A)

7A. - (1) If in any action which is to be tried with pleadings any party intends, in reliance on Section 37 of the Evidence Law, 1978, to adduce evidence that a person was convicted of an offence by or before the Court or the Summary Court, he must include in his pleading a statement of his intention with particulars of -

- (a) the conviction and the date thereof;
- (b) the court which made the conviction; and
- (c) the issue in the proceedings to which the conviction is relevant.

(2) If in any action which is to be tried with pleadings any party intends in reliance on Section 38 of the Evidence Law, 1978, to adduce evidence that a person was found guilty of adultery in matrimonial proceedings before the Court or has been adjudged to be the father of a child in affiliation or maintenance proceedings before the Court or the Summary Court, he must include in his pleading a statement of his intention with particulars of -

- (a) the finding or adjudication and the date thereof;
- (b) the Court which made the finding or adjudication and the proceedings in which it was made; and
- (c) the issue in the proceedings to which the finding or adjudication is relevant.

(3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party -

- (a) denies the conviction or finding of adultery or adjudication of paternity to which the statement relates;
- (b) alleges that the conviction, finding or adjudication was erroneous;
or

- (c) denies that the conviction, finding or adjudication is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

Matters which must be specifically pleaded (O.18, r.8)

8. - (1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality -

- (a) which he alleges makes any claim or defence of the opposite party not maintainable; or
- (b) which, if not specifically pleaded, must take the opposite party by surprise; or
- (c) which raises issues of fact not arising out of the preceding pleading.

(2) Without prejudice to paragraph (1), a defendant to an action for the recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

(3) A claim for exemplary damages must be specifically pleaded together with the facts on which the party pleading relies.

(4) A party must plead specifically any claim for interest under Section 34 of The Judicature Law or otherwise and -

- (a) the claim for interest must be pleaded in the body of the pleading and should be repeated in the prayer;
- (b) the ground or basis on which interest is claimed must be identified precisely; and
- (c) wherever possible, the date from which and the rate at which interest is claimed must be stated.

Matter may be pleaded whenever arising (O.18, r.9)

9. - Subject to rules 7(1), 10 and 15(2), a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

Departure (O. 18, r.10)

10. - (1) A party shall not in any pleading make an allegation of fact, or raise any new ground or claim, inconsistent with a previous pleading of his.

(2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

Points of law may be pleaded (O.18, r.11)

11. - A party may by his pleading raise any point of law.

Particulars of pleading (O.18, r.12)

12. - (1) Every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words -

- (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and
- (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

(2) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(3) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (2), the Court may, on such terms as it thinks just, order that party to serve on any other party -

- (a) where he alleges knowledge, particulars of the facts on which he relies; and
- (b) where he alleges notice, particulars of the notice.

(4) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(5) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

(6) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

Admissions and denials (O.18, r.13)

13. - (1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them is not a sufficient traverse of them.

(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

Denial by joinder of issue (O.18, r.14)

14. - (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to paragraph (3) -

- (a) there is at the close of pleadings an implied joinder of issue on the pleading last served; and
- (b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a denial of every allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.

Statement of Claim (O.18, r.15)

15. - (1) A statement of claim must state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed.

(2) A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but, subject to that, a plaintiff may in his statement of claim, alter, modify

or extend any claim made by him in the indorsement of the writ without amending the indorsement.

(3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

Defence of tender (O.18, r.16)

16. - Where in any action a defence of tender before action is pleaded, the defendant must pay into Court in accordance with Order 22 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into Court has been made.

Defence of set-off (O.18, r.17)

17. - Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

Counterclaim and defence to counterclaim (O. 18, r.18)

18. - Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically -
- (a) rule 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff; and
 - (b) rules 8(2), 16 and 17 shall, with the necessary modifications, apply to a defence to counterclaim as they apply to a defence.

Striking out pleadings and indorsements (O.18, r.19)

19. - (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that -
- (a) it discloses no reasonable cause of action or defence, as the case may be; or
 - (b) it is scandalous, frivolous or vexatious; or
 - (c) it may prejudice, embarrass or delay the fair trial of the action; or
 - (d) it is otherwise an abuse of the process of the court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under subparagraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

Close of pleadings (O.18, r.20)

20. - (1) The pleadings in an action are deemed to be closed -

(a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim; or

(b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

Trial without pleadings (O.18, r.21)

21. - (1) Where in an action to which this rule applies any defendant has entered an appearance in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree such a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate, and Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and direction which they desire and with any other necessary modifications, apply as if the application under this rule were a summons for directions.

(4) This rule applies to every action begun by writ other than one which includes -

(a) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment; or

(b) a claim by the plaintiff based on an allegation of fraud.

ORDER 22**PAYMENT INTO AND OUT OF COURT****Payment into Court (O.22, r.1)**

1. - (1) In any action for a debt or damages any defendant may at any time pay into Court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.

(2) On making any payment into Court under this rule, and on increasing any such payment already made, the defendant must give notice thereof in Form No. 14 of Appendix I to the plaintiff and every other defendant (if any); and within 3 days after receiving the notice the plaintiff must send the defendant a written acknowledgment of its receipt.

(3) A defendant may, without leave, give notice of an increase in a payment made under this rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.

(4) Where two or more causes of action are joined in the action and money is paid into Court under this rule in respect of all, or some only of, those causes of action, the notice of payment -

- (a) must state that the money is paid in respect of all those causes of action, or, as the case may be, must specify the cause or causes of action in respect of which the payment is made; and
- (b) where the defendant makes separate payments in respect of each, or any two or more of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.

(5) Where a single sum of money is paid into Court under this rule in respect of two or more causes of action, then, if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may, subject to paragraph (6), order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

(6) Where a cause of action under the Law of Torts Reform Law 1977 and a cause of action under the Estate Proceedings Law 1974 are joined in the action, with or without any other cause of action, the causes of action under the said Laws shall, for the purpose of paragraph (5) be treated as one cause of action.

(7) For the purposes of this rule, the plaintiff's cause of action in respect of a debt or damages shall be construed as a cause of action in respect, also, of such interest as might be included in the judgment, whether under Section 34 of The Judicature Law or otherwise, if judgment were given at the date of the payment into Court.

Payment in by defendant who has counterclaimed (O.22, r.2)

2. - Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum or sums of money into Court under rule 1, the notice of payment must state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy -
- (a) the cause of action in respect of which he claims; or
 - (b) where two or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them.

Acceptance of money paid into Court (O.22, r.3)

3. - (1) Where money is paid into Court under rule 1, then, subject to paragraph (2), within 21 days after receipt of the notice of payment, or, where more than one payment has been made or the notice has been amended, within 21 days after receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may -
- (a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be; or
 - (b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,

by giving notice in Form No. 15 of Appendix I to every defendant to the action.

(2) Where after the trial or hearing of an action has begun -

- (a) money is paid into Court under rule 1; or
- (b) money in Court is increased by a further payment into Court under that rule,

the plaintiff may accept the money in accordance with paragraph (1) within 2 days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the Judge begins to deliver judgment or, if the trial is with a jury, before the Judge begins his summing up.

(3) Rule 1(5) shall not apply in relation to money paid into Court in an action after the trial or hearing of the action has begun.

(4) On the plaintiff accepting any money paid into Court all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to him, shall be stayed.

(5) Where money is paid into Court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action, in respect of which he claimed, then, on the plaintiff accepting that sum all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(6) A plaintiff who has accepted any sum paid into Court shall, subject to rule 4 and Order 80, rule 12, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

Order for payment out of money accepted required in certain cases (O.22, r.4)

4. - (1) Where a plaintiff accepts any sum paid into Court and that sum was paid into Court -

- (a) by some but not all of the defendants sued jointly or in the alternative by him; or
- (b) with a defence of tender before action; or
- (c) in satisfaction either of causes of action arising under the Law of Torts Reform Law 1977 and the Estate Proceedings Law, 1974 or of a cause of action arising thereunder where more than one person is entitled to the money,

the money in Court shall not be paid out except under paragraph (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates, as the case may be.

(2) Where an order of the Court is required under paragraph (1) by reason only of subparagraph (1)(a), then if, either before or after accepting the money paid into Court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the action against all other defendants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the trial or hearing of an action has begun a plaintiff accepts any money paid into Court and all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates are stayed by virtue of rule 3(4), then, notwithstanding anything in paragraph (2), the

money shall not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the action.

Money remaining in Court (O.22, r.5)

5. - If any money paid into Court in an action is not accepted in accordance with rule 3, the money remaining in Court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, or after the trial or hearing of the action; and where such an order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

Counterclaim (O. 22, r.6)

6. - A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into Court in accordance with rule 1, and that rule and rules 3 (except paragraph (5)), 4 and 5 shall apply accordingly with the necessary modifications.

Non-disclosure of payment into Court (O.22, r.7)

7. - (1) Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of rule 3(4) after the trial or hearing has begun and subject to paragraph (2), the fact that money has been paid into Court under the foregoing provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of debt or damages have been decided.

(2) Where the question of the costs of the issue of liability falls to be decided, that issue having been tried and an issue or question concerning the amount of the debt or damages remaining to be tried separately, any party may bring to the attention of the Court the fact that a payment into Court has or has not been made and the date (but not the amount) of such payment or of the first payment if more than one.

Money paid into Court under order (O.22, r.8)

8. - (1) On making any payment into Court under an order of the Court or certificate of the Clerk of the Court, a party must give notice thereof to every other party to the proceedings.

(2) Subject to paragraph (3), money paid into Court under an order of the Court or a certificate of the Clerk of the Court shall not be paid out except in pursuance of an order of the Court.

(3) Unless the Court otherwise orders, a party who has paid money into Court in pursuance of an order made under Order 14 -

- (a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice; or
- (b) if he pleads a tender, may by his pleading appropriate the whole or any part of the money as payment into Court of the money alleged to have been tendered,

and money appropriated in accordance with this rule shall be deemed to be money paid into Court in accordance with rule 1 or money paid into Court with a plea of tender, as the case may be, and this Order shall apply accordingly.

(4) If the Court so orders, paragraph (3) shall apply, with the necessary modifications, where a party has paid money to another person to abide the outcome of the action.

No rules (O.22, rr.9-12)

Investment of money in Court (O.22, r.13)

13. - Cash under the control of or subject to the order of the Court shall be invested in accordance with the provisions of Order 92.

Written offers "without prejudice save as to costs" (O.22, r.14)

14. - (1) A party to proceedings may at any time make a written offer to any other party to those proceedings which is expressed to be "without prejudice save as to costs" and which relates to any issue in the proceedings.

(2) Where an offer is made under paragraph (1), the fact that such an offer has been made shall not be communicated to the Court until the question of costs falls to be decided and the Court shall take into account any offer which has been brought to its attention when making an order for costs.

Provided that the Court shall not take such offer into account if, at the time it is made, the party making it could have protected his position as to costs by means of a payment into Court under Order 22.

ORDER 28**ORIGINATING SUMMONS PROCEDURE****Application (O.28, r.1)**

1. - The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any Law; and, subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as it applies in relation to other summonses.

Affidavit evidence (O.28, r.1A)

- 1A - (1) In any cause or matter begun by originating summons (not being an ex parte summons) the plaintiff must, before the expiration of 14 days after the defendant has acknowledged service, or, if there are two or more defendants, at least one of them has acknowledged service, file the affidavit evidence on which he intends to rely.

(2) In the case of an ex parte summons, the applicant must file his affidavit evidence not less than 4 clear days before the day fixed for the hearing.

(3) Copies of the affidavit evidence filed in Court under paragraph (1) must be served by the plaintiff on the defendant, or, if there are two or more defendants, on each defendant, before the expiration of 14 days after service has been acknowledged by that defendant.

(4) When a defendant who has acknowledged service wishes to adduce affidavit evidence he must within 28 days after service on him of copies of the plaintiff's affidavit evidence under paragraph (3) file his own affidavit evidence and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

(5) A plaintiff on whom a copy of a defendant's affidavit evidence has been served under paragraph (4) may within 14 days of such service file further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.

(6) No other affidavit shall be received in evidence without leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this rule apply subject to any directions by the Court to the contrary.

(9) In this rule references to affidavits and copies of affidavits include references to exhibits to affidavits and copies of such exhibits.

Fixing time for attendance of parties before Court (O.28, r.2)

2. - (1) In the case of an originating summons which is in Form No. 2 of Appendix I, the plaintiff must, within 1 month of the expiry of the time within which copies of affidavit evidence may be served under rule 1A, make an application to fix an appointment in accordance with the provisions of Order 34, rule 3.

(2) A day and time fixed for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 3 of Appendix I, or for the hearing of an ex parte originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be and, in the case of a summons which is required to be served, the time limited for acknowledging service shall, where appropriate, be abridged so as to expire on the next day but one before the day so fixed, and the time limits for filing affidavits under rule 1A(2) and (3) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.

(3) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has acknowledged service of the originating summons.

Notice of hearing (O.28, r.3)

3. - (1) Not less than 14 clear days before the day fixed under rule 2 for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 2 of Appendix I, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has acknowledged service of the originating summons and, if the first mentioned party is a defendant, on the plaintiff.

(2) Not less than 4 clear days before the day fixed under rule 2 for the hearing of an originating summons, which is in Form No. 3 of Appendix I, the plaintiff must serve the summons on every defendant or, if any defendant has already been served with the summons, must serve on that defendant notice of the day fixed for hearing.

(3) Where notice in Form No. 5 of Appendix I is served in accordance with paragraph (1), such notice shall specify what orders or directions the party serving the notice intends to seek at the hearing; and any party served with such notice who wishes to seek different orders or directions must, not less than 7 days before the hearing, serve on every other party a notice specifying the other orders and directions he intends to seek.

(4) If the hearing of an originating summons which is in Form No. 2 or Form No. 3 of Appendix I is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for he must not less than 7 days before the resumed hearing of the summons serve on every other party a notice specifying those orders and directions.

(5) Where a party is required by any provision of this rule or rule 5(2) to serve a notice or a copy of a notice on "every other party" he must -

- (a) where he is the plaintiff, serve it on every defendant who has acknowledged service of the originating summons; and
- (b) where he is a defendant, serve it on the plaintiff and on every other defendant affected thereby.

Directions, etc., by Court (O.28, r.4)

4. - (1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) Unless on the first hearing of an originating summons the Court disposes of the summons altogether or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence, and, if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give under Order 25 if the cause or matter had been begun by writ and the summons were a summons for directions under that Order.

(5) The Court may at any stage of the proceedings order that any affidavit, or any particulars of any claim, defence or other matter stated in any affidavit, shall stand as pleadings or that points of claim, defence or reply be delivered and stand as pleadings.

Adjournment of summons (O.28, r.5)

5. - (1) The hearing of the summons by the Court may, if necessary, be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, any party may restore it to the list on 14 days' notice to every other party, and rule 3(4) shall apply to any adjourned hearing.

Applications affecting party who has not acknowledged service (O.28, r.6)

6. - Where in a cause or matter begun by originating summons an application is made to the Court for an order affecting a party who has failed to acknowledge service, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party has so failed.

Counterclaim by defendant (O.28, r.7)

7. - (1) A defendant to an action begun by originating summons who has acknowledged service of the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 4 or 8.

(3) If it appears on the application of a plaintiff against whom a counterclaim is made under this rule that the subject matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

Continuation of proceedings as if cause or matter begun by writ (O.28, r.8)

8. - (1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) Where the Court decides to make such an order, Order 25, rules 2 to 7 shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and, with any other necessary modifications, apply as if there had been a summons for directions in the proceedings and that order were one of the orders to be made thereon.

(3) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(4) Any reference in these Rules to an action begun by writ, shall, unless the context otherwise requires, be construed as including a reference to a cause or matter, proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

Order for hearing or trial (O.28, r.9)

9. - (1) Except where the Court disposes of a cause or matter begun by originating summons in Chambers or makes an order in relation to it under rule 8 or some other provision of these Rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make an order for the hearing or trial of the cause or matter as may be appropriate.

(2) The Court shall by order determine the place and mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

(3) Order 33, rule 4(2), and Order 34, rules 1 to 5, shall apply in relation to a cause or matter begun by originating summons and to an order made therein under this rule as they apply in relation to an action begun by writ and to an order made therein under the said rule 4 and shall have effect accordingly with the necessary modifications and with the further modification that for references therein to the summons for directions there shall be substituted references to the first or any resumed hearing of the originating summons by the Court.

(4) The Court may order the Plaintiff to deliver to the Court office bundles comprising documents of the kind specified in Order 34, rule 10, but Order 34, rule 10 shall not otherwise apply to any cause or matter begun by originating summons.

Failure to comply with rules of court orders (O.28, r.10)

10. - If any party to a cause or matter begun by originating summons, or a counterclaim under rule 7, does not comply with this Order, or with any order or direction of the Court as to the conduct of the proceedings, the Court may order that the cause or matter or counterclaim be dismissed or, as the case may be, the defendant be debarred from adducing such evidence in the cause or matter or counterclaim as the Court may specify, or (if it thinks appropriate) that the defence or counterclaim be struck out and judgment entered accordingly.

No rule (O.28, r.11)

ORDER 32**APPLICATIONS AND PROCEEDINGS IN CHAMBERS****Mode of making application (O.32, r.1)**

1. - Except as provided by Order 25, rule 7, every application in Chambers not made ex parte must be made by summons.

Issue of summons (O.32, r.2)

2. - (1) Issue of a summons by which an application in Chambers is to be made takes place on its being sealed and filed by the Clerk of the Court.
- (2) No summons may be issued unless it specifies a date and time at which the hearing will take place.
- (3) A summons may not be amended after issue without leave of the Court.
- (4) Every summons must have indorsed upon it by the party issuing it his estimate of the length of the hearing and it shall be that party's duty to notify the Clerk of the Court if for whatever reason his estimate is no longer considered to be accurate.
- (5) Every summons shall be in Form No. 17 of Appendix I.

Service of summons (O.32, r.3)

3. - (1) A summons asking only for the extension or abridgement of any period of time may be served on the day before the day specified in the summons for the hearing of the application.
- (2) Except as provided by paragraph (1), and unless the Court otherwise orders or any of these rules otherwise provides -
- (a) a summons must be served on every other party not less than four days before the day specified in the summons for the hearing of the application;
 - (b) any evidence relied on in support of the application must be served with the summons.

Adjournment of hearing (O.32, r.4)

4. - (1) The hearing of a summons may be adjourned from time to time either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the summons was taken out may restore it to the list on 4 clear days' notice to all the other parties on whom the summons was served.

Proceeding in absence of party failing to attend (O.32, r.5)

5. - (1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeds in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

Order made ex parte may be set aside (O.32, r.6)

6. - The Court may set aside an order made ex parte.

Subpoena for attendance of witness (O.32, r.7)

7. - A writ of subpoena ad testificandum or a writ of subpoena duces tecum to compel the attendance of a witness for the purposes of proceedings in Chambers may be issued by the Clerk of the Court, if the Judge so authorises.

Officers may administer oaths (O.32, r.8)

8. - The following persons shall have authority to administer oaths in proceedings in Chambers namely -

- (a) a Judge;
- (b) the Clerk of the Court;
- (c) the Chief Marshall; or
- (d) a court usher.

No rule (O.32, r.9)

Applications for a direction under the Limitation Law 1991 (O.32, r.9A)

- 9A. - (1) The jurisdiction to direct, under Section 39 of the Limitation Law 1991, that Section 13 or Section 16 of that Law should not apply to an action or to any specified cause of action to which the action relates shall be exercisable by the Judge in Chambers.

(2) An application for a direction under paragraph (1) above shall be by originating summons and must be supported by an affidavit setting out the grounds on which such leave is sought and any facts necessary to substantiate those grounds.

No rules (O.32, rr.10-12)

Power to direct hearing in Court (O.32, r.13)

13. - (1) The Judge in Chambers may direct that any summons, application or appeal shall be heard in Court or shall be adjourned into Court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in Court by virtue of a direction under paragraph (1) above may be adjourned from Court into Chambers.

No rules (O.32, rr.14-15)

Obtaining assistance of experts (O.32, r.16)

16. - If the Court thinks it expedient in order to enable it better to determine matters arising in proceedings in Chambers, it may obtain the assistance of any person specifically qualified to advise on that matter and may act upon his opinion.

Service and notice of affidavit (O.32, r.17)

17. - (1) Any party filing an affidavit intended to be used by him in any proceedings in Chambers shall serve a copy of such affidavit on every other party to the proceedings.

(2) Any party intending to use in such proceedings any affidavit filed by him in previous proceedings shall give notice to every other party of his intention so to do and serve a copy of such affidavit on every other party to the proceedings.

No rule (O.32, r.18)

Disposal of matters in Chambers (O.32, r.19)

19. - The Judge may by any judgment or order made in Court in any proceedings direct that such matters (if any) in the proceedings as he may specify shall be disposed of in Chambers.

No rule (O.32, r.20)

Papers for use of Court, etc. (O.32, r.21)

21. - (1) Copies of documents may be used in evidence in proceedings in Chambers provided that such copies are exhibited to an affidavit stating that such copies are or are believed to be true copies of the originals.

(2) Any party upon whom is served an affidavit to which are exhibited copies of documents may serve a notice requiring the party intending to rely upon such affidavit to produce for inspection within 4 days the original of any such copies.

(3) Any party who fails to produce for inspection the original of any document required to be produced pursuant to paragraph (2) shall be permitted to use the copy thereof in evidence only with the leave of the Court.

Notes of proceedings in Chambers (O.32, r.22)

22. - (1) A note shall be kept of all proceedings in Chambers with the dates thereof so that all such proceedings in any cause or matter are noted in chronological order with a short statement of the matter decided at each hearing.

(2) The Clerk of the Court shall provide any party to the proceeding with a photocopy or typed transcript of such note if requested to do so unless the Judge otherwise orders.

No Rules (O.32, rr.23-26)**Judgments and orders in Chambers (O.32, r.27)**

27. - (1) On the making of any judgment or order in Chambers the Judge may direct that an office copy of such judgment or order is to be filed in the Register of Judgments to be kept pursuant to Order 63, rule 7(1).

(2) A direction pursuant to paragraph (1) that an office copy of any judgment or order is to be filed in the Register of Judgments shall be noted in writing on such judgment or order and all copies thereof for filing.

Application in case of emergency, etc. (O.32, r.28)

28. - Nothing in this Order shall prevent a Judge from hearing an application in any place other than his Chambers in a case of emergency or when there is some other special reason so to do.

ORDER 82**DEFAMATION ACTIONS****Application (O.82, r.1)**

1. - These Rules apply to actions for libel or slander.

Indorsement of claim in libel action (O.82, r.2)

2. - Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

Application for leave to institute defamation action (O.82, r.2A)

- 2A. - (1) An application under Section 38 of the Limitation Law 1991 for leave to institute a defamation action shall be made by originating summons in Form No. 3 of Appendix I and shall be heard in Chambers.

(2) The application must be supported by an affidavit setting out the grounds on which leave is sought and any facts necessary to substantiate those grounds.

Obligation to give particulars (O.82, r.3)

3. - (1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, insofar as the words complained of consist of statements of fact, they are true in substance and in fact, and, insofar as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(2A) Without prejudice to Order 18, rule 8, but subject to paragraph (2B), where the defendant makes an allegation as described in paragraph (2), the plaintiff shall serve a reply specifically admitting or denying any such allegation raised by the defendant and specifying any fact or matter upon which he relies in opposition to the defendant's allegations.

(2B) No reply shall be required under paragraph (2A) where all the facts or matters on which the plaintiff intends to rely in opposition to the defendant's allegations as described in paragraph (2) are already particularised elsewhere in the pleadings.

(3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(3A) Without prejudice to Order 18, rule 12, the plaintiff must give full particulars in the statement of the facts and matters on which he relies in support of his claim for damages, including details of any conduct by the defendant which it is alleged has increased the loss suffered and of any loss which is peculiar to the plaintiff's own circumstances.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

Ruling on meaning (O.82, r.3A)

3A. - (1) At any time after the service of the statement of claim either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a particular meaning or meanings attributed to them in the pleadings.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the pleadings, he may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.

(3) Subject to paragraph (4), each party to the proceedings may make only one application under paragraph (1).

(4) Where a party has made an application under paragraph (1) and the respondent to that application subsequently amends his pleadings to allege a new meaning, the Court may allow the other party to make a further application under paragraph (1) in relation to that new meaning.

(5) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant, and as if the counterclaim were the statement of claim.

Provisions as to payment into Court (O.82, r.4)

4. - (1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with Order 22, rule 3(1), accepts money paid into Court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in rule 3(4) of that Order, the action shall be stayed as against that defendant only, but -
- (a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the action by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into Court by the defendant as against whom the action has been stayed; and
 - (b) the plaintiff shall not be entitled to his costs of the action against the other defendant after the date of the payment into Court unless either the amount of the damages awarded to him is greater than the amount paid into Court and accepted by him or the Judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.

(2) Where in an action for libel a party pleads the defence for which Section 10 of the Defamation Law (Revised) 1976 provides, Order 22, rule 7, shall not apply in relation to that pleading.

Statement in open Court (O.82, r.5)

5. - (1) Where a party accepts money paid into Court in satisfaction of a cause of action for libel or slander, malicious prosecution or false imprisonment, that party may apply to a Judge in Chambers by summons for leave to make in open Court a statement in terms approved by the Judge.
- (2) Where a party to an action for libel or slander, malicious prosecution or false imprisonment which is settled before trial desires to make a statement in open Court, an application must be made to a Judge in Chambers for an order that the action be set down for trial, and before the date fixed for the trial the statement must be submitted for the approval of the Judge before whom it is to be made.

Interrogatories not allowed in certain cases (O.82, r.6)

6. - In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

No rule (O.82, r.7)

Fulfilment of offer of amends under Section 4 of the Defamation Law (Revised) (O.82, r.8)

8. - (1) An application to the Court under Section 11 of the Defamation Law (Revised) 1976 to determine any question as to the steps to be taken in fulfilment of an offer of amends made under that Section must, unless the application be made in the course of proceedings for libel or slander in respect of the publication to which the offer relates, be made to a Judge in Chambers.

(2) An originating summons by which such application is made shall be in Form No. 3 of Appendix I.