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# THE GRAND COURT LAW (1995 REVISION)

## THE GRAND COURT RULES, 1995

(REVISED EDITION)

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**THE GRAND COURT RULES 1995****(REVISED EDITION)****PREAMBLE****1. The Overriding objective**

1.1 The overriding objective of these Rules is to enable the Court to deal with every cause or matter in a just, expeditious and economical way.

1.2 Dealing with a cause or matter justly includes, as far as is practicable-

- (a) ensuring that the substantive law is rendered effective and that it is carried out;
- (b) ensuring that the normal advancement of the proceeding is facilitated rather than delayed;
- (c) saving expense;
- (d) dealing with the cause or matter in ways which are proportionate-
  - (i) to the amount of money involved;
  - (ii) to the importance of the case; and
  - (iii) to the complexity of the issues;
- (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other proceedings.

**2. Application by the Court of the overriding objective**

2.1 The Court must seek to give effect to the overriding objective when it-

- (a) applies, or exercises any discretion given to it by these Rules; or
- (b) interprets the meaning of any Rule.

2.2 These Rules shall be liberally construed to give effect to the overriding objective and, in particular, to secure the just, most expeditious and least expensive determination of every cause or matter on its merits.

### **3. Duty of the parties**

The parties are obliged to help the Court to further the overriding objective. In applying the Rules to give effect to the overriding objective the Court may take into account a party's failure to help in this respect.

### **4. Court's duty to manage proceedings**

4.1 The Court must further the overriding objective by actively managing proceedings.

4.2 This may include-

- (a) identifying the issues at an early stage;
- (b) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (c) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (d) helping the parties to settle the whole or part of the proceeding;
- (e) deciding the order in which issues are to be resolved;
- (f) fixing timetables or otherwise controlling the progress of the proceeding;
- (g) considering whether the likely benefits of taking a particular step will justify the cost of taking it;
- (h) dealing with as many aspects of the proceeding as is practicable on the same occasion;
- (i) dealing with the proceeding without the parties needing to attend at court;
- (j) conducting procedural hearings by means of telephone conference calls;
- (k) making appropriate use of technology; and
- (l) giving directions to ensure that the trial proceeds quickly and efficiently.

4.3 Whenever a proceeding comes before the Court, whether on a summons for directions or otherwise, the Court will consider making orders on its own motion for the purpose of giving effect to the overriding objectives of the rules.

**THE GRAND COURT RULES 1995****(REVISED EDITION)****EXPLANATORY MEMORANDUM****1 Introduction**

- 1.1 The purpose of this Memorandum is to draw to the attention of legal practitioners and court staff the key features of the Grand Court Rules 1995 ("the Rules") which originally came into force on the 1st June, 1995 and were published in revised form on 8<sup>th</sup> September, 2003.
- 1.2 The Grand Court (Civil Procedure) Rules 1976 and the Rules of Supreme Court 1965 ceased to apply to any proceeding commenced in the Grand Court on or after the 1st June, 1995 and ceased to apply in respect of any step taken or required to be taken after that date in every proceeding which was pending on that date.
- 1.3 The Rules follow the layout of the Rules of the Supreme Court and are designed so that the notes contained in the Supreme Court Practice 1999 can be used as an aid to the interpretation and application of these Rules where they are the same or similar to the Rules of Supreme Court, as they existed prior to the enactment of the Civil Procedure Rules 1998.
- 1.4 This Memorandum is not intended to be a comprehensive guide. Nor is it to be regarded as a substitute for the Rules.

**2 Preamble**

- 2.1 The preamble sets out the overriding objective of the rules which is to enable the court to deal with every cause or matter in a just, expeditious and economical way. The contents of the preamble are not rules of the court. Rather, it is a statement of the policy upon which the rules are founded. The judiciary will interpret and apply the rules with a view to giving effect to this policy.
- 2.2 Whenever a cause or matter comes before the Court the Judge will consider what direction should be made with a view to achieving these overriding objectives.
- 2.3 Practitioners' attention is drawn to O.25, r. 1(7) and rule 3 which provide for the court to make a wide range of directions of its own motion. Whenever a cause or matter is before the court and the Judge considers that it is appropriate for directions to be made, he will either do so at that hearing or direct that a hearing take place specifically for that purpose.

- 2.4 Notwithstanding the adversarial nature of all inter-partes proceedings, the parties and their attorneys have a duty to co-operate with each other and help the court to further the overriding objectives of the rules. Any failure to comply with this duty may result in orders for costs being made against the defaulting parties and/or their attorneys.

### **3 The Register of Writs and Other Originating Process**

- 3.1 The Register of Writs takes the form of a series of ring binders into which an office copy of every originating process (i.e. every writ, petition, originating summons or originating motion) is placed in numerical cause number order. There is to be an index at the front of each binder containing summarised details of the title of each proceeding in similar form to that previously entered into the Cause Book.
- 3.2 In order to issue any originating process the Clerk of the Court must be presented with at least three copies, i.e. one to be placed in the Court File; one to be placed on the Register of Writs; and a service copy for use of the party issuing it (O.5, r.1).
- 3.3 The Register of Writs is open to public inspection upon payment of the prescribed fee (O.63, r.8(3)).

### **4 Issue and Service of Writs**

- 4.1 Writs must be in Form No. 1 of Appendix 1 to the Rules. Since the Writ no longer takes the form of a command by Her Majesty, it may be served out of the jurisdiction, subject to obtaining the leave of the Court in accordance with O.11.
- 4.2 Writs must be endorsed with the information contained in O.6, r.2, r.3 and r.4. Failure to comply with these Rules will prevent a plaintiff from obtaining a default judgment either at all or for the full extent of the relief to which he might otherwise be entitled.
- 4.3 A writ is not validly served unless it is accompanied by an acknowledgment of service in Form 8.

### **5 Acknowledgment of Service**

- 5.1 The defendant to a proceeding commenced by writ must be served with an acknowledgment of service in Form No. 8. The defendant to a proceeding commenced by originating summons must be served with an acknowledgment of service in Form No. 9. Delivery to the defendant of a writ or originating summons alone does not constitute good service. It must be accompanied by an acknowledgment of service in Form No. 8 or Form No. 9, as appropriate.
- 5.2 The defendant to a proceeding commenced by writ or originating summons must complete and file the acknowledgment of service within 14 days calculated from the date of service.

- 5.3 Filing an acknowledgment of service does not constitute a waiver of the defendant's right to challenge the jurisdiction or apply to set aside the writ or originating summons on grounds of irregularity.
- 5.4 A defendant wishing to challenge the jurisdiction must take out a summons or motion within the period for serving a defence.
- 5.5 An acknowledgment of service in Form No. 8 or Form No. 9 must be served on every person against whom a counterclaim is made or against whom a third party claim is made, unless that person is already a party to the action.
- 5.6 A copy of every acknowledgment of service filed in the Court Office will be sent by the Clerk of the Court to the plaintiff or other claimant, as the case may be.

## **6 Default Judgments**

- 6.1 Applications for default judgments under O.13 or O.19 are made to the Clerk of the Court in Form No. 20 and must be accompanied by a draft order in Form No. 21 or Form No. 22.
- 6.2 Upon filing an application for a default judgment, the Court file is deemed to be closed (O.42, r.6) until the application is either granted or rejected. During the period when the Court file is closed, no step may be taken in the action by either party.
- 6.3 Applications for default judgments are processed administratively without the need for any appearance by or on behalf of the plaintiff.
- 6.4 Default judgments may be final (i.e. in Form No. 21) or interlocutory (i.e. in Form No. 22).
- 6.5 A plaintiff seeking a default judgment may also seek interest provided that his writ has been endorsed with a claim in compliance with O.6, r.2(e) (i.e. contractual interest) or r.2(f) (i.e. statutory interest) calculated in accordance with the rates prescribed by the Judgment Debts (Rates of Interest) Rules 1995.
- 6.6 A default judgment may include fixed costs calculated in accordance with O.62, r.7, provided that the writ has been endorsed with a claim in accordance with O.6, r.2(g).
- 6.7 Failure to endorse a writ in accordance with O.6, r.2 will prevent the plaintiff from obtaining a default judgment.

## **7 Summary Judgment**

- 7.1 Application for summary judgment may be made by a plaintiff pursuant to O.14 only if a statement of claim has been served. It matters not that the statement of claim is endorsed on the writ or served separately.

- 7.2 An application for summary judgment may also be made by defendants, but only if a defence has been served.
- 7.3 In either case, an application for summary judgment must be supported by an affidavit complying with the requirements of r.2 or r.13, as the case may be.

## **8 Consent Judgments**

- 8.1 Consent judgments and orders (i.e. final orders) to which the parties are entitled as of right are obtained administratively in accordance with O.42, r.5A, without the need for any party to appear before a Judge.
- 8.2 Most interlocutory orders involve the exercise of a judicial discretion and are therefore excluded from O.42 r.5A.

## **9 Discovery**

- 9.1 Discovery now encompasses two elements. GCR O.24, Part I deals with documentary discovery which occurs automatically in every action begun by writ unless the Court orders otherwise. In addition, the Court may order discovery by oral examination pursuant to Part II of GCR O.24.
- 9.2 If a party wishes to claim that any discoverable document in his possession, custody or control contains confidential information in respect of which the relevant principal is someone other than an opposing party, the claim must be made in paragraph 3 and Schedule 1, Part III of the List.
- 9.3 Where such a claim is made, the party making it may be required by the opposing party to make a Section 3A application. See O.24, r.5(4).
- 9.4 Interrogatories may be served without first obtaining the leave of the Court. See O.26, r.3.
- 9.5 Discovery by oral examination is limited to parties and may be conducted only if ordered by the Court. See O.24, r.16.

## **10 Interlocutory Summonses and Motions**

- 10.1 Every interlocutory summons or motion must be in Form 17.
- 10.2 Every interlocutory summons must be endorsed with a realistic time estimate in compliance with O.32, r.4(4).
- 10.3 Every interlocutory summons will be heard in Chambers, but the Judge may adjourn the hearing or the delivery of his ruling into open court if it is considered to be of some general importance (O.32, r.13).
- 10.4 Every interlocutory motion will be heard in open court.



## **11 Affidavits and Exhibits**

- 11.1 O.41 applies to all proceedings, including matrimonial proceedings, winding up proceedings, bankruptcy proceedings and civil appeals from the summary court.
- 11.2 Every affidavit must comply with the formal requirements of O.41, r.1 and O.66, r.1.
- 11.3 Documents for use in conjunction with affidavits must be exhibited, not annexed, i.e. United States procedure is not acceptable. See O.41, r.11.
- 11.4 Documentary exhibits must be prepared in accordance with the formal requirements of O.41, r.12.
- 11.5 Copies of the same document shall not be exhibited twice in any one proceeding. See O.41, r.15.
- 11.6 Where a deponent swears more than one affidavit to which there are exhibits, the numbering of such exhibits shall run consecutively throughout and shall not begin again with each affidavit. See O.41, r.12(3).

## **12 Trials and Final Hearings**

### **12.1 Actions Begun by Writ (O.34)**

- 12.1.1 An application to the Clerk of the Court to fix a date for the trial of an action commenced by writ must be in Form No. 63 and must be supported by an agreed statement, or in the absence of agreement, two statements containing reasoned time estimates (O.34, r.3).
- 12.1.2 Trial bundles containing the documents, and only the documents, specified in O.34, r.10, must be delivered to the Clerk of the Court between 2 and 14 days prior to the trial. Trial bundles which constitute a photocopy of the Court file are unacceptable.
- 12.1.3 The trial of every action begun by writ will take place in open court.

### **12.2 Actions Begun by Originating Summons (O.28)**

- 12.2.1 An application to the Clerk of the Court to fix a date for the trial of an originating summons in Form No. 2 must be made in Form No. 63 (as in paragraph 11.1 above). Notice of hearing in Form No. 5 must be served.
- 12.2.2 An application to the Clerk of the Court to fix a date for the hearing of an ex parte originating summons or one in Form No. 3 should be made informally at the time of issuing the summons.
- 12.2.3 It is only necessary to prepare indexes and trial bundles in cases in which the Court will be referred to large numbers of affidavits, exhibits, orders, etc.

12.2.4 The hearing of originating summonses will take place in Chambers unless the Court directs otherwise.

### 12.3 Proceedings Begun by Originating Motion

12.3.1 Proceedings may only be begun by originating motion if required or authorised by the Rules (O.5, r.5) e.g. certain applications under the Companies Law (Revised) (O.102, r.3).

12.3.2 The hearing of every notice of motion must take place in open court.

### 12.4 Proceedings Begun by Petition

12.4.1 Proceedings may only be begun by petition if required or authorised by the Rules (O.5, r.5), e.g. election petitions (O.93), petitions by CIMA to wind up banks etc. (O.95, r.3) and various kinds of applications under the Companies Law (O.102) and certain other statutes (O.94).

12.4.2 The procedure relating to divorce petitions continues to be governed by the Matrimonial Causes Rules 1986.

12.4.3 The effect of O.102, r.17 is that the presentation and hearing of winding up petitions are governed by the English Insolvency Rules 1986 (SI 1986/1925) r.4.7 to r.4.21 (creditors' petitions) and r.4.22 to r.4.24 (contributories' petitions).

12.4.4 All petitions are heard in open court.

## 13 Exchange of Witness Statements

On every summons for directions in actions commenced by writ the Court will consider whether or not it is appropriate to order the exchange of witness statements in advance of the trial in accordance with O.38, r.2(a).

## 14 Drawing Up and Filing Orders and Judgments

14.1 O.42 applies to all civil proceedings including matrimonial proceedings, winding up proceedings, bankruptcy proceedings and civil appeals from the Summary Court.

14.2 Every order or judgment must comply with the formal requirements of O.42, r.1. See Form Nos. 22, 24, 24A, 25 and 30 for examples.

14.3 The procedure for drawing up, signing and filing orders and judgments is contained in O.42, r.5.

14.4 The procedure for obtaining default judgments is contained in O.42, r.6. This is done administratively without the need for any appearance by the plaintiff before the Court.

- 14.5 Consent orders or judgments of a kind which do not involve the exercise of judicial discretion should also be obtained administratively in accordance with O.42, r.5(A). See paragraph 7 above.
- 14.6 Note that a money judgment may be made in a foreign currency, if that currency is the currency of the obligation. O.42, r.8.
- 14.7 Judgments or orders of a kind which are or can be made in open court are placed on the Register of Judgments which is open to public inspection upon payment of the prescribed fee. See O.42, r.8(7) and O.63, r.7.

## **15 Paper, Printing, Binding and Copies**

- 15.1 Legal size and fools-cap paper may not be used.
- 15.2 All documents requiring to be filed in Court must be produced on letter size paper, 11" long and 8-1/2" wide.
- 15.3 A-4 paper (which is not generally available in the United States or Cayman Islands) may be used only if unavoidable and then only if the document is produced with sufficient margins at the top and bottom of each page to enable it to be photocopied on to letter size paper.
- 15.4 Ring binders must be used for all documents of more than 50 pages.

## **16 Filing Fees**

The ad valorem fee payable upon issuing a writ endorsed with a liquidated claim or upon entering judgment for damages is calculated as follows:

### Example

Claim for US\$1,500,000 (CI\$1,260,000) plus interest and costs -

First CI\$10,000	Nil
Next CI\$90,000 @ 1%	CI\$900
Next CI\$900,000 @ 1/2 %	CI\$4,500
Next CI\$260,000 @ 1/4 %	CI\$650
Total	CI\$6,050

The fixed fees i.e. CI\$150 upon issuing a writ or CI\$20 upon filing a judgment, are payable in addition to the ad valorem fees.

## 17 Execution Generally

- 17.1 A money judgment may be enforced by –
- 17.1.1 a writ of fieri facias (O.47 and Form No. 26) resulting in the sale of the judgment debtors goods and chattels;
  - 17.1.2 garnishee proceedings (O.49 and Form Nos. 31 and 32) resulting in the attaching of bank account balances and other debts;
  - 17.1.3 a charging order (O.50 and Form Nos. 33 and 34) resulting in the imposition of a statutory charge over the debtor's land or securities which can then be enforced by an order for sale;
  - 17.1.4 the appointment of a receiver (O.30);
  - 17.1.5 an order for committal (O.52, Part II and Form Nos. 49, 50, 51 and 52) resulting in the debtor being sentenced to a term of imprisonment (or successive terms of imprisonment) not exceeding 6 weeks;
  - 17.1.6 a writ of sequestration (Form No. 29) which empowers a sequestrator to seize all the debtor's real and personal property; and
  - 17.1.7 an attachment of earnings order (O.50A and Form Nos. 35 to 47) resulting in the debtor's employer being required to deduct specific amounts from his wages each week or month and pay it over for the credit of the judgment creditor.
- 17.2 Judgments requiring a person to do or refrain from doing something other than pay money may be enforced by –
- 17.2.1 a writ of possession (O.45, r.3 and Form No. 28) requiring a person to deliver up possession of land;
  - 17.2.2 a writ of delivery (O.45, r.4) requiring a person to deliver up goods or, in the alternative, pay their assessed value;
  - 17.2.3 a writ of specific delivery (O.45, r.4) requiring a person to deliver up goods without the alternative of paying their assessed value;
  - 17.2.4 a writ of sequestration (O.46, r.5);
  - 17.2.5 an order for committal (O.52, Part I and Form No. 48); and
  - 17.2.6 the appointment of a receiver by way of equitable execution (O.51).
- 17.3 Note that all these remedies are theoretically available to enforce orders made in matrimonial proceedings.

- 17.4 Note that a receiver may be appointed for the purposes of collecting money (e.g. rents) or to carry out some other act (e.g. the execution of a contract or document of title).

## **18 Examination of Judgment Debtors**

- 18.1 A judgment creditor wishing to conduct post judgment discovery must make application under O.48 for an order for the examination of the judgment debtor in Form No. 30.
- 18.2 Orders for examination will not normally be made against individuals if the Court considers that an attachment of earnings order is likely to be an appropriate and effective remedy.
- 18.3 In the case of corporate judgment debtors, orders for examination may be made against any officer.

## **19 Imprisonment for Non-Payment of Debts**

- 19.1 An application to commit a judgment debtor to prison is considered to be an extraordinary remedy which is only available if it can be demonstrated that the judgment debtor has the means to pay but is refusing to do so.
- 19.2 A judgment creditor who has reasonable grounds for believing that a judgment debtor can pay but is wilfully refusing to do so, may apply for an order that he be sentenced to a term of imprisonment not exceeding 6 weeks. See O.52, Part II.
- 19.3 Applications must be made by notice of motion in Form No. 50, supported by an affidavit. Like all other notices of motion, it must be heard in open court.
- 19.4 The notice of motion will not be validly served unless it is accompanied by a statement of means form in Form No. 30. This form is designed to be photocopied. The judgment creditor's attorney should insert the Cause No.; the title (or abbreviated title) of the action; and the judgment debtor's name. The judgment debtor must complete the form and return it to the Court Office within 8 days of the date of service.
- 19.5 Since such applications involve the liberty of the subject, the Court will insist upon strict adherence to the Rules and Forms.

## **20 Attachment of Earnings Orders**

- 20.1 Attachment of earnings orders may be made pursuant to the Second Schedule of the Judicature Law by both the Grand Court and the Summary Court. The procedure applicable in the Summary Court is the same as that applicable in the Grand Court.
- 20.2 Applications for attachment of earnings orders in respect of judgments or maintenance orders made by the Summary Court must be made in accordance with O.50A and the relevant forms contained in Appendix II.

- 20.3 Applications for attachment of earnings orders to enforce money judgments of CI\$100 or more are made in Form No. 35 and must be accompanied by an affidavit in accordance with O.50A, r.4.
- 20.4 Applications for attachment of earnings orders to enforce maintenance orders which are in arrears are made in Form No. 44 and must be supported by an affidavit proving the amount of the arrears.
- 20.5 The applications must be served on the debtor together with a statement of means form in Form No. 36 of Appendix I.
- 20.6 Upon receipt of a completed statement of means form the Clerk of the Court will place the file before a Judge or Magistrate, as the case may be, who will normally make an attachment of earnings order in accordance with O.50A, r.7, without the need for the parties to attend before the Court. If either party is dissatisfied with an order made in his absence, he may ask the Clerk of the Court to issue a notice of hearing in Form No. 39 for a reconsideration of the order.
- 20.7 If the judgment debtor fails to deliver a completed statement of means form to the Court Office within 8 days of service, the Clerk of the Court will of her own motion issue a notice in Form No. 41 requiring the judgment debtor to attend court in person and explain why he should not be committed to prison for contempt of court. In addition to sentencing the judgment debtor to a term of imprisonment, the court may make an attachment of earnings order.
- 20.8 Attachment of earnings orders will be made in Form No. 38 (Judgment Debts) or Form No. 45 (Maintenance Orders). In the case of judgment debts, the installments shall be deemed to include interest calculated in accordance with Grand Court Practice Direction No. 2/95.
- 20.9 Before applying for an attachment of earnings order, the applicant should check the Register of Attachment of Earnings Orders to ascertain whether or not the judgment debtor is already the subject of an order, in which case it will be appropriate to apply in Form No. 46 for a consolidated order pursuant to O.50A, r.18. For this purpose Summary Court proceedings and Grand Court proceedings may be consolidated.

## **21 Applications Under Section 45 of the Trust Law**

- 21.1 O.85, r.7 and r.8 create two alternative methods by which an executor, administrator or trustee may make application under Section 45 of the Trust Law (Revised) for the opinion, advice or direction of the Court upon any question respecting the management or administration of the estate or trust fund.
- 21.2 An ordinary application under r.7 is made by an inter partes originating summons in Form No. 3 or an ex parte originating summons in Form No. 4, as may be appropriate and the originating summons procedure contained in O.28 will apply.

21.3 A written application under r.8 is made by an ex parte originating application in Form No. 57. O.26 shall not apply to such applications.

21.4 Written applications under r.7 are intended as an expeditious and economical means by which executors, administrators or trustees may obtain the opinion, advice or direction of the Court in non-contentious cases.

## **22 Costs**

22.1 The general rule is that the court will order costs to follow the event. See O.62, r. 4(5).

22.2 The objective is that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the court. See O.62, r. 4(2).

22.3 Fixed costs may be claimed in any action begun by writ for the recovery of a liquidated sum. See O.62, r. 7.

22.4 A party in whose favour an order for costs is made, may ask the Court to assess costs. Assessment is a summary process and the successful party is not usually required to produce any bill of costs. See O.62, r. 8.

22.5 Unless fixed or assessed, the amount payable pursuant to an order for costs will be negotiated and agreed between the parties. To the extent that there is disagreement, the successful party must apply for taxation which will be limited to those items which are disputed.

22.6 Taxation is conducted by the taxing officer in an inquisitorial way.

22.7 Any party who is dissatisfied with the amount of any cost certificate may apply to a Judge to review the taxing officer's decision.

Dated this 8<sup>th</sup> day of September, 2003

The Honourable Anthony Smellie QC, Chief Justice

The Honourable Sam Bulgin, Acting Attorney General

Andrew J. Jones QC, Legal Practitioner

Alden L. McLaughlin, MLA, Legal Practitioner





**ORDER 1****CITATION, APPLICATION, COMMENCEMENT, INTERPRETATION AND FORMS****Citation (O.1, r.1)**

1. (1) These Rules may be cited as the Grand Court Rules, 1995 (Revised).
- (2) An individual rule may be cited using the abbreviation "GCR".

**Application (O.1, r.2)**

2. (1) Subject to the following provisions of this rule, these Rules shall apply in relation to all proceedings in the Court.
- (2) Except for Part I of Order 52 (Committal), Order 53 (Applications for Judicial Review), Part III of Order 62 (Wasted Costs Orders) and Order 103 (Confidential Relationships (Preservation) Law (1995 Revision)), these Rules shall not apply to any criminal proceedings.
- (3) These Rules shall not apply to any application or proceedings governed by Parts I to III of the Succession Law (Probate and Administration) Rules 1977, as amended.
- (4) Except for Orders 3 (Time), 38 Part II (Writs of Subpoena), 39 (Evidence by Deposition), 62 (Costs), 67 (Change of Attorney), 45-51 (Enforcement) and 52 (Committal) 80, these Rules shall not apply to any proceedings which are -
  - (a) governed by the Matrimonial Causes Rules 1986, as amended,
  - (b) governed by the Grand Court (Bankruptcy) Rules 1977, as amended, or
  - (c) on appeal from civil proceedings in the Summary Court.
- (5) Except for Order 62 (Costs) and Order 102 (Applications Pursuant to the Companies Law (2003 Revision) these Rules shall not apply to any proceedings under Part V of The Companies Law (2003 Revision).
- (6) Notwithstanding the provisions of paragraphs (2) to (5) of this rule -
  - (a) Order 38 shall apply to every civil proceeding except -
    - (i) a proceeding under Part V of the Companies Law (Revised); and

- (ii) any appeal from civil proceedings in the Summary Court;
  - (b) every affidavit or other document filed in the Court office shall comply with the requirements of Orders 41 and 66;
  - (c) every judgment and order made by the Court shall comply with the requirements of Order 42;
  - (d) except in the case of petitions in proceedings governed by the Matrimonial Causes Rules 1986, as amended, every originating process or other document required to be served by these Rules or any other rules in connection with any civil proceedings shall be served in accordance with Orders 10 and 65;
  - (e) Part I of Order 80 shall apply to every proceeding to which a person under disability is a party; and
  - (f) every interlocutory summons issued by the Court, including summonses issued in proceedings governed by the Matrimonial Causes Rules 1986 and those issued in proceedings under Part V of the Companies Law (Revised), shall be endorsed in accordance with Order 32, rule 2(4), and Order 32, rules 2 to 8 shall apply to the hearing of such summonses.
- (7) All funds required to be paid into or out of Court, whether by order of the Court of Appeal, the Court, the Summary Court or otherwise, in both criminal and civil proceedings, shall be lodged, paid, invested and dealt with in accordance with the provisions of Order 92.

### **Commencement and transitional provisions (O.1, r.3)**

3. (1) These Rules shall come into operation on the 1st day of June, 1995, referred to in this Order as the "commencement date".
- (2) These Rules shall apply to -
- (a) every proceeding commenced on or after the commencement date; and
  - (b) every step taken or required to be taken after the commencement date in any proceeding pending on that date.
- (3) No step taken or required to be taken before the commencement date shall be treated as a non-compliance with these Rules provided that it complied with the rules then in force.
- (4) Order 6, rule 8 shall have no application to writs issued prior to the commencement date.

**Revocations (O.1, r.4)**

4. The following rules are hereby revoked with effect from the commencement date –
- (a) the Grand Court (Civil Procedure) Rules 1976, as amended;
  - (b) the Grand Court (Admiralty) Rules 1977;
  - (c) the Grand Court (Forms and Miscellaneous) Rules 1976;
  - (d) the Civil Evidence Rules 1978;
  - (e) the Grand Court (Proceedings by and against the Crown) Rules 1977;
  - (f) Part IV of the Succession Law (Probate and Administration) Rules 1977, as amended;
  - (g) the Grand Court (Applications for Orders of Mandamus, Prohibition, Certiorari and Habeas Corpus) Rules 1977;
  - (h) the Grand Court (Foreign Process) Rules 1977; and
  - (i) the Grand Court (Foreign Judgments) (Reciprocal Enforcement) Rules 1977.

**Non application of English rules (O.1, r.5)**

5. (1) Except as provided in Order 75, r.2, the Rules of the Supreme Court 1965 shall cease to have any application to –
- (a) every proceeding commenced on or after the commencement date; and
  - (b) any step taken or required to be taken after the commencement date in any proceeding pending on that date.
- (2) Notwithstanding paragraph (1), The Supreme Court Practice, 1999 may be relied upon where appropriate as an aid to the interpretation and application of these Rules.

**Application of Interpretation Law (1995 Revision) (O.1, r.6)**

6. The Interpretation Law (1995 Revision) shall apply to the interpretation of these Rules as it applies to the interpretation of a Law.

**Definitions (O.1, r.7)**

7. (1) In these Rules, unless the context otherwise requires -

"Accountant General" means the Accountant General of the Grand Court appointed under paragraph 1 of the First Schedule of the Judicature Law or an officer appointed by him under Order 92, rule 6;

"an action for personal injuries" means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, and "personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"attorney" means a person admitted or otherwise entitled to practise as an attorney-at-law in the Cayman Islands either generally or in respect of a particular cause or matter and includes Crown Counsel;

"Bailiff" means the person appointed as such under Section 7(1) of the Grand Court Law (1995 Revision), and includes any assistant bailiffs;

"Chief Justice" means the Chief Justice of the Cayman Islands or any other Judge authorised to act as Chief Justice;

"Chief Marshall" means the person appointed as such by the Chief Justice and includes any deputies and assistants;

"Clerk of the Court" means the person appointed as such under Section 7(1) of the Grand Court Law (1995 Revision), and includes any deputies;

"the Court" means the Grand Court of the Cayman Islands constituted pursuant to Section 3 of the Grand Court Law (1995 Revision) whether sitting as the Grand Court or as the Chief Court of Bankruptcy or as a Colonial Court of Admiralty;

"Court Funds Office" means the office of the Accountant General or of an officer appointed by him under Order 92, rule 6;

"Court office" is the office established pursuant to Section 10 of the Grand Court Law (1995 Revision), as amended;

"Court file" means the file established in respect of every proceeding in accordance with Order 63, rule 2;

"Grand Court Law" means the Grand Court Law (1995 Revision) as amended from time to time;

"The Judicature Law" means The Judicature Law (1995 Revision), as amended from time to time;

"Judge" means any judge or acting judge of the Court;

"notice of intention to defend" means an acknowledgment of service containing a statement to the effect that the person by whom or on whose behalf it is signed intends to contest the proceedings to which the acknowledgment relates;

"originating summons" means every summons other than a summons in a pending cause or matter;

"pleading" does not include a petition, summons or preliminary act;

"prescribed fee" means the fee prescribed by the Grand Court Fees Rules 1999;

"practice form" means a form contained in a practice direction issued pursuant to Order 1, rule 12;

"prescribed form" means a form prescribed by these Rules and contained in the Appendices;

"prescribed rate" means the applicable rate of interest prescribed from time to time by the Rules Committee pursuant to Section 34 of The Judicature Law;

"probate action" has the meaning assigned by Order 76;

"receiver" includes a manager;

"Register of Judgments" means the file maintained in accordance with Order 63, rule 7;

"Register of Writs" means the file maintained in accordance with Order 63, rule 8;

"State Immunity Act 1978" means the United Kingdom State Immunity Act 1978 as applied to the Cayman Islands by the State Immunity (Overseas Territories) Order 1979 (SI 1979/458);

"writ" means a writ of summons.

- (2) In these Rules, unless the context otherwise requires, "the Court" means the Grand Court or any one or more Judges thereof, whether sitting in open Court or in chambers.
- (3) In these Rules, unless the context otherwise requires, a reference to acknowledging service of a document or giving notice of intention to defend any proceedings is a reference to lodging in the Court office an acknowledgment of service of that document or, as the case may be, a notice to defend those proceedings.

**Construction of references to orders, rules, etc. (O.1, r.8)**

8. (1) Unless the context otherwise requires, any reference in these Rules to a specified Order, rule or Appendix is a reference to that Order or rule of, or Appendix to, these Rules and any reference to a specified rule, paragraph or subparagraph is a reference to that rule of the Order, that paragraph of the rule, or that subparagraph of the paragraph, in which the reference occurs.
- (2) Any reference in these Rules to anything done under a rule of these Rules includes a reference to the same thing done before the commencement date under any corresponding rule of court ceasing to have effect on the commencement date.
- (3) Except where the context otherwise requires, any reference in these Rules to any Law shall be construed as a reference to the Law as amended, extended or applied by or under any other Law.

**Construction of references to action, etc. for possession of land (O.1, r.9)**

9. Except where the context otherwise requires, references in these Rules to an action or claim for the possession of land shall be construed as including references to proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or to the possession thereof.

**Prescribed forms (O.1, r.10)**

10. The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case requires.

**Use of English Practice Forms as precedents (O.1, r.11)**

11. The Queens Bench and Chancery Masters' Practice Forms contained in Part 2 of The Supreme Court Practice, 1999, as may be hereafter amended from time to time, are not incorporated in these Rules, but they shall be regarded as approved precedents to be used, with all necessary and appropriate variations, whenever possible.

**Practice directions (O.1, r.12)**

12. (1) The Chief Justice may issue practice directions for the purpose of -
- (a) supplementing these Rules, provided that no practice direction shall revoke or vary any rule;
  - (b) establishing forms to be known as "practice forms" in respect of any matter in which no prescribed form is contained in Appendix I; and
  - (c) providing for the practice and procedure of the Court in respect of any matter not governed by these or any other rules.

- (2) All practice directions issued by or with the authority of the Chief Justice and all practice notes issued by the Clerk of the Court are hereby revoked with effect from the commencement date.
- (3) The Rules Committee shall from time to time issue practice directions containing guidelines relating to the matters referred to in Order 62, rule 17
- (4) The Accountant General may, with the concurrence of the Chief Justice, issue practice directions for the purpose of supplementing the provisions of Order 92 and establish practice forms in respect of any matter relating to Order 92 for which no prescribed form is contained in Appendix II.
- (5) All practice directions and practice forms issued pursuant to this rule shall be gazetted.
- (6) Any practice direction or practice form issued pursuant to this rule may be varied or revoked by the Chief Justice in the case of those issued by him or by the Accountant General in the case of those issued by him.
- (7) Any practice direction or practice form may be revoked by the Rules Committee.





**ORDER 2****EFFECT OF NON-COMPLIANCE****Non-compliance with rules (O.2, r.1)**

1. (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.
- (2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1) and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.
- (3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed.

**Application to set aside for irregularity (O.2, r.2)**

2. (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.
- (2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion.



**ORDER 3****TIME****"Month" means calendar month (O.3, r.1)**

1. Without prejudice to Section 3 of the Interpretation Law, as amended, the word "month", where it occurs in any judgment, order, direction or other document forming part of any proceedings in the Court, means a calendar month unless the context otherwise requires.

**Reckoning periods of time (O.3, r.2)**

2.
  - (1) Any period of time fixed by these Rules or by any judgment, order or direction for doing any act shall be reckoned in accordance with the following provisions of this rule.
  - (2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.
  - (3) Where the act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.
  - (4) Where the act is required to be done a specified number of clear days before or after a specified date, at least that number of days must intervene between the day on which the act is done and that date.
  - (5) Where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Saturday or a Sunday or a public general holiday, that day shall be excluded.

**No rule (O.3, r.3)****Time expires on Saturday, Sunday, etc. (O.3, r.4)**

4. Where the time prescribed by these Rules, or by any judgment, order or direction, for doing any act at the Court office expires on a Saturday, a Sunday or other day on which the Court office is closed, and by reason thereof that act cannot be done on that day, the act shall be in time if done on the next day on which the Court office is open.

**Extension, etc. of time (O.3, r.5)**

5.
  - (1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act in any proceedings.

- (2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.
- (3) The period within which a person is required by these Rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.

**Notice of intention to proceed after six months' delay (O.3, r.6)**

6. Where a period of 6 months or more has elapsed since the last proceeding in a cause or matter, the party who desires to proceed must give to every other party not less than 1 month's notice of his intention to proceed.

A summons on which no order was made is not a proceeding for the purposes of this rule.

**ORDER 4****ASSIGNMENT AND CONSOLIDATION OF CAUSES OR MATTERS****Reservation of a cause or matter to a particular Judge (O.4, r.1)**

1. If it appears to be expedient so to do, a Judge may reserve all further proceedings in a cause or matter to himself or the Chief Justice may direct that all further proceedings in a cause or matter be heard by a particular Judge.

**Exercise of one Judge's jurisdiction by another (O.4, r.2)**

2. Where, by virtue of any of these Rules, any application ought to be made to, or jurisdiction exercised by, the Judge by whom a cause or matter has been tried, then, if that Judge dies or ceases to be a judge, or if for any other reason it is impossible or inconvenient for that Judge to act in the cause or matter, the Chief Justice may, either by a special order in any cause or matter, or by a general order applicable to any class of causes or matters, nominate some other Judge to whom the application may be made or by whom the jurisdiction may be exercised.

**Consolidation, etc. of causes or matters (O.4, r.3)**

3. (1) Where two or more causes or matters are pending in the Court, then, if it appears to the Court -
  - (a) that some common question of law or fact arises in both or all of them; or
  - (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or
  - (c) that for some other reason it is desirable to make an order under this rule,the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.
- (2) When the Court makes an order under paragraph (1) that two or more causes or matters are to be tried at the same time but no order is made for those causes or matters to be consolidated, then, a party to one of those causes or matters may be treated as if he were a party to any other of those causes or matters for the purpose of making an order for costs against him or in his favour.
- (3) Nothing in this rule shall prevent two or more causes or matters being consolidated pursuant to Order 50, rule 1(6).



**ORDER 5****MODE OF BEGINNING CIVIL PROCEEDINGS****Mode of beginning civil proceedings (O.5, r.1)**

1. (1) Subject to the provision of any Law and of these Rules, civil proceedings in the Court may be begun by writ, originating summons, originating motion or petition, which are referred to collectively in this rule as originating process.
- (2) Every originating process must be issued.
- (3) The issue of an originating process takes place upon it being -
  - (a) sealed by the Clerk of the Court with a seal indicating the date upon which it was sealed; and
  - (b) filed in accordance with paragraph (4).
- (4) Upon issuing an originating process the Clerk of the Court shall -
  - (a) assign to it a cause number, using a chronological sequence re-commencing on the 1st January each year;
  - (b) establish a court file in respect of the cause or matter in accordance with Order 63, rule 2;
  - (c) place an office copy of the originating process on the Court file; and
  - (d) place a second office copy of the originating process on the Register of Writs maintained in accordance with Order 63, rule 8.
- (5) A person seeking to issue an originating process shall present to the Clerk of the Court at least three copies thereof, each signed by or on behalf of the plaintiff, applicant or petitioner, as the case may be.
- (6) The Clerk of the Court shall not issue any originating process without first being satisfied that the prescribed fee has been paid.

**Proceedings which must be begun by writ (O.5, r.2)**

2. Subject to any provisions of a Law, or of these Rules, by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings must, notwithstanding anything in rule 4, be begun by writ, that is to say, proceedings -

- (a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;
- (b) in which any claim by the plaintiff is based on an allegation of fraud;
- (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any Law or independently of any contract or any such provision) where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;
- (d) in which a claim is made by the plaintiff in respect of the infringement of a patent; and
- (e) which are a probate action.

**Proceedings which must be begun by originating summons (O.5, r.3)**

3. Proceedings by which an application is to be made to the Court or a Judge thereof under any Law must be begun by originating summons except where by these Rules or by or under any Law the application in question is expressly required or authorised to be made by some other means.

This rule does not apply to an application made in pending proceedings.

**Proceedings which may be begun by writ or originating summons (O.5, r.4)**

4. (1) Except in the case of proceedings which by these Rules or by or under any Law are required to be begun by originating motion or petition, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.
- (2) Proceedings -
- (a) in which the sole or principal question at issue is, or is likely to be, one of the construction of any Law or of any deed, will, contract or other document, or some other question of law; or
  - (b) in which there is unlikely to be any substantial dispute of fact,
- are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ.



**Proceedings to be begun by motion or petition (O.5, r.5)**

5. Proceedings may be begun by originating motion or petition if, but only if, by these Rules or by or under any Law the proceedings in question are required or authorised to be so begun.

**Right to sue in person (O.5, r.6)**

6. (1) Subject to paragraph (2) and to Order 80, rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the Court by an attorney or in person.
- (2) Except as expressly provided by or under any Law, a body corporate may not begin or carry on or defend any such proceedings otherwise than by an attorney.



**ORDER 6****WRITS OF SUMMONS: GENERAL PROVISIONS****Form of writ (O.6, r.1)**

1. Every writ must be in Form No. 1 of Appendix I.

**Indorsement of claim (O.6, r.2)**

2. Before a writ is issued it must be indorsed -
  - (a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;
  - (b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for acknowledging service, the defendant pays the amount so claimed to the plaintiff, his attorney or agent;
  - (c) where the action is brought to enforce a right to recover possession of goods, with a statement showing the value of the goods;
  - (d) where the claim made by the plaintiff is for a debt or liquidated demand it must specify the currency of the debt or liquidated demand.
  - (e) where a claim is made for interest pursuant to the terms of any contract, with a statement of -
    - (i) the relevant contractual term(s);
    - (ii) the agreed rate of interest;
    - (iii) the date(s) from which it is payable;
    - (iv) the total amount of interest claimed; and
    - (v) the amount of interest accruing due each day;
  - (f) where a claim is made for interest pursuant to Section 34 of The Judicature Law or any other statute, with a statement of -
    - (i) the prescribed rate(s);

- (ii) the date(s) from which it is calculated;
  - (iii) the total amount of interest claimed as at the date of the issue of the writ; and
  - (iv) the amount of interest accruing each day thereafter;
- (g) where the claim made by the plaintiff includes a claim for fixed costs pursuant to Order 62, rule 1, with a statement of the amount payable in accordance with the scale and the amount of the prescribed fee payable upon issue of the writ.

**Indorsement as to capacity (O.6, r.3)**

3. Before a writ is issued it must be indorsed -

- (a) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;
- (b) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued.

**Indorsement as to insurers of motor vehicles (O.6, r.4)**

4. (1) Any writ which includes a claim for damages arising out of the use of a motor vehicle or vehicles on any road shall be endorsed with the name and address of the insurer or insurers of such vehicles.
- (2) The Clerk of the Court shall send a copy of any writ indorsed in accordance with paragraph (1) to the insurer or insurers whose names are indorsed thereon within 10 days of the date upon which such writ is issued.

**Indorsement as to attorney and address (O.6, r.5)**

5. (1) Before a writ is issued, it must be indorsed -

- (a) where the plaintiff sues by an attorney, with the plaintiff's address and the attorney's name or firm and a business address of his within the jurisdiction; or
  - (b) where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent.
- (2) The address for service of a plaintiff shall be -
- (a) where he sues by an attorney, the business address of the attorney indorsed on the writ; or

- (b) where he sues in person, his address within the jurisdiction indorsed on the writ.
- (3) Where the name of an attorney is indorsed on a writ, he must, if any defendant who has been served with or who has acknowledged service of the writ requests him in writing so to do, declare in writing whether the writ was issued by him or with his authority or privity.
- (4) If an attorney whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity, the Court may on the application of any defendant who has been served with or who has acknowledged service of the writ, stay all proceedings in the action begun by the writ.

**Office copies of writs (O.6, r.6)**

- 6. (1) One or more office copies of a writ may, at the request of the plaintiff, be issued at the time when the original writ is issued or at any time thereafter before the original writ ceases to be valid.
- (2) Without prejudice to the generality of paragraph (1) a writ for service within the jurisdiction may be issued as an office copy writ with one which is to be served out of the jurisdiction and a writ which is to be served out of the jurisdiction may be issued as an office copy writ with one for service within the jurisdiction.
- (3) An office copy of a writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued and which has been sealed.

**No rules (O.6, rr.7-7A)**

**Duration and renewal of writ (O.6, r.8)**

- 8. (1) For the purpose of service, a writ (other than an office copy of a writ) is valid in the first instance -
  - (a) where leave to serve the writ out of the jurisdiction is required under Order 11, for 6 months; and
  - (b) in any other case, for 4 months,
 beginning with the date of its issue and an office copy of a writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the office copy.
- (2) Subject to paragraph (3), where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 4 months at any one time, beginning with the day next

following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

- (3) Where the Court is satisfied on an application under paragraph (2) that, despite the making of all reasonable efforts, it may not be possible to serve the writ within 4 months, the Court may, if it thinks fit, extend the validity of the writ for such period, not exceeding 12 months, as the Court may specify.
- (4) Before a writ, the validity of which has been extended under this rule, is served, it must be marked with an official stamp showing the period for which the validity of the writ has been so extended.
- (5) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or office copy) issued in the same action which has not been served so as to extend the validity of that other writ until the expiration of the period specified in the order.

**ORDER 7****ORIGINATING SUMMONSES: GENERAL PROVISIONS****Application (O.7, 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.

**Form of summons, etc. (O.7, r.2)**

2. (1) Every originating summons (other than an ex parte summons) shall be in Form No. 2 of Appendix I or, if so authorised or required, in Form No. 3 of Appendix I and every ex parte originating summons shall be in Form No. 4 of Appendix I.  
(2) The party taking out an originating summons (other than an ex parte summons) shall be described as a plaintiff, and the other parties shall be described as defendants.

**Contents of summons (O.7, r.3)**

3. (1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.  
(2) Order 6, rules 3 and 5, shall apply in relation to an originating summons as they apply in relation to a writ.

**Office copy of summons (O.7, r.4)**

4. Order 6, rule 6, shall apply in relation to an originating summons as it applies in relation to a writ.

**No rule (O.7, r.5)No rule (O.7, r.5)****Duration and renewal of summons (O.7, r.6)**

6. Order 6, rule 8, shall apply in relation to an originating summons as it applies in relation to a writ.





**ORDER 8****ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS****Application (O.8, r.1)**

1. The provisions of this Order apply to all motions subject, in the case of originating motions of any particular class, to any special provisions relating to motions of that class made by these Rules or by or under any Law.

**Notice of motion (O.8, r.2)**

2. (1) Except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceedings in the ordinary way would or might entail irreparable or serious mischief may make an order ex parte on such terms as to costs or otherwise, and subject to such undertaking, if any, as it thinks just; and any party affected by such order may apply to the Court to set it aside.
- (2) Unless the Court gives leave to the contrary, there must be at least 4 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.
- (3) A day and time for the hearing of a motion shall be fixed by the Clerk of the Court at the time of its issue.

**Form and issue of notice of motion (O.8, r.3)**

3. (1) The notice of an originating motion must be in Form No. 6 of Appendix I. When leave has been given under rule 2(2) to serve short notice of motion, that fact must be stated in the notice. The notice of a motion must include a concise statement of the nature of the claim made or the relief or remedy required.
- (2) Order 6, rule 5, shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.

**Service of notice of motion with writ, etc. (O.8, r.4)**

4. Notice of motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or at any time after service of such writ or summons, whether or not the defendant has acknowledged service in the action.

**Adjournment of hearing (O.8, r.5)**

5. The hearing of any motion may be adjourned from time to time on such terms, if any, as the Court thinks fit.

**ORDER 9****PETITIONS: GENERAL PROVISIONS****Application (O.9, r.1)**

1. Rules 2 to 4 apply to petitions by which civil proceedings in the Court are begun, subject, in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by these Rules or by or under any Law or any rules under any Law.

**Contents of petition (O.9, r.2)**

2. (1) Every petition (except an election petition) shall be in Form No. 7 of Appendix I and shall include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun by the petition.
- (2) Every petition must include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.
- (3) Order 6, rule 5, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

**No rule (O.9, r.3)****Fixing time for hearing petition (O.9, r.4)**

4. (1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Clerk of the Court at the time of its issue.
- (2) If a petition is required to be served on any person, it shall be indorsed with the hearing date or accompanied by a notice of hearing.
- (3) Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than 14 days before the day fixed for the hearing of the petition.

**Certain applications not to be made by petition (O.9, r.5)**

5. No application in any cause or matter may be made by petition.



**ORDER 10****SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS****General provisions (O.10, r.1)**

1. (1) A writ must be served personally on each defendant by the plaintiff or his agent.
- (2) Where a defendant's attorney indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.
- (3) Subject to Order 12, rule 7, where a writ is not duly served on a defendant but he acknowledges service of it, the writ shall be deemed, unless the contrary is shown, to have been served on him and to have been so served on the date on which he acknowledges service.
- (4) Every copy of a writ for service on a defendant shall be sealed with the seal of the Court and shall be accompanied by a form of acknowledgment of service in Form No. 8 of Appendix I in which the title of the action and its number have been entered.
- (5) This rule shall have effect subject to the provision of any Law and these Rules and in particular to any Law which provides for the manner in which documents may be served on bodies corporate.

**Service of writ on agent of overseas principal (O.10, r.2)**

2. (1) Where the Court is satisfied on an ex parte application that -
  - (a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing in or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction; and
  - (b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate; and
  - (c) at the time of the application either the agent's authority has not been determined or he is still in business relation with his principal,

the Court may authorise service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

- (2) An order under this rule authorising service of a writ on a defendant's agent must limit a time within which the defendant must acknowledge service.
- (3) Where an order is made under this rule authorising service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction.

**Service of writ in pursuance of contract (O.10, r.3)**

3. (1) Where -
- (a) a contract contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Court has jurisdiction to hear and determine any such action; and
  - (b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner, or at such place (whether within or out of the jurisdiction), as may be so specified,
- then, if an action in respect of the contract is begun in the Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to paragraph (2) be deemed to have been duly served on the defendant.
- (2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ out of the jurisdiction has been granted under Order 11.

**Service of writ in certain actions for possession of land (O.10, r.4)**

4. Where a writ is indorsed with a claim for the possession of land, the Court may, subject to the provisions of Section 154 of the Registered Land Law -
- (a) if satisfied on an ex parte application that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the land; or
  - (b) if satisfied on such an application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to some conspicuous part of the land shall be treated as good service on that defendant.

**Service of originating summons, notice of motion or petition (O.10, r.5)**

5. (1) The foregoing rules of this Order shall apply, with any necessary modifications in relation to an originating summons (other than an ex parte originating summons, or an originating summons under Order 113) as they apply in relation to a writ, except that on acknowledgment of service shall be in Form No. 9 of Appendix I.
- (2) Paragraphs (1) and (2) of rule 1 shall apply, with any necessary modifications, in relation to a notice of an originating motion and a petition as they apply in relation to a writ.





**ORDER 11****SERVICE OF PROCESS, ETC. OUT OF THE JURISDICTION****Principal cases in which service of writ out of jurisdiction is permissible (O.11, r.1)**

1. (1) Provided that the writ does not contain any claim mentioned in Order 75, rule 1(3) service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ -
  - (a) relief is sought against a person who -
    - (i) has the right to reside permanently in the Islands; or
    - (ii) has a right to work in the Islands; or
    - (iii) is resident in and the nature and circumstances of his residence indicate that he has a substantial connection with the Islands;
  - (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing) provided that a claim for an interlocutory injunction shall not of itself be a sufficient ground for service of a writ out of the jurisdiction;
  - (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
  - (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which -
    - (i) was made within the jurisdiction; or
    - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or
    - (iii) is by its terms, or by implication, governed by the law of the Islands; or
    - (iv) contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract;

- (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
  - (f) the claim is founded on a tort, fraud or breach of duty whether statutory at law or in equity and the damage was sustained, or resulted from an act committed, within the jurisdiction;
  - (ff) the claim is brought against a person who is or was a director, officer or member of a company registered within the jurisdiction or who is or was a partner of a partnership, whether general or limited, which is governed by the laws of the Islands and the subject matter of the claim relates in any way to such company or partnership or to the status, rights or duties of such director, officer, member or partner in relation thereto;
  - (g) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
  - (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;
  - (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
  - (j) the claim is brought for any relief or remedy in respect of any trust, whether express, implied or constructive, that is governed by or ought to be executed according to the laws of the Islands or in respect of the status, rights or duties of any trustee thereof in relation thereto;
  - (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;
  - (l) the claim is brought in a probate action within the meaning of Order 76; or
  - (m) the claim is brought to enforce any judgment or arbitral award.
- (2) Service of a writ out of the jurisdiction is permissible without the leave of the Court if every claim made in the action begun by the writ is one which by virtue of a Law the Court has power to hear and determine notwithstanding that the person

against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within the jurisdiction.

- (3) Where a writ is to be served out of the jurisdiction pursuant to an order under paragraph (1), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall be such time as may be fixed by the Court.
- (4) Where a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall be 28 days.

**No rules (O.11, rr.2-3)**

**Application for, and grant of, leave to serve writ out of jurisdiction (O.11, r.4)**

4. (1) An application for the grant of leave under rule 1(1) must be supported by an affidavit stating -
  - (a) the grounds on which the application is made;
  - (b) that in the deponent's belief the plaintiff has a good cause of action;
  - (c) in what place or country the defendant is, or probably may be found;
  - (d) where the application is made under rule 1(1)(c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try; and
  - (e) if service is not to be effected personally the method or methods of service which are in accordance with the law of the country in which service is to be effected.
- (2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.
- (3) An order granting leave to serve a writ out of the jurisdiction under rule 1 must limit a time within which the defendant to be served must acknowledge service.

**Service of writ abroad; general (O.11, r.5)**

5. (1) Subject to the following provisions of this rule, Order 10, rule 1(1), (2), (3) and (4) and Order 65, rule 4, shall apply in relation to the service of a writ, notwithstanding that the writ is to be served out of the jurisdiction, save that the

accompanying form of acknowledgment of service shall be modified in such manner as may be appropriate.

- (2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.
- (3) A writ which is to be served out of the jurisdiction -
  - (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected; and
  - (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 6 or rule 7.
- (4) An official certificate stating that a writ as regards which rule 6 has been complied with has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate -
  - (a) by a British consular authority in that country; or
  - (b) the government or judicial authorities of that country; or
  - (c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.
- (5) An official certificate by the Secretary of State stating that a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.
- (6) A document purporting to be such a certificate as is mentioned in paragraphs (4) and (5) shall, until the contrary is proved, be deemed to be such a certificate.
- (7) In this rule and rule 6 "the Hague Convention" means the convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on November 15, 1965.

**Service of writ abroad through foreign governments, judicial authorities and British consuls (O.11, r.6)**

6. (1) Save where a writ is to be served pursuant to paragraph (3), this rule does not apply to service in -
  - (a) the United Kingdom, including the Isle of Man and the Channel Islands;

- (b) any independent Commonwealth country;
  - (c) any associated state;
  - (d) any dependent territory of the United Kingdom; or
  - (e) the Republic of Ireland.
- (2) Where in accordance with these Rules a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the Court, the writ may be served -
- (a) through the judicial authorities of that country; or
  - (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).
- (3) Where in accordance with these Rules a writ is to be served on a defendant in any country which is party to the Hague Convention, the writ may be served -
- (a) through the authority designated under the Convention in respect of that country; or
  - (b) if the law of that country permits -
    - (i) through the judicial authorities of that country; or
    - (ii) through a British consular authority in that country.
- (4) Where in accordance with these Rules a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the Court, the writ may be served -
- (a) through the government of that country, where the government is willing to effect service; or
  - (b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.
- (5) A person who wishes to serve a writ by a method specified in paragraph (2), (3) or (4) must deliver to the Clerk of the Court a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.

- (6) Every copy of a writ delivered under paragraph (5) must be accompanied by a translation of the writ in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected:

Provided that this paragraph shall not apply in relation to a copy of a writ which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

- (7) Every translation delivered under paragraph (6) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.
- (8) Documents duly delivered under paragraph (5) shall be sent by the Clerk of the Court to the Governor with a request that he forward them to the Secretary of State asking the Secretary of State to arrange for the writ to be served by the method indicated in the request delivered under paragraph (5) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

#### **Service of process on a foreign state (O.11, r.7)**

7. (1) Subject to paragraph (4) where a person to whom leave has been granted under rule 1 to serve a writ on a State, as defined in Section 14 of the State Immunity Act 1978, wishes to have the writ served on that State, he must deliver with the Clerk of the Court -
- (a) a request for service to be arranged by the Secretary of State;
  - (b) a copy of the writ; and
  - (c) except where the official language of the State is, or the official languages of that State include, English, a translation of the writ in the official language or one of the official languages of the State.
- (2) Rule 6(7) shall apply in relation to a translation delivered under paragraph (1) of this rule as it applies in relation to a translation delivered under paragraph (6) of that rule.
- (3) Documents duly delivered under this rule shall be sent by the Clerk of the Court to the Governor with a request that the Secretary of State be asked to arrange for the writ to be served on the State or the government in question, as the case may be.

- (4) Where Section 12(6) of the State Immunity Act 1978 applies and the State has agreed to a method of service other than that provided by the preceding paragraph, the writ may be served either by the method agreed or in accordance with the preceding paragraphs of this rule.

**Undertaking to pay expenses of Governor (O.11, r.8)**

8. Every request delivered under rule 6(5) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Governor in respect of the service requested including the expenses incurred by him in making any request of the Secretary of State and, on receiving due notification of the amount of those expenses, to pay that amount to the Financial Secretary and to produce a receipt for such payment to the Clerk of the Court.

**Service of originating summons, petition, notice of motion, etc. (O.11, r.9)**

9. (1) Subject to Order 73, rule 5, and Order 102, rule 16, rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to the service of a writ.
- (2) Service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court, but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these Rules or under any Law be served without leave.
- (3) Rule 4(1) and (2) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1.
- (4) An order under this rule granting leave to serve an originating summons out of the jurisdiction must limit a time within which the defendant to be served with the summons must acknowledge service.
- (5) Rules 5, 6 and 8 shall apply in relation to any document in respect of which leave to serve out of the jurisdiction has been granted under this rule as they apply in relation to a writ.





**ORDER 12****ACKNOWLEDGMENT OF SERVICE TO WRIT OR ORIGINATING SUMMONS****Mode of acknowledging service (O.12, r.1)**

1. (1) Subject to paragraph (2) and to Order 80, rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) acknowledge service of the writ and defend the action by an attorney or in person.
- (2) The defendant to such an action who is a body corporate may acknowledge service of the writ and give notice of intention to defend the action either by an attorney or by a person duly authorised to act on the defendant's behalf but, except as aforesaid or as expressly provided by any Law, such a defendant may not take steps in the action otherwise than by an attorney.
- (3) Service of a writ may be acknowledged by properly completing an acknowledgment of service, as defined by rule 3, and handing it in at the Court office, or sending it by post to the Clerk of the Court.
- (4) If two or more defendants to an action acknowledge service by the same attorney and at the same time, only one acknowledgment of service need be completed and delivered for those defendants.
- (5) The date on which service is acknowledged is the date on which the acknowledgment of service is received by the Clerk of the Court.

**No rule (O.12, r.2)****Acknowledgment of service (O.12, r.3)**

3. (1) An acknowledgment of service shall be in Form No. 8 or Form No. 9 of Appendix I, whichever is appropriate, and except as provided in rule 1(2) must be signed by the attorney acting for the defendant specified in the acknowledgment or, if the defendant is acting in person, by that defendant.
- (2) An acknowledgment of service must specify -
  - (a) in the case of a defendant acknowledging service in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent; and

- (b) in the case of a defendant acknowledging service by an attorney a business address of his attorney within the jurisdiction,

and where the defendant acknowledges service in person, the address within the jurisdiction specified under subparagraph (a) shall be his address for service, but otherwise the business address of his attorney shall be his address for service.

In relation to a body corporate the references in subparagraph (a) to the defendant's place of residence shall be construed as references to the defendant's registered office.

- (3) If an acknowledgment of service does not specify the defendant's address for service or the Court is satisfied that any address specified in the acknowledgment of service is not genuine, the Court may on application by the plaintiff set aside the acknowledgment or order the defendant to give an address or, as the case may be, a genuine address for service and may in any case direct that the acknowledgment shall nevertheless have effect for the purposes of Order 10, rule 1(3) and Order 65, rule 9.

**Procedure on receipt of acknowledgment of service (O.12, r.4)**

- 4. On receiving an acknowledgment of service the Clerk of the Court must -
  - (a) affix to the acknowledgment an official stamp showing the date on which he received it;
  - (b) file the acknowledgment of service on the Court file; and
  - (c) make a copy of the acknowledgment, having affixed to it an official stamp showing the date on which he received the acknowledgment and send it to the plaintiff or, as the case may be, his attorney at the plaintiff's address for service.

**Time limited for acknowledging service (O.12, r.5)**

- 5. References in these Rules to the time limited for acknowledging service are references -
  - (a) in the case of a writ served within the jurisdiction, to 14 days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these Rules, to that time as so extended; and
  - (b) in the case of a writ served out of the jurisdiction, to the time limited under Order 10, rule 2(2), Order 11, rule 1(3) or Order 11, rule 4(3) or, where that time has been extended as aforesaid, to that time as so extended.

**Late acknowledgment of service (O.12, r.6)**

6. (1) Except with the leave of the Court, a defendant may not give notice of intention to defend in an action after judgment has been obtained therein.
- (2) Except as provided by paragraph (1) nothing in these Rules or any writ or order thereunder shall be construed as precluding a defendant from acknowledging service in an action after the time limited for so doing, but if a defendant acknowledges service after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other act later than if he had acknowledged service within that time.

**Acknowledgment not to constitute waiver (O.12, r.7)**

7. The acknowledgment by a defendant of service of a writ shall not be treated as a waiver by him of any irregularity in the writ or service thereof or in any order giving leave to serve the writ out of the jurisdiction or extending the validity of the writ for the purpose of service.

**Dispute as to jurisdiction (O.12, r.8)**

8. (1) A defendant who wishes to dispute the jurisdiction of the Court in the proceedings by reason of any such irregularity as is mentioned in rule 7 or on any other ground shall give notice of intention to defend the proceedings and shall within the time limited for service of a defence, apply to the Court for -
- (a) an order setting aside the writ or service of the writ on him;
  - (b) an order declaring that the writ has not been duly served on him;
  - (c) the discharge of any order giving leave to serve the writ on him out of the jurisdiction;
  - (d) the discharge of any order extending the validity of the writ for the purpose of service;
  - (e) the protection or release of any property of the defendant seized or threatened with seizure, in the proceedings;
  - (f) the discharge of any order made to prevent any dealing with any property of the defendant;
  - (g) a declaration that in the circumstances of the case the Court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action; or
  - (h) such other relief as may be appropriate.

- (2) An application under paragraph (1) must be made -
  - (a) in an admiralty action in rem, by motion; or
  - (b) in any other action, by summons or motion,
 and the summons or notice of motion must state the grounds of the application.
- (3) An application under paragraph (1) must be supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit must be served with the notice of motion or summons by which the application is made.
- (4) Upon hearing an application under paragraph (1) the Court, if it does not dispose of the matter in dispute, may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a preliminary issue.
- (5) A defendant who makes an application under paragraph (1) shall not be treated as having submitted to the jurisdiction of the Court by reason of his having given notice of intention to defend the action; and if the Court makes no order on the application or dismisses it, the notice shall cease to have effect, but the defendant may, subject to rule 6(1), file a further acknowledgment of service within 14 days or such other period as the Court may direct and in that case paragraph (6) shall apply as if the defendant had not made any such application.
- (6) Except where the defendant makes an application in accordance with paragraph (1) the acknowledgment by a defendant of service of a writ shall, unless the acknowledgment is withdrawn by leave of the Court under Order 21, rule 1, be treated as a submission by the defendant to the jurisdiction of the Court in the proceedings.

**Application by defendant where writ not served (O.12, r.8A)**

- 8A.**
- (1) Any person named as a defendant in a writ which has not been served on him may serve on the plaintiff a notice requiring him within a specified period not less than 14 days after service of the notice either to serve the writ on the defendant or to discontinue the action as against him.
  - (2) Where the plaintiff fails to comply with a notice under paragraph (1) within the time specified the Court may, on the application of the defendant by summons, order the action to be dismissed or make such other order as it thinks fit.
  - (3) A summons under paragraph (2) shall be supported by an affidavit verifying the facts on which the application is based and stating that the defendant intends to contest the proceedings and a copy of the affidavit must be served with the summons.

- (4) Where the plaintiff serves the writ in compliance with a notice under paragraph (1) or with an order under paragraph (2) the defendant must acknowledge service within the time limited for so doing.

**Acknowledgment of service of originating summons (O.12, r.9)**

9. (1) Each defendant named in and served with an originating summons (other than an ex parte originating summons) must acknowledge service as if it were a writ.
- (2) The foregoing rules of this Order shall apply in relation to an originating summons (other than an ex parte summons) as they apply to a writ except that after the word "extended", wherever it occurs in rule 5(a) there shall be inserted the words "or abridged" and for the reference in rule 5(b) to Order 11, rules 1(3) and 4(3) there shall be substituted a reference to Order 11, rule 9(4).

**Acknowledgment of service to be treated as entry of appearance (O.12, r.10)**

10. For the purpose of any Law referring expressly or impliedly to the entry of appearance as a procedure provided by rules of Court for responding to a writ or other process issuing out of the Court, or of any rule of law, the acknowledgment of service of the writ or other process in accordance with these Rules shall be treated as the entry of an appearance to it, and related expressions shall be construed accordingly.



**ORDER 13****FAILURE TO GIVE NOTICE OF INTENTION TO DEFEND****Claim for liquidated demand (O.13, r.1)**

1. (1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time enter final judgment against that defendant for a sum not exceeding –
  - (a) the principal sum claimed in the writ;
  - (b) interest, provided that the writ has been indorsed with a claim pursuant to Order 6, rule 2(e) or (f), as the case may be; and
  - (c) fixed costs,and proceed with the action against the other defendants, if any.
- (2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest under Section 34 of The Judicature Law.

**Claim for unliquidated damages (O.13, r.2)**

2. Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

**Claim in detinue (O.13, r.3)**

3. Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to give notice of intention to defend the plaintiff may, after the prescribed time, at his option enter either –
  - (a) interlocutory judgment against the defendant for delivery of the goods or their value to be assessed and costs; or
  - (b) interlocutory judgment for the value of the goods to be assessed and costs,and proceed with the action against the other defendants, if any.

**Claim for possession of land (O.13, r.4)**

4. (1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, if that defendant fails to give notice of intention to defend the plaintiff may, after the prescribed time enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.
- (2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

**Mixed claims (O.13, r.5)**

5. Where a writ issued against any defendant is indorsed with two or more of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim indorsed on the writ, and proceed with the action against the other defendants, if any.

**Other claims (O.13, r.6)**

6. (1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4 then, if any defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time and, if that defendant has not acknowledged service, upon filing an affidavit proving due service of the writ on him and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had given notice of intention to defend.
- (2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter judgment with the leave of the Court against that defendant for costs.
- (3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.

**Prescribed time (O.13, r.6A)**

- 6A. In the foregoing rules of this Order "the prescribed time" in relation to a writ issued against a defendant means the time limited for the defendant to acknowledge service of the



writ or, if within that time the defendant has returned to the Clerk of the Court an acknowledgement of service containing a statement to the effect that he does not intend to contest the proceedings, the date on which the acknowledge was received by the Clerk of the Court.

**Proof of service of writ (0.13, r.7)**

7. (1) Judgment shall not be entered against a defendant under this Order unless -
- (a) the defendant has acknowledged service on him of the writ; or
  - (b) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ on the defendant; or
  - (c) the Bailiff has indorsed on a copy of the writ that he has served it on the defendant; or
  - (d) the plaintiff produces the writ indorsed by the defendant's attorney with a statement that he accepts service of the writ on the defendant's behalf.
- (2) Where, in an action begun by writ, 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 is in default of acknowledgment of service.

**Judgment against a State (0.13, r.7A)**

- 7A. (1) In this rule "the Act" means the State Immunity Act 1978.
- (2) Where the defendant is a State, as defined in Section 14 of the Act the plaintiff shall not be entitled to enter judgment under this Order except with the leave of the Court.
- (3) An application for leave to enter judgement shall be supported by an affidavit -
- (a) stating the grounds of the application;
  - (b) verifying the facts relied on as exempting the State from the immunity conferred by Section 1 of the Act; and
  - (c) verifying that the writ has been served by being transmitted through the Secretary of State to the Ministry of Foreign Affairs of the State or in such other manner as may have been agreed to by the State, and that the time for acknowledging service, as extended by Section 12(2) of the Act (by 2 months) where applicable, has expired.
- (4) The application may be made ex parte but the Court hearing the application may direct a summons to be issued and served on the State, for which purpose such a

direction shall include leave to serve the summons and a copy of the affidavit out of the jurisdiction.

- (5) 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, and the grant of leave to enter judgment under this Order shall include leave to serve out of the jurisdiction -
  - (a) a copy of the judgment; and
  - (b) a copy of the affidavit, where not already served.
- (6) The procedure of effecting service out of the jurisdiction pursuant to leave granted in accordance with the rule shall be the same as for the service of the writ under Order 11, rule 7(1) except where Section 12(6) of the Act applies and an alternative method of service has been agreed.

**No rule (0.13, r.7B)**

**Stay of execution on default judgment (0.13, r.8)**

- 8. Where judgment for a debt or liquidated demand is entered under this Order against a defendant who has returned to the Clerk of the Court an acknowledgment of service containing a statement to the effect that, although he does not intend to contest the proceedings, he intends to apply for a stay of execution of the judgment by writ of fieri facias, execution of the judgment by such a writ shall be stayed for a period of 14 days from the acknowledgment of service and, if within that time the defendant issues and serves on the plaintiff a summons for such a stay supported by an affidavit in accordance with Order 47, rule 1, the stay imposed by this rule shall continue until the summons is heard or otherwise disposed of, unless the Court after giving the parties an opportunity of being heard otherwise directs.

**Setting aside judgment (0.13, r.9)**

- 9. The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

**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) 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) 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 14A****DISPOSAL OF CASE ON POINT OF LAW****Determination of questions of law or construction (O.14A, r.1)**

1. (1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that -
  - (a) such question is suitable for determination without a full trial of the action; and
  - (b) such determination will finally determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.
- (2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.
- (3) The Court shall not determine any question under this Order unless the parties have either -
  - (a) had an opportunity of being heard on the question; or
  - (b) consented to an order or judgment on such determination.
- (4) Nothing in this Order shall limit the powers of this Court under Order 18, rule 19 or any other provision of these Rules.

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

2. An application under rule 1 may be made by summons or motion or (notwithstanding Order 32, rule 1) may be made orally in the course of an interlocutory application to the Court.



**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 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 who 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 provision 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 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 (1996 Revision) 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 (1996 Revision).

- (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 this 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 of 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 wither 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 become 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, r8)**

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 that 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 representative 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 the 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 indorse 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 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 order, continued, by or against any one or more of them as representing all of 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 this 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 with 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 direction 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 that 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 person 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 (20) 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 person 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 not 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 on 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 the 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 person having an interest in the estate as it thinks fit.



**Declaratory judgment (O.15, r16)**

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 16****THIRD PARTY AND SIMILAR PROCEEDINGS****Third party notice (O.16, r.1)**

1. (1) Where in any action a defendant who has given notice of intention to defend -
  - (a) claims against a person not already a party to the action any contribution or indemnity; or
  - (b) claims against such a person any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
  - (c) requires that any question or issue relating to or connected with the original subject matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action,

then, subject to paragraph (2), the defendant may issue a notice in Form No. 12 or Form No. 13 of Appendix I, whichever is appropriate, (in this Order referred to as a third party notice) containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or the question or issue required to be determined.

- (2) A defendant to an action may not issue a third party notice without the leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.
- (3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action (in this Order referred to as a third party) with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice is issued.

**Application for leave to issue third party notice (O.16, r.2)**

2. (1) Application for leave to issue a third party notice may be made ex parte but the Court may direct a summons for leave to be issued.
- (2) An application for leave to issue a third party notice must be supported by an affidavit stating -
  - (a) the nature of the claim made by the plaintiff in the action;

- (b) the stage which proceedings in the action have reached;
- (c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and
- (d) the name and address of the person against whom the third party notice is to be issued.

**Issue, service and acknowledgment of service, of third party notice (O.16, r.3)**

- 3.
- (1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.
  - (2) There must be served with every third party notice -
    - (a) a copy of the writ or originating summons by which the action was begun;
    - (b) a copy of the pleadings (if any) served in the action; and
    - (c) a form of acknowledgment of service in Form No. 8 of Appendix I with such modification as may be appropriate.
  - (3) The appropriate office for acknowledging service of a third party notice is the Court office.
  - (4) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, Order 5, rules 1(2) and (3), Orders 10 to 12 and Order 75, rule 4, shall apply in relation to a third party notice and to the proceedings begun thereby as if -
    - (a) the third party notice were a writ and the proceeding begun thereby an action; and
    - (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action,

provided that in the application of Order 11, rule 1(1)(c) leave may be granted to serve a third party notice outside the jurisdiction on any necessary or proper party to the proceedings brought against the defendant.

**Third party directions (O.16, r.4)**

- 4.
- (1) If the third party gives notice of intention to defend, the defendant who issues the third party notice must, by summons to be served on all the other parties to the action, apply to the Court for directions.
  - (2) A summons for third party directions shall be in Form 42 of Appendix I.

- (3) If no summons is served on the third party under paragraph (1) the third party may, not earlier than 7 days after giving notice of intention to defend by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.
- (4) On an application for directions under this rule the Court may -
- (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or
  - (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
  - (c) dismiss the application and terminate the proceedings on the third party notice,
- and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.
- (5) On an application for directions under this rule the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.
- (6) An order for third party directions shall be in Form No. 17A of Appendix I.
- (7) Any order made or direction given under this rule may be varied or rescinded by the Court at any time.

**Default of third party, etc. (O.16, r.5)**

5. (1) If a third party does not give notice of intention to defend or, having been ordered to serve a defence, fails to do so -
- (a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action insofar as it is relevant to any claim, question or issue stated in that notice; and
  - (b) the defendant by whom the third party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before

satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

- (2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other orders as may appear to the Court necessary to do justice between the parties.
- (3) The Court may at any time set aside or vary a judgment entered under subparagraph (1)(b) or paragraph (2) on such terms (if any) as it thinks just.

#### **Setting aside third party proceedings (O.16, r.6)**

6. Proceedings on a third party notice may, at any stage of the proceedings, be set aside by the Court.

#### **Judgment between defendant and third party (O.16, r.7)**

7. (1) Where in any action a defendant has served a third party notice, the Court may at or after trial of the action or, if the action is decided otherwise than by trial, on an application by summons or motion, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.
- (2) Where judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, execution shall not issue on the judgment without the leave of the Court until that liability has been discharged.
- (3) For the purpose of paragraph (2) "liability" includes liability under a judgment in the same or other proceedings.

#### **Claims and issues between a defendant and some other party (O.16, r.8)**

8. (1) Where in any action a defendant who has given notice of intention to defend -
  - (a) claims against a person who is already a party to the action any contribution or indemnity; or
  - (b) claims against such a person any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

- (c) requires that any question or issue relating to or connected with the original subject matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action,

then, subject to paragraph (2) the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined.

- (2) Where a defendant makes such a claim as is mentioned in paragraph (1) and that claim could be made by him by counterclaim in the action, paragraph (1) shall not apply in relation to the claim.
- (3) No acknowledgment of service of such a notice shall be necessary if the person on whom it is served has acknowledged service of the writ or originating summons in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served of the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has given notice of intention to defend the action or is a plaintiff) had given notice of intention to defend the claim, question or issue.
- (4) Rule 4(3) shall have effect in relation to proceedings on a notice issued under this rule as if for the words "7 days after giving notice of intention to defend" there were substituted the words "14 days after service of the notice on him".

#### **Claims by third and subsequent parties (O.16, r.9)**

9. (1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or rule 8, this Order shall, with the modification mentioned in paragraph (2) and any other necessary modifications, apply as if the third party were a defendant; and similarly where any further person to whom by virtue of this rule this Order applies as if he were a third party makes such a claim or requirement.
- (2) The modification referred to in paragraph (1) is that paragraph (3) shall have effect in relation to the issue of a notice under rule 1 by a third party in substitution for rule 1(2).
- (3) A third party may not issue a notice under rule 1 without the leave of the Court unless the action in question was begun by writ and he issues the notice before the expiration of 14 days after the time limited for acknowledging service of the notice issued against him.

**Offer of contribution (O.16, r.10)**

10. (1) If, at any time after he has acknowledged service, a party to an action who stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence) a written offer to that other party to contribute to a specified extent to the debt or damages, then, subject to paragraph (2) and notwithstanding that he reserves the right to bring the offer to the attention of the Judge at the trial, the offer shall not be brought to the attention of the Judge until after all questions of liability and 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 Judge the fact that a written offer under paragraph (1) has or has not been made and the date (but not the amount) of such offer or of the first such offer if more than one.

**Counterclaim by defendant (O.16, r.11)**

11. Where in any action a counterclaim is made by a defendant, the foregoing provisions of this Order shall apply in relation to the counterclaim as if the subject matter of the counterclaim were the original subject matter of the action, and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.



**ORDER 17**  
**INTERPLEADER**

**Entitlement to relief by way of interpleader (O.17, r.1)**

**1. Where -**

- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or
- (b) claim is made to any money, goods or chattels taken or intended to be taken by the Bailiff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,

the person under liability as mentioned in subparagraph (a) or (subject to rule 2) the Bailiff may apply to the Court for relief by way of interpleader.

**Claim to goods, etc., taken in execution (O.17, r.2)**

- 2. (1)** Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the Bailiff charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service.
- (2) On receipt of a claim made under this rule the Bailiff on whom notice in accordance with paragraph (1) has been given must forthwith give notice thereof to the execution creditor and the execution creditor must, within 7 days after receiving the notice, give notice to that Bailiff informing him whether he admits or disputes the claim.

An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable for any fees and expenses incurred by the Bailiff before receipt of that notice.

**(3) Where -**

- (a) the Bailiff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice; and

(b) the claim made under this rule is not withdrawn,

the Bailiff may apply to the Court for relief under this Order.

- (4) The Bailiff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this Order of the following kind, that is to say, an order restraining the bringing of an action against him for or in respect of his having taken possession of that money or those goods or chattels.

**Mode of application (O.17, r.3)**

3. (1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action.
- (2) Where the applicant is the Bailiff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2(4) the summons must be served on any person who made a claim under that rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.
- (3) An originating summons under this rule shall be in Form No. 3 of Appendix I.
- (4) Subject to paragraph (5) a summons under this rule must be supported by evidence that the applicant -
- (a) claims no interest in the subject matter in dispute other than for charges or costs;
  - (b) does not collude with any of the claimants to that subject matter; and
  - (c) is willing to pay or transfer that subject matter into Court or to dispose of it as the Court may direct.
- (5) Where the applicant is the Bailiff, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the Court so to do.
- (6) Any person who makes a claim under rule 2 and who is served with a summons under this rule shall within 14 days serve on the execution creditor and the Bailiff an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.
- (7) Where the applicant is the Bailiff a summons under this rule must give notice of the requirement in paragraph (6).

**No rule (O.17, r.4)****Powers of Court hearing summons (O.17, r.5)**

5. (1) Where on the hearing of a summons under this Order all the persons by whom adverse claims to the subject matter in dispute (hereafter in this Order referred to as "the claimants") appear, the Court may order -
- (a) that any claimant be made a defendant in any action pending with respect to the subject matter in dispute in substitution for or in addition to the applicant for relief under this Order; or
  - (b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.
- (2) Where -
- (a) the applicant on a summons under this Order is the Bailiff; or
  - (b) all the claimants consent or any of them so request; or
  - (c) the question at issue between the claimants is a question of law and the facts are not in dispute,
- the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.
- (3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, forever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

**Power to order sale of goods taken in execution (O.17, r.6)**

6. Where an application for relief under this Order is made by the Bailiff who has taken possession of any goods or chattels in execution under any process, and a claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debts, the Court may order those goods or chattels or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

**Power to stay proceedings (O.17, r.7)**

7. Where a defendant to an action applies for relief under this Order in the action, the Court may by order stay all further proceedings in the action.

**Other powers (O.17, r.8)**

8. Subject to the foregoing rules of this Order, the Court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

**One order in several causes or matters (O.17, r.9)**

9. Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several causes or matters pending before different Judges -
- (a) the Court may make such an order; and
  - (b) the order shall be entitled in all those causes or matters; and
  - (c) the order shall be binding on all the parties to those causes or matters.

**Discovery (O.17, r.10)**

10. Orders 24 and 26 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

**Trial of interpleader issue (O.17, r.11)**

11. (1) Order 35 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of an action.
- (2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

**Appeal from judgment etc. of Judge in interpleader proceedings (O.17, r.12)**

12. (1) Any judgment, order or decision of a Judge given or made in summarily determining under rule 5(2)(b) or (c) any question at issue between claimants in interpleader proceedings shall be final and conclusive against the claimants and all persons claiming under them unless leave to appeal to the Court of Appeal is given by the Judge or the Court of Appeal.
- (2) Where an interpleader issue is tried by a Judge an appeal shall lie to the Court of Appeal, without the leave of the Judge or that Court, from any judgment, order or decision given or made by the Judge on the trial.

- (3) The time within which notice of appeal under this rule must be served shall be the same as in the case of an appeal from an interlocutory order.



**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 39 of the Evidence Law (1995 Revision) 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 40 of the Evidence Law (1995 Revision) 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 19**  
**DEFAULT OF PLEADINGS**

**Default of service of statement of claim (O.19, r.1)**

1. Where the plaintiff is required by these Rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed by or under these Rules for service of the statement of claim, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

**Default of defence: claim for liquidated demand (O.19, r.2)**

2. (1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding -
  - (a) the principal sum claimed in the writ;
  - (b) interest, provided that the writ has been indorsed with a claim pursuant to Order 6, rule 2(e) or (f), as the case may be; and
  - (c) fixed costs,and proceed with the action against the other defendants, if any.
- (2) Order 13, rule 1(2), shall apply for the purposes of this rule as it applies for the purposes of that rule.

**Default of defence: claim for unliquidated damages (O.19, r.3)**

3. Where the plaintiff's claim against a defendant is for unliquidated damages only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

**Default of defence: claim in detinue (O.19, r.4)**

4. Where the plaintiff's claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for the service of the defence at his option enter either –

- (a) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs; or
  - (b) interlocutory judgment for the value of the goods to be assessed and costs,
- and proceed with the action against the other defendants, if any.

**Default of defence: claim for possession of land (O.19, r.5)**

- 5. (1) Where the plaintiff's claim against a defendant is for possession of land only, then if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.
- (2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

**Default of defence: mixed claims (O.19, r.6)**

- 6. Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.

**Default of defence: other claims (O.19, r.7)**

- 7. (1) Where the plaintiff makes against a defendant or defendants a claim of a description not mentioned in rules 2 to 5, then, if the defendant or all the defendants (where there is more than one) fails or fail to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his statement of claim.
- (2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may -
  - (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or

(b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.

(3) An application under paragraph (1) must be by summons or motion.

**Default of defence to counterclaim (O.19, r.8)**

8. A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed by or under these Rules for service of the defence were references to the period so fixed for service of the defence to counterclaim.

**Setting aside judgment (O.19, r.9)**

9. The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.



**ORDER 20**  
**AMENDMENT**

**Amendment of writ without leave (O.20, r.1)**

1. (1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.
- (2) Where a writ is amended under this rule after service thereof, then, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on each defendant to the action.
- (3) This rule shall not apply in relation to an amendment which consists of -
  - (a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued; or
  - (b) the addition or substitution of a new cause of action; or
  - (c) without prejudice to rule 3(1) an amendment of the statement of claim (if any) indorsed on the writ,unless the amendment is made before service of the writ on any party to the action.

**Amendment of acknowledgment of service (O.20, r.2)**

2. (1) Subject to paragraph (2) a party may not amend his acknowledgment of service without the leave of the Court.
- (2) A party whose acknowledgment of service contains a statement to the effect that -
  - (a) he does; or
  - (b) he does not,intend to contest the proceedings to which the acknowledgment relates may, without the leave of the Court, amend the acknowledgment by substituting for that statement a statement to the opposite effect, provided that in a case falling under subparagraph (b) the amendment is made before judgment has been obtained in the proceedings.
- (3) Where an acknowledgment of service is authorised to be amended under this rule, a fresh acknowledgment, amended as so authorised, must be handed in at

the Court office or sent by post to the Clerk of the Court, and Order 12, rule 3, shall apply accordingly.

**Amendment of pleadings without leave (O.20, r.3)**

3. (1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.
- (2) Where an amended statement of claim is served on a defendant -
  - (a) the defendant, if he has already served a defence on the plaintiff, may amend his defence; and
  - (b) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these Rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.
- (3) Where an amended defence is served on the plaintiff by a defendant -
  - (a) the plaintiff, if he has already served a reply on that defendant, may amend his reply; and
  - (b) the period for service of his reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him.
- (4) In paragraphs (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counterclaim respectively.
- (5) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.
- (6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to rely on it in answer to the amended pleading, and Order 18, rule 14(2), shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

**Application for disallowance of amendment made without leave (O.20, r.4)**

4. (1) Within 14 days after the service on a party of a writ amended under rule 1 or of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.
- (2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.
- (3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

**Amendment of writ or pleading with leave (O.20, r.5)**

5. (1) Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
- (2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.
- (3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected is a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.
- (4) An amendment to alter the capacity in which a party sues may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.
- (5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

**No rule (O.20, r.6)**

**Amendment of other originating process (O.20, r.7)**

7. Rule 5 shall have effect in relation to an originating summons, a petition and a notice of originating motion as it has effect in relation to a writ.

**Amendment of certain other documents (O.20, r.8)**

8. (1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
- (2) This rule shall not have effect in relation to a judgment or order.

**Failure to amend after order (O.20, r.9)**

9. Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

**Mode of amendment of writ, etc. (O.20, r.10)**

10. (1) Any amendments authorised under any rule of this order to be made in a writ, pleading or other document shall be given effect by preparing a fresh document, unless the Court directs otherwise in any case where the amendment is minimal.
- (2) An amended writ or other originating process shall be re-issued and any amended pleading shall be re-filed.
- (3) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the Judge by whom the order (if any) authorising the amendment was made and the date thereof, or, if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

**Amendment of judgment and orders (O.20, r.11)**

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.



**Amendment of pleadings by agreement (O.20, r.12)**

- 12.** (1) Notwithstanding the foregoing provisions of this Order any pleading in any cause or matter may, by written agreement between the parties, be amended at any stage of the proceedings.
- (2) This rule shall not have effect in relation to an amendment to a counterclaim which consists of the addition, omission or substitution of a party.

**Manner in which amendments should be shown (O.20, r.13)**

- 13.** (1) In all cases in which a writ, pleading or other document is amended, the amended copy which is filed should make it clear what has been deleted and what has been added or altered so that the Court, when reading the amended document, shall be able to see at once the exact nature and extent of the amendments made.
- (2) Any amendments made should be shown in the following different coloured inks, namely -
- (a) a first amendment in red;
  - (b) a second or re-amendment in green;
  - (c) a third or re-re-amendment in violet; and
  - (d) a fourth or re-re-re-amendment in yellow.



**ORDER 21****WITHDRAWAL AND DISCONTINUANCE****Withdrawal of acknowledgment of service (O.21, r.1)**

1. A party who has acknowledged service in an action may withdraw the acknowledgment at any time with the leave of the Court.

**Discontinuance of action, etc., without leave (O.21, r.2)**

2. (1) Subject to paragraph (2A), the plaintiff in an action begun by writ may, without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.
- (2) Subject to paragraph (2A), a defendant to an action begun by writ may, without the leave of the Court -
  - (a) withdraw his defence or any part of it at any time; or
  - (b) discontinue a counterclaim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him of a defence to counterclaim or, if the counterclaim is made against two or more parties, of the defence to counterclaim last served,  
  
by serving a notice to that effect on the plaintiff or other party concerned.
- (2A) A party in whose favour an interim payment has been ordered, in accordance with Order 29, rule 11, may not discontinue any action or counterclaim, or withdraw any particular claim therein, except with the leave of the Court or the consent of all the other parties.
- (3) Where there are two or more defendants to an action not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

This paragraph shall apply in relation to a counterclaim as it applies in relation to an action with the substitution for references to a defence, to the plaintiff and to

paragraph (1), of references to a defence to counterclaim, to the defendant and to paragraph (2) respectively.

- (3A) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him of the defendant's affidavit evidence filed pursuant to Order 28, rule 1A(4) or, if there are two or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.
- (3B) When there are two or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff and the period fixed by order under these Rules for service by any of those defendants of his affidavit evidence, paragraph (3A) shall have effect as if the reference therein to the service of the affidavit evidence last served were a reference to the expiration of that period.
- (4) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing to the Clerk of the Court a written consent to the action being withdrawn signed by all the parties.

#### **Discontinuance of action, etc., with leave (O.21, r.3)**

- 3. (1) Except as provided by rule 2, a party may not discontinue an action (whether begun by writ or otherwise) or counterclaim, or withdraw any particular claim made by him therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.
- (2) An application for the grant of leave under this rule may be made by summons or motion or by notice under Order 25, rule 7.

#### **Effect of discontinuance (O.21, r.4)**

- 4. Subject to any terms imposed by the Court in granting leave under rule 3, the fact that a party has discontinued an action or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to the subsequent action for the same, or substantially the same, cause of action.

#### **Stay of subsequent action until costs paid (O.21, r.5)**

- 5. (1) Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then, if, before payment of those costs, he subsequently brings

an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

- (2) An application for an order under this rule may be made by summons or motion, or by notice under Order 25, rule 7.

**Withdrawal of summons (O.21, r.6)**

6. A party who has taken out a summons in a cause or matter may not withdraw it without the leave of the Court.



**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 (1996 Revision) and a cause of action under the Estate Proceedings Law (1995 Revision) 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 Torts (Reform) Law (1996 Revision) and the Estate Proceedings Law(1995 Revision) 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 23**  
**SECURITY FOR COSTS**

**Security for costs of action, etc. (O.23, r.1)**

1. (1) Where, on the application of a defendant to an action or other proceedings it appears to the Court -
  - (a) that the plaintiff is ordinarily resident out of the jurisdiction; or
  - (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so; or
  - (c) subject to paragraph (3), that the plaintiff's address is not stated in the writ or other originating process or is incorrectly stated therein; or
  - (d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant's costs of the action or other proceedings as it thinks just.
- (2) For the purposes of this rule a person is deemed to be ordinarily resident out of the jurisdiction if he does not have the right either to reside permanently in the Islands or have the right to work in the Islands.
- (3) The Court shall not require a plaintiff to give security by reason only of subparagraph (1)(c) if he satisfies the Court that the failure to state his address or the mis-statement thereof was made innocently and without intention to deceive.
- (4) The references in the foregoing paragraphs to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceedings in question, including a proceeding on a counterclaim.

**Manner of giving security (O.23, r.2)**

2. Where an order is made requiring any party to give security for costs, security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct.

**Saving for enactments (O.23, r.3)**

3. This Order is without prejudice to the provisions of any Law which empowers the Court to require security to be given for the costs of any proceedings.

**ORDER 24****DISCOVERY****I. DOCUMENTARY DISCOVERY****Mutual discovery of documents (O.24, r.1)**

1. (1) After the close of pleadings in an action begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.
- (2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

**Discovery by parties without order (O.24, r.2)**

2. (1) Subject to the provisions of this rule and of rule 4, the parties to an action between whom pleadings are closed must make discovery by exchanging lists of documents and, accordingly, each party must, within 14 days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action.

Without prejudice to any directions given by the Court under Order 16, rule 4, this paragraph shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

- (2) Unless the Court otherwise orders, a defendant to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle shall not make discovery of any documents to the plaintiff under paragraph (1).
- (3) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any enactment to make discovery of any documents.
- (4) Paragraphs (2) and (3) shall apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in paragraph (2) to the plaintiff, of a reference to the party making the counterclaim.
- (5) On the application of any party required by this rule to make discovery of documents, the Court may -
  - (a) order that the parties to the action or any of them shall make discovery under paragraph (1) of such documents or classes of documents only, or

as to such only of the matters in question, as may be specified in the order; or

- (b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage,

and the Court shall make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

- (6) An application for an order under paragraph (5) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.
- (7) Any party to whom discovery of documents is required to be made under this rule may, at any time before the summons for directions in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under paragraph (1), and the party on whom such a notice is served must, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

### **Order for discovery (O.24, r.3)**

- 3. (1) Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.
- (2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court on the application of any party to whom discovery was required to be made may make an order against the first mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.
- (3) An order under this rule may be limited to such documents or classes of documents only or to such only of the matters in question in the cause or matter, as may be specified in the order.



**Orders for determination of issue, etc., before discovery (O.24, r.4)**

4. (1) Where on an application for an order under rule 2 or 3 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.
- (2) Where in an action begun by writ an order is made under this rule for the determination of an issue or question, 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 desire and with any other necessary modifications, apply as if the application on which the order was made were a summons for directions.

**Form of list and affidavit (O.24, r.5)**

5. (1) A list of documents made in compliance with rule 2 or with an order under rule 3 must be in Form No. 16 of Appendix I, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.
- (2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.
- (3) If it is desired to claim that any documents contain confidential information within the meaning of Section 2 of the Confidential Relationships (Preservation) Law (1995 Revision), and that the relevant principal in relation to such confidential information is someone other than the party or parties on whom the list of documents is to be served, the claim must be made in the list of documents with a sufficient statement of the grounds of the claim.
- (4) Where a claim is made under paragraph (3) of this rule, any party to whom discovery was required to be made may serve a notice on the party making discovery, requiring that party to make an application to the Court under Section 4 of the Confidential Relationships (Preservation) Law (1995 Revision), and such application shall be made within 14 days of receipt of the notice.

**Defendant entitled to copy of co-defendant's list (O.24, r.6)**

6. (1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

- (2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.
- (3) Where in an action begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.
- (4) In this rule "list of documents" includes an affidavit verifying a list of documents.

**Order for discovery of particular documents (O.24, r.7)**

- 7. (1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of documents so specified or described is, or has at any time been in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.
- (2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or 3.
- (3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession custody or power the document, or class of documents specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

**Discovery to be ordered only if necessary (O.24, r.8)**

- 8. On the hearing of an application for an order under rule 3 or 7 the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

**Inspection of documents referred to in list (O.24, r.9)**

- 9. A party who has served a list of documents on any other party, whether in compliance with rule 2 or with an order under rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof, and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

**Inspection of documents referred to in pleadings and affidavits (O.24, r.10)**

10. (1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.
- (2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

**Order for production for inspection (O.24, r.11)**

11. (1) If a party who is required by rule 9 to serve such a notice as is therein mentioned or who is served with a notice under rule 10(1) -
- (a) fails to serve a notice under rule 9 or, as the case may be, rule 10(2); or
  - (b) objects to produce any document for inspection; or
  - (c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then, or, as the case may be, there,
- then, subject to rule 14(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.
- (2) Without prejudice to paragraph (1), but subject to rule 14(1) the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.
- (3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

**Provision of copies of documents (O.24, r.12)**

12. (1) Any party who is entitled to inspect any documents under any provision of this Order or any order made thereunder may at or before the time when inspection takes place serve on the party who is required to produce such documents for inspection a notice (which shall contain an undertaking to pay the reasonable

charges) requiring him to supply a true copy of any such document as is capable of being copied by photographic or similar process.

- (2) The party on whom such a notice is served must within 7 days of receipt thereof supply the copy required together with an account of the reasonable charges.
- (3) When a party fails to supply to another party a copy of any document under paragraph (2), the Court may on the application of either party, make such order as to the supply of that document as it thinks fit.

**Order for production to Court (O.24, r.13)**

13. At any stage of the proceedings in any cause or matter the Court may, subject to rule 14(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit.

**Production to be ordered only if necessary, etc. (O.24, r.14)**

14. (1) No order for the production of any documents for inspection or to the Court or for the supply of a copy of any document shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.
- (2) Where on an application under this Order for production of any document for inspection or to the Court or for the supply of a copy of a document privileged from such production or supply is claimed or objection is made to such production or supply on the ground that it contains confidential information or on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

**Production of business books (O.24, r.15)**

15. (1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.
- (2) Any such affidavit shall state whether or not there are in the original books any and what erasures, interlineations or alterations.
- (3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

## II. DISCOVERY BY ORAL EXAMINATION

### Order for Discovery by Oral Examination (O.24, r.16)

- 16.** (1) In an action begun by Writ, the Court may make an order for discovery by oral examination of any party or, if the party is a body corporate, any officer thereof.
- (2) On the hearing of an application for an order under this rule, the Court make such an order if and so far as it is of opinion that discovery by oral examination is necessary either for disposing fairly of the cause or matter or for saving costs.
- (3) An order shall not be made under this rule until after the parties have given discovery of documents in accordance with rules 2 or 3 or until after the Court has determined in accordance with rule 8 that discovery of documents is not necessary.
- (4) An order for examination under this rule shall specify -
- (a) the time and place of the examination;
  - (b) the maximum duration of the examination; and
  - (c) the party having responsibility for engaging the services of a court reporter.

### Conduct of examination (O.24, r.17)

- 17.** (1) An examination for discovery shall be taken down by a court reporter in the form of questions and answers and the transcript shall be certified as an accurate transcription by the court reporter.
- (2) The court reporter shall record the names and addresses of all the persons present and the time(s) at which the examination commenced and finished.
- (3) The examination shall be done under oath and the court reporter shall be empowered to administer the oath.
- (4) The examination of a person for discovery shall be in the nature of a cross-examination and the person examined may be re-examined on his own behalf or on behalf of another party not adverse in interest to him in relation to any matter respecting which he has been examined.
- (5) Documents referred to during an examination for discovery shall be retained by the parties and shall be exhibited to the transcript only if all parties agree that it is necessary to do so.
- (6) Unless the Court otherwise orders, a person being examined for discovery shall (subject to any claim of privilege) answer any question within his knowledge or means of knowledge regarding any matter in question in the action and is

compellable to give the names and addresses of all persons who reasonably might be expected to have knowledge relating to any matter in question in the action.

- (7) A person ordered to be examined for discovery shall take all such steps as may be reasonably necessary to inform himself of the matters in question in the action and the examination may be adjourned for that purpose.
- (8) Where a person under examination objects to answering any questions put to him, or if objection is taken to any such question, that question, the ground for the objection and the answer to the question to which objection is taken must be taken down and recorded.
- (9) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by the Court.
- (10) If the Court decides against the person taking the objection it may order him to submit to further examination and to pay the costs occasioned by his objection.

#### **Use of transcripts (O.24, r.18)**

- 18.** (1) Certified copies of transcripts of oral examinations for discovery (which may be ordered by any party) shall be served on all the parties to the action within 14 days after completion of the transcript of the examination.
- (2) At the trial of an action any party may use in evidence as part of his case, if otherwise admissible, the whole or part of the examination for discovery of a party having an adverse interest (the "adverse party") in the following manner.
- (3) A party may read in evidence as part of his case, any portion of any adverse party's discovery, subject to the court ordering that any further passage should be read in, as a matter of fairness, to fully explain or qualify any answer given.
- (4) A party may put to an adverse party in cross examination any questions and answers contained in the transcript of his examination.
- (5) If the adverse party does not testify personally or call any evidence, then the other parties may read in evidence any portion of the transcript of adverse party's examination, as evidence for that party's case, subject to the court ordering that any further passage should be read in, as a matter of fairness, to fully explain or qualify any answer given.

### III. GENERAL PROVISIONS

#### **Disclosure which would be injurious to public interest: saving (O.24, r.19)**

19. The foregoing provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document or information on the ground that the disclosure of it would be injurious to the public interest.

#### **Failure to comply with an order for discovery. (O.24, r.20)**

20. (1) Where the Court has made an order for discovery (either of documents or by way of oral examination) against any party and such party fails to comply, the Court may make such order as it thinks just, including, in particular, an order that the action be dismissed or, as the case may be order that the defence be struck out and final judgment entered accordingly.
- (2) If any party against whom an order for discovery is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal or, where the party is a body corporate, its responsible officer(s) shall be liable to committal.
- (3) Service on a party's attorney of an order for discovery made against that party shall be sufficient service to found an application for committal of the party disobeying the order but the party may show cause in answer to the application that he had no notice or knowledge of the order.
- (4) An attorney on whom an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

#### **Revocation and variation of orders (O.24, r.21)**

21. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

#### **Use of documents and transcripts (O.24, r.22)**

22. Any undertaking, whether expressed or implied, not to use a document or transcript for any purposes other than the proceedings in which it is disclosed or made shall cease to apply to such document or transcript after it has been read to or by the Court, or referred to in open Court, unless the Court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs or by whom the oral evidence was given.





**ORDER 25****SUMMONS FOR DIRECTIONS****Summons for directions (O.25, r.1)**

1. (1) With a view to providing, in every action to which this rule applies, an occasion for the consideration by the Court of the preparations for the trial of the action, so that -
  - (a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with; and
  - (b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof,

the plaintiff must, within 1 month after the pleadings in the action are deemed to be closed, take out a summons (in these Rules referred to as a summons for directions) returnable in not less than 14 days.
- (2) This rule applies to all actions begun by writ except -
  - (a) actions in which the plaintiff or defendant has applied for judgment under Order 14, or in which the plaintiff applied for judgment under Order 86 and directions have been given under the relevant Orders;
  - (b) actions in which the plaintiff or defendant has applied under Order 18, rule 21, for trial without pleadings or further pleadings and directions have been given under that rule;
  - (c) actions in which order has been made under Order 24, rule 4, for the trial of an issue or question before discovery;
  - (d) actions in which directions have been given under Order 29, rule 7;
  - (e) actions in which an order for the taking of an account has been made under Order 43, rule 1;
  - (f) actions for the infringement of a patent; and
  - (g) actions for personal injuries for which automatic directions are provided by rule 8.

- (3) Where, in the case of any action in which discovery of documents is required to be made by any party under Order 24, rule 2, the period of 14 days referred to in paragraph (1) of that rule is extended, whether by consent or by order of the Court or both by consent and by order, paragraph (1) of this rule shall have effect in relation to that action as if for the reference therein to 1 month after the pleadings in the action are deemed to be closed there were substituted a reference to 14 days after the expiration of the period referred to in paragraph (1) of the said rule 2 as so extended.
- (4) If the plaintiff does not take out a summons for directions in accordance with the foregoing provisions of this rule, the defendant or any defendant may do so or apply for an order to dismiss the action.
- (5) On an application by a defendant to dismiss the action under paragraph (4) the Court may either dismiss the action on such terms as may be just or deal with the application as if it were a summons for directions.
- (6) In the case of an action which is proceeding only as respects a counterclaim, references in this rule to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.
- (7) Notwithstanding anything in paragraph (1) -
  - (a) any party to the action to which this rule applies may take out a summons for directions at any time after the defendant has given notice of intention to defend, or, if there are two or more defendants, at least one of them has given such notice; and
  - (b) the Court may make directions of its own motion at any time provided that the parties have been given such notice, if any, as may be appropriate having regard to the nature of the directions intended to be given by the Court.

**Duty to consider all matters (O.25, r.2)**

- 2. (1) When the summons for directions first comes to be heard, the Court shall consider whether -
  - (a) it is possible to deal then with all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions; or
  - (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.

- (2) If, when the summons for directions first comes to be heard, the Court considers that it is possible to deal with all the said matters, it shall deal with them forthwith and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also then dealt with.
- (3) If, when the summons for directions first comes to be heard, the Court considers that it is expedient to adjourn the consideration of all or any of the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons, the Court shall deal forthwith with such of those matters as it considers can conveniently be dealt with forthwith and adjourn the consideration of the remaining matters and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are dealt with either then or at a resumed hearing of the summons for directions.
- (4) If the hearing of the summons for directions is adjourned without a day being fixed for the resumed hearing thereof, any party may restore it to the list on 4 days' notice to the other parties.

**Particular matters for consideration (O.25, r.3)**

- 3. On the hearing of the summons for directions, or when giving directions of its own motion, the Court shall in particular consider (if necessary of its own motion) whether any order should be made or direction given in respect of any of the following matters -
  - (a) fixing a trial date and/or a timetable for future steps in the action;
  - (b) making orders for the disposal of the whole or part of the cause or matter pursuant to Order 14A and/or striking out the whole or part of any pleading pursuant to Order 18, rule 19;
  - (c) amendment of the writ or any pleading pursuant to Order 20, rule 5;
  - (d) directions pursuant to Order 38, rule 2 to rule 7 in relation to evidence generally;
  - (e) directions pursuant to Order 38, rule 21 to rule 31 relating to hearsay evidence;
  - (f) directions pursuant to Order 38, rule 36 to rule 44 relating to expert evidence;

- (g) directions for the determination of preliminary issues pursuant to Order 33, rule 3 or a split trial pursuant to Order 33, rule 4A;
- (h) orders pursuant to Order 24 relating to discovery including an order pursuant to Rule 20 that an action be dismissed or, as the case may be, that the defence be struck out and final judgment entered accordingly.
- (i) give directions which facilitate alternative dispute resolutions.

**Admissions and agreements to be made (O.25, r.4)**

- 4. At the hearing of the summons for directions the Court shall endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceedings which ought reasonably to be made by them and may cause the order on the summons to record any admissions or agreements so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.

**Limitation of right of appeal (O.25, r.5)**

- 5. Nothing in rule 4 shall be construed as requiring the Court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the order made on the summons for directions may record any such agreement.

**Duty to give all information at hearing (O.25, r.6)**

- 6. (1) Subject to paragraph (2), no affidavit shall be used on the hearing of the summons for directions except by the leave or direction of the Court, but, subject to paragraph (4), it shall be the duty of the parties to the action and their advisers to give all such information and produce all such documents on any hearing of the summons as the Court may reasonably require for the purposes of enabling it properly to deal with the summons.

The Court may, if it appears proper so to do in the circumstances, authorise any such information or documents to be given or produced to the Court without being disclosed to the other parties but, in the absence of such authority, any information or document given or produced under this paragraph shall be given or produced to all the parties present or represented on the hearing of the summons as well as to the Court.

- (2) No leave shall be required by virtue of paragraph (1) for the use of an affidavit by any party on the hearing of the summons for directions in connection with any application thereat for any order if, under any of these Rules, an application for such an order is required to be supported by an affidavit.

- (3) If the Court on any hearing of the summons for directions requires a party to the action or his attorney to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (4), the Court may -
- (a) cause the facts to be recorded in the order with a view to such special order, if any, as to costs as may be just being made at the trial; or
  - (b) if it appears to the Court to be just so to do, order the whole or any part of the pleadings of the party concerned to be struck out, or, if the party is plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.
- (4) Notwithstanding anything in the foregoing provisions of this rule, no information or documents which are confidential or privileged from disclosure shall be required to be given or produced under this rule by or by the attorneys of any party otherwise than with the consent of that party.

**Duty to make all interlocutory applications on summons for directions (O.25, r.7)**

7. (1) Any party to whom the summons for directions is addressed must so far as practicable apply at the hearing of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and must, not less than 7 days before the hearing of the summons, serve on the other parties a notice specifying those orders and directions insofar as they differ from the orders and directions asked for by the summons.
- (2) If the hearing of the summons for directions is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or directions not asked for by the summons or in any notice given under paragraph (1), he must, not less than 7 days before the resumed hearing of the summons, serve on the other parties a notice specifying those orders and directions insofar as they differ from the orders and directions asked for by the summons or in any such notice as aforesaid.
- (3) Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action must be made under the summons by 4 clear days' notice to the other party stating the grounds of the application.

**Automatic directions in personal injury actions (O.25, r.8)**

8. (1) When the pleadings in any action to which this rule applies are deemed to be closed the following directions shall take effect automatically -
- (a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within 7 days thereafter, save that

where liability is admitted, or where the action arises out of a road accident, discovery shall be limited to disclosure by the plaintiff of any documents relating to special damages;

- (b) subject to paragraph (2), when any party intends to place reliance at the trial on expert evidence, he shall, within 10 weeks disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible;
  - (c) unless such reports are agreed, the parties shall be at liberty to call as expert witnesses those witnesses, the substance of whose evidence has been disclosed in accordance with the preceding subparagraph, except that the number of expert witnesses shall be limited in any case to two medical experts and one expert of any other kind;
  - (d) photographs, a sketch plan and the contents of any police accident report book shall be receivable in evidence at the trial, and shall be agreed if possible;
  - (e) the action shall be tried by Judge alone and shall be set down within 6 months;
  - (f) the Court shall be notified, on setting down, of the estimated length of the trial.
- (2) When subparagraph (1)(b) applies to more than one party the reports shall be disclosed by mutual exchange, medical for medical and non-medical for non-medical, within the time provided or as soon thereafter as the reports on each side are available.
- (3) Nothing in paragraph (1) shall prevent any party to an action to which this rule applies from applying to Court for such further or different directions or orders as may, in the circumstances, be appropriate.
- (4) For the purposes of this rule -
- (a) "road accident" means an accident on land due to a collision or apprehended collision involving a vehicle; and
  - (b) "documents relating to special damages" include -
    - (i) documents relating to any industrial injury, industrial disablement or sickness benefit rights; and
    - (ii) when the claim is made under the Torts (Reform) Law(1996 Revision) documents relating to any claim for dependency on the deceased.

- (5) This rule applies to any action for personal injuries except -
  - (a) any admiralty action; and
  - (b) any action where the pleadings contain an allegation of a negligent act or omission in the course of medical treatment.





**ORDER 26**  
**INTERROGATORIES**

**Discovery by interrogatories (O.26, r.1)**

1. (1) A party to any cause or matter may in accordance with the following provisions of this Order serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter which are necessary either -
  - (a) for disposing fairly of the cause or matter; or
  - (b) for saving costs.
- (2) Without prejudice to the provisions of paragraph (1), a party may apply to the Court for an order giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter.
- (3) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) may not be administered notwithstanding that it might be admissible in oral cross-examination of a witness.
- (4) In this Order -
  - (a) "interrogatories without order" means interrogatories served under paragraph (1); and
  - (b) "ordered interrogatories" means interrogatories served under paragraph (2) or interrogatories which are required to be answered pursuant to an order made on an application under rule 3(2) and, where such an order is made the interrogatories shall not, unless the Court orders otherwise, be treated as interrogatories without order for the purposes of rule 3(1).
- (5) Unless the context otherwise requires, the provisions of this Order apply to both interrogatories without order and ordered interrogatories.

**Form and nature of interrogatories (O.26, r.2)**

2. (1) Where interrogatories are served, a note at the end of the interrogatories shall specify -
  - (a) a period of time (not being less than 28 days from the date of service) within which the interrogatories are to be answered;

- (b) where the party to be interrogated is a body corporate or unincorporate which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the officer or member on whom the interrogatories are to be served; and
  - (c) where the interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.
- (2) Subject to rule 5(1), a party on whom interrogatories are served shall, unless the Court orders otherwise on an application under rule 3(2), be required to give within the period specified under rule 2(1)(a) answers, which shall (unless the Court directs otherwise) be on affidavit.

### **Interrogatories without order (O.26, r.3)**

3. (1) Interrogatories without order may be served on a party not more than twice.
- (2) A party on whom interrogatories without order are served may, within 14 days of the service of the interrogatories, apply to the Court for the interrogatories to be varied or withdrawn and, on any such application, the Court may make such order as it thinks fit (including an order that the party who served the interrogatories shall not serve further interrogatories without order).
- (3) Interrogatories without order shall not be served on the Crown.

### **Ordered interrogatories (O.26, r.4)**

4. (1) Where an application is made for leave to serve interrogatories, a copy of the proposed interrogatories shall be served with the summons or the notice under Order 25, rule 7, by which the application is made.
- (2) In deciding whether to give leave to serve interrogatories, the Court shall take into account any offer made by the party to be interrogated to give particulars, make admissions or produce documents relating to any matter in question and whether or not interrogatories without order have been administered.

### **Objections and insufficient answers (O.26, r.5)**

5. (1) Without prejudice to rule 3(2), where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his answer.
- (2) Where any person on whom ordered interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, either by affidavit or on oral examination as the Court may direct.

- (3) Where any person on whom interrogatories without order have been served answers any of them insufficiently, the party serving the interrogatories may ask for further and better particulars of the answer given and any such request shall not be treated as service of further interrogatories for the purposes of rule 3(1).
- (4) If it is desired to claim that the answer to any interrogatory constitutes confidential information within the meaning of Section 2 of the Confidential Relationships (Preservation) Law (1995 Revision), and that the relevant principal in relation to such confidential information is someone other than the party or parties on whom the answers to the interrogatories are to be served, the claim must be made in the answer with a sufficient statement of the grounds of the claim.
- (5) Where a claim is made under paragraph (4) of this rule, any party on whom the answers to the interrogatories are required to be served may serve a notice on the party answering the interrogatories, requiring that party to make an application to the Court under Section 4 of the Confidential Relationships (Preservation) Law (1995 Revision), and such application shall be made within 14 days of receipt of the notice.

#### **Failure to comply with order (O.26, r.6)**

6. (1) If a party fails to answer interrogatories or to comply with an order made under rule 5(2) or a request made under rule 5(3), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.
- (2) Without prejudice to paragraph (1), where a party fails to answer ordered interrogatories or to comply with an order made under rule 5(2), he shall be liable to committal.
- (3) Service on a party's attorney of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.
- (4) An attorney on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

#### **Use of answers to interrogatories at trial (O.26, r.7)**

7. A party may put in evidence at the trial of a cause or matter, or of any issue therein, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one

ought not to be used without the other, the Court may direct that that other answer or part shall be put in evidence.

**Revocation and variation of orders (O.26, r.8)**

8. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

**ORDER 27**  
**ADMISSIONS**

**Admission of case of other party (O.27, r.1)**

1. Without prejudice to Order 18, rule 13, a party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

**Notice to admit (O.27, r.2)**

2. (1) A party to a cause or matter may not later than 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, the facts specified in the notice.  
  
(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

**Judgment on admissions (O.27, r.3)**

3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order on the application as it thinks just.

An application for an order under this rule may be made by motion or summons.

**Admission and production of documents specified in list of documents (O.27, r.4)**

4. (1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of any provision of Order 24 shall, unless the Court otherwise orders, be deemed to admit -
  - (a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and
  - (b) that any document described therein as a copy is a true copy.

This paragraph does not apply to a document the authenticity of which the party has denied in his pleading.

- (2) If before the expiration of 21 days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is the later, the party on whom the list is served serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under paragraph (1).
- (3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of any provision of Order 24 shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.
- (4) The foregoing provisions of this rule apply in relation to an affidavit made in compliance with an order under Order 24, rule 7, as they apply in relation to a list of documents served in pursuance of any provision of that Order.

**Notices to admit or produce documents (O.27, r.5)**

5. (1) Except where rule 4(1) applies, a party to a cause or matter may within 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice.
- (2) If a party on whom a notice under paragraph (1) is served desires to challenge the authenticity of any document therein specified he must, within 21 days after service of the notice, serve on the party by whom it was given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.
- (3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.
- (4) Except where rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the cause or matter.

**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 29**  
**INTERLOCUTORY INJUNCTIONS, INTERIM**  
**PRESERVATION OF PROPERTY,**  
**INTERIM PAYMENTS, ETC.**  
**I. INTERLOCUTORY INJUNCTIONS, INTERIM**  
**PRESERVATION OF PROPERTY, ETC.**

**Application for injunction (O.29, r.1)**

1. (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.
- (2) Where the applicant is the plaintiff and the case is one of urgency such application may be ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.
- (3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

**No rule (O.29, 1A)**

**Detention, preservation, etc., of subject matter of cause or matter (O.29, r.2)**

2. (1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.
- (2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

- (3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into Court or otherwise secured.
- (4) An order under this rule may be made on such terms, if any, as the Court thinks just.
- (5) An application for an order under this rule must be made by summons or by notice under Order 25, rule 7.
- (6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he acknowledges service of the writ or originating summons by which the cause or matter was begun.

**No rule (O.29, 2A)**

**Power to order samples to be taken, etc. (O.29, r.3)**

3. (1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.
- (2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.
- (3) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

**Sale of perishable property, etc. (O.29, r.4)**

4. (1) The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith.

In this paragraph "land" includes any interest in, or right over, land.

- (2) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

**Order for early trial (O.29, r.5)**

5. Where on the hearing of an application, made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 3 or 4 it appears to the Court that the matter in dispute can be better dealt with by an early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before the trial as the justice of the case requires.

Where the Court makes an order for early trial it shall by the order determine the place and mode of the trial.

**Recovery of personal property subject to lien, etc. (O.29, r.6)**

6. Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any), for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

**Directions (O.29, r.7)**

7. (1) Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.
- (2) If, in an action begun by writ, not being any such action as is mentioned in subparagraphs (a) to (c) and (e) to (g) of Order 25, rule 1(2), the Court thinks fit to give directions under this rule before the summons for directions, rules 2 to 7 of that Order 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 desire and with any other necessary modifications, apply as if the application were a summons for direction.

**No rule (O.29, r.7A)****Allowance of income of property pending suit (O.29, r.8)**

8. Where any real or personal property forms the subject matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may

direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

## **II. INTERIM PAYMENTS**

### **Interpretation of Part II (O.29, r.9)**

**9.** In this Part of this Order -

"interim payments," in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff and any reference to the plaintiff or defendant includes a reference to any person who, for the purpose of the proceedings acts as next friend of the plaintiff or guardian of the defendant.

### **Application for interim payment (O.29, r.10)**

- 10.** (1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to acknowledge service has expired, apply to the Court for an order requiring that defendant to make an interim payment.
- (2) An application under this rule shall be made by summons but may be included in a summons for summary judgment under Order 14 or Order 86.
- (3) An application under this rule shall be supported by an affidavit which shall -
- (a) verify the amount of the damages, debt or other sum the application relates to and the grounds of the application; and
  - (b) exhibit any documentary evidence relied on by the plaintiff in support of the application.
- (4) The summons and a copy of the affidavit in support and any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the return day.
- (5) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

### **Order for interim payment in respect of damages (O.29, r.11)**

- 11.** (1) If, on the hearing of an application under rule 10 in an action for damages, the Court is satisfied -



- (a) that the defendant against whom the order is sought (in this paragraph referred to as "the respondent") has admitted liability for the plaintiff's damages; or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent or, where there are two or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.

- (2) No order shall be made under paragraph (1), in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely -
  - (a) a person who is insured in respect of the plaintiff's claim;
  - (b) a public authority; or
  - (c) a person whose means and resources are such as to enable him to make the interim payment.

**Order for interim payment in respect of sums other than damages (O.29, r.12)**

**12.** If on the hearing of an application under rule 10, the Court is satisfied -

- (a) that the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid; or
- (b) that the plaintiff's action includes a claim for possession of land and, if the action proceeded to trial, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, even if a final judgment or order were given or made in favour of the defendant; or
- (c) that if the action proceeded to trial the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the defendant may be entitled to rely.

**Manner of payment (O.29, r.13)**

13. (1) Subject to Order 80, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides it to be paid into Court, and where the amount is paid into Court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.
- (2) An application under the preceding paragraph for money in Court to be paid out may be made ex parte, but the Court hearing the application may direct a summons to be issued.
- (3) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.
- (4) Where a payment is ordered in respect of the defendant's use and occupation of land the order may provide for periodical payments to be made during the pendency of the action.

**Directions on application under rule 10 (O.29, r.14)**

14. Where an application is made under rule 10, the Court may give instructions as to the further conduct of the action, and, so far as may be applicable, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application were a summons for directions, and, in particular, the Court may order an early trial of the action.

**Non-disclosure of interim payment (O.29, r.15)**

15. The fact that an order has been made under rule 11 or 12 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

**Payment into Court in satisfaction (O.29, r.16)**

16. Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant pays a sum of money into Court under Order 22, rule 1, the notice of payment must state that the defendant has taken into account the interim payment.

**Adjustment on final judgment or order or on discontinuance (O.29, r.17)**

17. Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order or granting the plaintiff leave to discontinue his action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application of any party, make an order with respect to the interim payment as may be just, and in particular -
- (a) an order for the repayment by the plaintiff of all or part of the interim payment; or
  - (b) an order for the payment to be varied or discharged; or
  - (c) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

**Counterclaims and other proceedings (O.29, r.18)**

18. The preceding rules in this Part of this Order shall apply with the necessary modifications, to any counterclaim or proceeding otherwise than by writ, where one party seeks an order for an interim payment to be made by another.



**ORDER 30**  
**RECEIVERS**

**Application for receiver and injunction (O.30, r.1)**

1. (1) An application for the appointment of a receiver may be made by summons or motion.
- (2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.
- (3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte on affidavit.
- (4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.

**Giving of security by receiver (O.30, r.2)**

2. (1) A judgment or order directing the appointment of a receiver may include such directions as the Court thinks fit for the giving of security by the person appointed.
- (2) Where by virtue of any judgment or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.
- (3) Unless the Court otherwise directs, the security shall be by guarantee.
- (4) The guarantee shall be submitted for approval by the Clerk of the Court and shall then be filed.

**Remuneration of receiver (O.30, r.3)**

3. A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the Court and the Court may direct that such remuneration shall be fixed by reference to such scales or rates of professional charges as it thinks fit.

**Service of order and notice (O.30, r.4)**

4. A copy of the order or judgment appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the cause or matter in which the receiver has been appointed.

**Receiver's accounts (O.30, r.5)**

5. (1) A receiver shall submit accounts to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.
- (2) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to the accounts.
- (3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within 14 days to file his accounts with the Court.
- (4) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by the examiner and an order may thereupon be made as to the incidence of any costs or expenses incurred.

**Payment into Court by receiver (O.30, r.6)**

6. The Court may fix the amounts and frequency of payments into Court to be made by a receiver.

**Default by receiver (O.30, r.7)**

7. (1) Where a receiver fails to attend for the examination of any account of his, or fails to submit any account, provide access to any books or papers or do any other thing which he is required to submit, provide or do, he and any or all of the parties to the cause or matter in which he is appointed may be required to attend in Chambers to show cause for the failure, and the Court may, either in Chambers or after adjournment into Court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.
- (2) Without prejudice to paragraph (1) where a receiver fails to attend for the examination of any account of his or fails to submit any account or fails to pay into Court on the day fixed by the Court any sum required to be so paid, the Court may disallow any remuneration claimed by the receiver and may, where he has failed to pay any such sum into Court, charge him with interest at the rate currently payable in respect of judgments of the Court on that sum while in his possession as receiver.

**Directions to receivers (O.30, r.8)**

- 8.** A receiver may at any time request the Court to give him directions and such a request shall state in writing the matter with regard to which directions are required.





**ORDER 31****SALES, ETC., OF LAND BY ORDER OF COURT****Power to order sale of land (O.31, r.1)**

1. Where, in any cause or matter relating to any land, it appears necessary or expedient for the purposes of the cause or matter that the land or any part thereof should be sold, the Court may order that land or part thereof to be sold, and any party bound by the order and in possession of that land or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

In this Order "land" includes any interest in, or right over, land.

**Manner of carrying out sale (O.31, r.2)**

2. (1) Where an order is made, whether in Court or in Chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or subsequently direct for the best price that can be obtained, and all proper parties shall join in the sale and transfer as the Court shall direct.
- (2) The Court may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions -
  - (a) appointing the party or person who is to have the conduct of the sale;
  - (b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;
  - (c) fixing a reserve or minimum price;
  - (d) requiring payment of the purchase money into Court or to trustees or other persons;
  - (e) for settling the particulars and conditions of sale;
  - (f) for obtaining evidence of the value of the property;
  - (g) fixing the security (if any) to be given by the auctioneer, if the sale is to be public auction, and the remuneration to be allowed him.

**Certifying result of sale (O.31, r.3)**

3. (1) If either the Court has directed payment of the purchase money into Court or the Court so directs, the result of sale by order of the Court must be certified -
  - (a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and
  - (b) in any other case, by the attorney of the party or person having the conduct of the sale, and the Court may require the certificate to be verified by the affidavit of the auctioneer or attorney, as the case may be.
- (2) The attorney of the party or person having the conduct of the sale must file the certificate and any affidavit.

**Charge, exchange or partition under order of the Court (O.31, r.4)**

4. Rules 2 and 3 shall, so far as applicable and with the necessary modifications, apply in relation to the charge, exchange or partition of any land under an order of the Court as they apply in relation to the sale of any land under such an order.

**No rules (O.31, rr.5-8)**

**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 (1996 Revision) (O.32, r.9A)**

- 9A.** (1) The jurisdiction to direct, under Section 39 of the Limitation Law (1996 Revision), 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 33****PLACE AND MODE OF TRIAL****Place of trial (O.33, r.1)**

1. (1) Subject to the provisions of these Rules, the place of trial of a cause or matter, or of any question or issue arising therein, shall be the Law Courts, George Town, Grand Cayman, or any other building in George Town at which sittings of the Court are authorised by the Chief Justice to be held, unless for some special reason the Court orders that the trial of a cause or matter, or any question or issue arising therein shall be heard -
  - (a) elsewhere in the Islands; or
  - (b) in any place outside the Islands.
- (2) No order shall be made under subparagraph (1)(b) unless the Secretary of State for Foreign and Commonwealth Affairs has certified that neither he nor the authorities in the country concerned have any objection to the Court sitting in such country.

**Mode of trial (O.33, r.2)**

2. (1) The Court may, on application by any party pursuant to Section 21 of The Judicature Law, order any cause or matter, or any question or issue arising therein, to be tried before a jury.
- (2) An application under paragraph (1) shall be made by summons supported by an affidavit setting out the reasons why, in the applicant's opinion, the cause or matter or question or issue arising therein can with advantage be so tried.

**Time, etc. of trial of questions or issues (O.33, r.3)**

3. The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

**Determining the place and mode of trial (O.33, r.4)**

4. (1) In every action begun by writ, an order made on the summons for directions shall determine the place and mode of the trial; and any such order may be varied by a subsequent order of the Court made at or before the trial.

- (2) In any such action different questions or issues may be ordered to be tried by different modes of trial and one or more questions or issues may be ordered to be tried before the others.
- (3) The references in this Order to the summons for directions include references to any summons or application to which, under any of these Rules, Order 25, rules 2 to 7, are to apply, with or without modifications.

**Split trial: offer on liability (O.33, r.4A)**

- 4A.**
- (1) This rule applies where an order is made under rule 4(2) for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded if liability is established.
  - (2) After the making of an order to which paragraph (1) applies, any party against whom a finding of liability is sought may (without prejudice to his defence) make a written offer to the other party to accept liability up to a specified proportion.
  - (3) Any offer made under the preceding paragraph may be brought to the attention of the Judge after the issue of liability has been decided, but not before.

**No rules (O.33, rr.5-6)**

**Dismissal of action, etc. after decision of preliminary issue (O.33, r.7)**

7. If it appears to the Court that the decision of any question or issue arising in a cause or matter and tried separately from the cause or matter substantially disposes of the cause or matter or renders the trial of the cause or matter unnecessary, it may dismiss the cause or matter or make such other order or give such judgment as may be just.



**ORDER 34****FIXING A TRIAL DATE FOR ACTIONS BEGUN BY WRIT****Application and interpretation (O.34, r.1)**

1. This Order applies to actions begun by writ and accordingly, references in this Order to an action shall be construed as references to an action so begun.

**Order for action to be tried (O.34, r.2)**

2. (1) Every order made in an action which provides for trial before a Judge shall, whether the trial is to be with or without a jury, fix a period within which the plaintiff is to apply to the Clerk of the Court to fix a trial date.  
(2) Where the plaintiff does not, within the period fixed under paragraph (1), apply to the Clerk of the Court to fix a trial date, the defendant may so apply or may apply to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or may make such other order as it thinks just.

**Notice to fix a trial date (O.34, r.3)**

3. (1) An application to fix a trial date shall be made by notice in Form No. 63 addressed to the Clerk of the Court, referred to in this Order as a "notice to fix a trial date", copies of which shall be served on all the other parties to the action.  
(2) Within 14 days of receipt of a notice to fix a trial date the Clerk of the Court shall fix an appointment at his office to be attended by the attorneys for all the parties, or the parties themselves if acting in person, at which the trial date shall be fixed.  
(3) Not less than 3 days prior to the appointment with the Clerk of the Court, the parties shall deliver to him the following documents -
  - (a) a statement by each party of the name, address, telephone and facsimile number of all overseas counsel who may be instructed to appear at the trial; and
  - (b) an agreed statement containing a reasoned estimate of the length of the trial; or
  - (c) in the absence of agreement, separate statements by each party containing his reasoned estimate of the length of the trial.

- (4) Any party who has delivered a statement of his intention to instruct overseas counsel at the trial may arrange for such counsel's clerk to participate in the appointment by telephone.

**Directions relating to fixing a trial date (O.34, r.4)**

4. Nothing in this Order shall prejudice any powers of the Judge to give directions -
- (a) providing for the determination of a date for the trial of any action or a date before which the trial thereof is not to take place; or
  - (b) as to the making of applications to fix, vacate or alter any trial date or the estimate of the length of any trial.

**Further provisions fixing a trial date (O.34, r.5)**

5. At any time after a trial date has been fixed in respect of any action, the Court may require the parties to furnish the Court, by personal attendance or otherwise, with such information as may be necessary to show whether the action is ready for trial, and if any party fails to comply with any such requirement, the Court may -
- (a) of its own motion, on 7 days' notice to the parties, direct that the fixture be vacated; or
  - (b) on the application of any party, dismiss the action for want of prosecution or strike out the defence or counterclaim or make such other order as the Court thinks fit.

**No rule (O.34, rr.6-7)**

**Notification of relevant information (O.34 r.8)**

8. It shall be the duty of all parties to an action in respect of which a trial date has been fixed to furnish without delay to the Clerk of the Court all available information as to the action being or being likely to be settled, or affecting the estimated length of the trial, and, if the action is settled or withdrawn, to notify the Clerk of the Court of the fact without delay.

**No rule (O.34, r.9)**

**Delivery of bundles to the Court (O.34, r.10)**

10. (1) Not less than 14 days prior to the trial date, the plaintiff shall deliver to the Clerk of the Court one set of bundles comprising the following documents -
- (a) a bundle containing the writ and all relevant pleadings, affidavits, interrogatories and orders;

- (b) a core bundle containing those documents central to the plaintiff's case and those documents which the defendant wishes to have included;
  - (c) whenever witness statements have been exchanged whether by agreement or pursuant to a direction, a bundle containing all such statements, together with a note specifying which, if any, of such statements are agreed;
  - (d) a bundle of all experts' reports which have been exchanged, together with a note stating which, if any, of such reports have been agreed; and
  - (e) a note agreed by the parties or, failing agreement, a note by each party giving (in the following order) -
    - (i) a summary of the issues involved;
    - (ii) a summary of any propositions of law to be advanced together with a list of the authorities to be cited;
    - (iii) a chronology of the relevant events; and
    - (iv) a reading guide for the Judge.
- (2) Not less than 2 days before the trial date, the plaintiff shall deliver to the Clerk of the Court one set of bundles comprising all the documents, except for those already contained in the core bundle, intended to be used at the trial.
- (3) All such bundles shall be indexed, paginated and contained in ring binders or bound in such other manner as may be agreed with the Clerk of the Court.
- (4) Nothing in this rule shall prevent the Court from giving, whether before or after the bundles have been delivered, such further or different directions as to the documents to be delivered as may, in the circumstances, be appropriate.
- (5) For the purposes of this rule, "plaintiff" includes a defendant where an action is proceeding on a counterclaim and, "defendant" includes any other party who is entitled under any order of the Court or otherwise to be heard at the trial.



**ORDER 35**  
**PROCEEDINGS AT TRIAL**

**Failure to appear by both parties or one of them (O.35, r.1)**

1. (1) If, when the trial of an action is called on, neither party appears, the action may be struck out, without prejudice, however, to the restoration thereof, on the direction of a Judge.
- (2) If, when the trial of an action is called on, on the first or any subsequent day of the trial, one party does not appear, the Judge may proceed with the trial of the action or any counterclaim in the absence of that party.

**Judgment etc. given in absence of party may be set aside (O.35, r.2)**

2. (1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.
- (2) An application under this rule must be made within 7 days after the trial.

**Adjournment of trial (O.35, r.3)**

3. The Judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time and upon such terms, if any, as he thinks fit.

**No rules (O.35, rr.4-6)**

**Order of speeches (O.35, r.7)**

7. (1) The Judge before whom an action is tried (whether with or without a jury) may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule.
- (2) Subject to paragraph (6) the plaintiff shall begin by opening his case.
- (3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.
- (4) If the defendant elects to adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has

been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.

- (5) Where there are two or more defendants who appear separately or are separately represented, then -
  - (a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;
  - (b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;
  - (c) if some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order aforesaid after the speech of the plaintiff in reply to the other defendants.
- (6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.
- (7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

#### **Inspection by Judge or jury (O.35, r.8)**

8. (1) The Judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter.
- (2) Where a cause or matter is tried with a jury and the Judge inspects any place or thing under paragraph (1), he may authorise the jury to inspect it also.

#### **Death of party before giving of judgment (O.35, r.9)**

9. Where a party to any action dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the Judge to make an order under Order 15, rule 7(2), before giving judgment.

**No rules (O.35, rr.10-10A)****List of Exhibits (O.35, r.11)**

11. (1) The Clerk of the Court shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number.

In this paragraph a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

- (2) The Clerk of the Court shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office copy of that list.
- (3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the action.
- (4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

**Custody of exhibit after trial (O.35, r.12)**

12. It shall be the duty of every party to an action who has put in any exhibit to apply to the Clerk of the Court immediately after the trial for the return of the exhibit, and, so far as is practicable, regard being had to the nature of the exhibit, to keep it duly marked and labelled as before, so that in the event of an appeal, he may be able to produce the exhibit so marked and labelled at the hearing of the appeal in case he is required to do so.

**Impounded documents (O.35, r.13)**

13. (1) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a Judge on an application made by motion:

Provided that where the Attorney General makes a written request in that behalf, documents so impounded shall be delivered into his custody.

- (2) Documents impounded by order of the Court, while in the custody of the Court, shall not be inspected except by a person authorised to do so by an order signed by a Judge.

**Officers may administer oaths (O.35, r.14)**

14. Order 32, rule 8 shall apply to proceedings in Court as it applies to proceedings in Chambers.





**ORDER 36**

**NO ORDER**



**ORDER 37****DAMAGES: ASSESSMENT AFTER JUDGMENT****Assessment of damages by a Judge (O.37, r.1)**

1. (1) Where judgment is given in the Court for damages to be assessed and no provision is made in the judgment as to how they are to be assessed, the damages shall be assessed by a Judge, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment from the Judge, and at least 7 days before the date of the appointment, serving notice of the appointment on the party against whom the judgment is given, proceed accordingly.
- (2) Notwithstanding anything in Order 65, rule 9, a notice under this rule must be served on the party against whom the judgment is given.

**Certificate of amount of damages (O.37, r.2)**

2. Where in pursuance of this Order or otherwise damages are assessed by a Judge, he shall certify the amount of the damages, and the certificate shall be filed in the Court office.

**Default judgment against some but not all defendants (O.37, r.3)**

3. Where any such judgment as is mentioned in rule 1 is given for failure to give notice of intention to defend or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

**No rule (O.37, r.4)****Assessment of value (O.37, r.5)**

5. The foregoing provisions of this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly.

**Assessment of damages to time of assessment (O.37, r.6)**

6. Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.



**ORDER 38****EVIDENCE****I. GENERAL RULES****General rule: witnesses to be examined orally (O.38, r.1)**

1. Subject to the provisions of these Rules and of the Law, and any other law relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open Court.

**Interpretation (O.38, r.1A)**

- 1A. In this Order "the Law" means the Evidence Law(1995 Revision), as amended, and any expressions used in this Order and in the Law have the same meanings in this Order as they have in the Law.

**Evidence by affidavit (O.38, r.2)**

2.
  - (1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.
  - (2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for that purpose.
  - (3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these Rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

**Exchange of witnesses' statements (O.38, r.2A)**

- 2A.
  - (1) The powers of the Court under this rule may be exercised for the purpose of disposing fairly and expeditiously of the cause or matter before it, and saving

costs, having regard to all the circumstances of the case, including (but not limited to) -

- (a) the extent to which the facts are in dispute or have been admitted;
  - (b) the extent to which the issues of fact are defined by the pleadings;
  - (c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.
- (2) At the summons for directions in an action commenced by writ the Court may direct every party to serve on the other parties, within 14 weeks (or such other period as the Court may specify) of the hearing of the summons and on such terms as the Court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial.

The Court may give a direction to any party under this paragraph at any other stage of such an action and at any stage of any other cause or matter.

- (3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.
- (4) Statements served under this rule shall -
- (a) be dated and, except for good reason (which should be specified by letter accompanying the statement), be signed by the intended witness and shall include a statement by him that the contents are true to the best of his knowledge and belief;
  - (b) sufficiently identify any documents referred to therein; and
  - (c) where they are to be served by more than one party, be exchanged simultaneously.
- (5) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (4)(a), the Court may direct the party wishing to adduce that witness' evidence to provide the other party with the name of the witness and (unless the Court otherwise orders) a statement of the nature of the evidence intended to be adduced.
- (6) Subject to paragraph (9), where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.
- (7) Subject to paragraph (9), where the party serving the statement does call such a witness at the trial -

- (a) except where the trial is with a jury, the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence in chief of the witness or part of such evidence;
  - (b) the party may not without the consent of the other parties or the leave of the Court adduce evidence from that witness, the substance of which is not included in the statement served, except -
    - (i) where the Court's directions under paragraph (2) or (17) specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues;
    - (ii) in relation to new matters which have arisen since the statement was served on the other party;
  - (c) whether or not the statement or any part of it referred to during the evidence in chief of the witness, any party may put the statement or any part of it in cross-examination of that witness.
- (8) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.
- (9) Where any statement served is one to which the Law applies, paragraphs (6) and (7) shall take effect subject to the provisions of that Law and Parts III and IV of this Order.
- The service of a witness statement under this rule shall not, unless expressly so stated by the party serving the same, be treated as a notice under the Law; and where a statement or any part thereof would be admissible in evidence by virtue only of the Law the appropriate notice under Part III or Part IV of this Order shall be served with the statement notwithstanding any provision of those Parts as to the time for serving such a notice. Where such a notice is served a counter-notice shall be deemed to have been served under Order 38, rule 26(1).
- (10) Where a party fails to comply with a direction for the exchange of witness statements he shall not be entitled to adduce evidence to which the direction related without the leave of the Court.
- (11) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served -
- (a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or
  - (b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7)(a) or otherwise).

- (12) Subject to paragraph (13), the Judge shall, if any person so requests during the course of the trial, direct that any witness statement which was ordered to stand as evidence in chief under paragraph (7)(a) shall be open to public inspection.

A request under this paragraph shall be made orally or in writing.

- (13) The Judge may refuse to give a direction under paragraph (12) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available -

- (a) in the interests of justice or national security;
- (b) because of the nature of any expert medical evidence in the statement; or
- (c) for any other sufficient reason.

- (14) Where a direction is made under paragraph (12) the Judge shall direct the Clerk of the Court to -

- (a) prepare a certificate which shall be attached to a copy ("the certified copy") of that witness statement; and
- (b) make the certified copy available for inspection.

- (15) Subject to any conditions which the Court may by special or general direction impose, any person may inspect and (subject to payment of the prescribed fee) take a copy of the certified copy of a witness statement from the time when the direction is given until the end of 7 days after the conclusion of the trial.

- (16) In this rule -

- (a) any reference in paragraphs (12) to (15) to a witness statement shall, in relation to a witness statement of which only part has been ordered to stand as evidence in chief under paragraph (7)(a), be construed as a reference to that part;
- (b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy

- (17) The Court shall have power to vary or override any of the provisions of this rule (except paragraphs (1), (8) and (12) to (16)) and to give such alternative directions as it thinks fit.



**Evidence of particular facts (O.38, r.3)**

3. (1) Without prejudice to rule 30, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such a manner as may be specified by the order.
- (2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial -
  - (a) by statement on oath of information or belief; or
  - (b) by the production of documents or entries in books; or
  - (c) by copies of documents or entries in books; or
  - (d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specific newspaper which contains a statement of that fact.

**Limitation of expert evidence (O.38, r.4)**

4. The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order.

**Limitation of plans, etc. in evidence (O.38, r.5)**

5. Unless, at or before the trial, the Court for special reasons otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

**Revocation or variation of orders under rules 2 to 5 (O.38, r.6)**

6. Any order under rules 2 to 5 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

**Evidence of finding on foreign law (O.38, r.7)**

7. (1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law contained in a judgment of the Court or the Court of Appeal where such judgment is in citable form shall -
  - (a) in the case of an action to which Order 25, rule 1, applies, within 14 days after the pleadings in the action are deemed to be closed; and

- (b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained,

or in either case, within such other period as the Court may specify, serve notice of his intention on every other party to the proceedings.

- (2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.
- (3) In any cause or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

**Application to trials of issues, references, etc. (O.38, r.8)**

- 8. The foregoing rules of this Order shall apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of actions.

**Depositions: when receivable in evidence at trial (O.38, r.9)**

- 9. (1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless -
  - (a) the deposition was taken in pursuance of an order under Order 39, rule 1; and
  - (b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.
- (2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.
- (3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

**Court documents admissible or receivable in evidence (O.38, r.10)**

- 10. (1) Certified copies of writs, records, pleadings and documents filed in the Court shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

- (2) Without prejudice to the provisions of any enactment, every document purporting to be sealed with the seal of the Court shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, the Court shall be deemed to be a office copy of that document without further proof unless the contrary is shown.

**Evidence of consent of new trustee to act (O.38, r.11)**

11. A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

**Evidence at trial may be used in subsequent proceedings (O.38, r.12)**

12. Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

**Order to produce document at proceeding other than trial (O.38, r.13)**

13. (1) At any stage in a cause or matter the Court may order any person to attend any proceeding in the cause or matter and produce any document, to be specified or described in that order, the production of which appears to the Court to be necessary for the purpose of that proceeding.
- (2) No person shall be compelled by an order under paragraph (1) to produce any document at the proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

**II. WRITS OF SUBPOENA**

**Form and issue of writ of subpoena (O. 38, r.14)**

14. (1) A writ of subpoena ad testificandum or a writ of subpoena duces tecum must be in Form No. 18 of Appendix I.
- (2) Issue of a writ of subpoena takes place upon its being sealed by the Clerk of the Court.
- (3) Before a writ of subpoena is issued a praecipe for the issue of the writ must be filed; and the praecipe must contain the name and address of the party issuing the writ, if he is acting in person, or the name or firm and business address of that party's attorney.

**More than one name may be included in one writ of subpoena (O.38, r.15)**

15. The names of two or more persons may be included in one writ of subpoena ad testificandum.

**Amendment of writ of subpoena (O.38, r.16)**

16. Where there is a mistake in any person's name or address in a writ of subpoena, then, if the writ has not been served, the party by whom the writ was issued may have the writ resealed in correct form by filing a second praecipe under rule 14(3) indorsed with the words "Amended and re-sealed".

**Service of writ of subpoena (O.38, r.17)**

17. A writ of subpoena must be served personally and the service shall not be valid unless effected within 12 weeks after the date of issue of the writ and not less than 4 days or such other period as the Court may fix, before the day on which attendance before the Court is required.

**Duration of writ of subpoena (O.38, r.18)**

18. A writ of subpoena continues to have effect until the conclusion of the trial or other proceeding at which the attendance of the witness is required.

**Inspection of banker's books (O.38, r.19)**

19. (1) An application under Section 8 of the Law for an order that a party be at liberty to inspect and take copies of any matter in a banker's book shall be made by summons to a Judge in Chambers.
- (2) An application under paragraph (1) may be made ex parte.
- (3) The application shall be supported by an affidavit stating -
- (a) the nature of the proceedings and the reasons why the inspection is necessary;
  - (b) how the entries of which inspection is sought will be admissible in evidence at the trial of the action;
  - (c) the period over which it is proposed that the inspection should extend; and
  - (d) whether the accountholder has consented to the inspection and, if not, whether any relevant directions have been made under Section 4 of the Confidential Relationships (Preservation) Law (1995 Revision).

### III. HEARSAY EVIDENCE

#### Application (O.38, r.20)

20. This Part of this Order shall apply in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry and assessment of damages, as it applies in relation to the trial or hearing of a cause or matter.

#### Notice of intention to give certain statements in evidence (O.38, r.21)

21. (1) Subject to the provisions of this rule, a party to a cause or matter who desires to give in evidence at the trial or hearing of the cause or matter any statement which is admissible in evidence by virtue of Section 32, 34 or 35 of the Law must -

- (a) in the case of a cause or matter which is required to be set down for trial or hearing or adjourned into Court, within 21 days after it is set down or so adjourned, or within such other period as the Court may specify; and
- (b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained, or within such other period as the Court may specify,

serve on every other party to the cause or matter notice of his desire to do so, and the notice must comply with the provisions of rule 22, 23 or 24, as the circumstances of the case require.

- (2) Paragraph (1) shall not apply in relation to any statement which is admissible as evidence of any act stated therein by virtue not only of the said Section 32, 34 or 35 but by virtue also of any other Law.
- (3) Paragraph (1) shall not apply in relation to any statement which any party to a probate action desires to give in evidence at the trial of that action and which is alleged to have been made by the deceased person whose estate is the subject of the action.
- (4) Where by virtue of any provision of these Rules or of any order or direction of the Court the evidence in any proceedings is to be given by affidavit then, without prejudice to paragraph (2), paragraph (1) shall not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings, but nothing in this paragraph shall affect the operation of Order 41, rule 5, or the powers of the Court under Order 38, rule 3.
- (5) Order 65, rule 9, shall not apply to a notice under this rule but the Court may direct that the notice need not be served on any party who at the time when service is to be effected is in default as to entry of appearance or who has no address for service.

**Statement admissible by virtue of Section 32 of the Law: contents of notice (O.38, r.22)**

- 22.** (1) If the statement is admissible by virtue of Section 32 of the Law, and was made otherwise than in a document, the notice must contain particulars of -
- (a) the time, place and circumstances at or in which the statement was made;
  - (b) the person by whom and the person to whom, the statement was made; and
  - (c) the substance of the statement or if material, the words used.
- (2) If the statement is admissible by virtue of the said Section 32 and was made in a document, a copy or transcript of the document, or of the relevant part thereof, must be annexed to the notice, and the notice must contain such (if any) of the particulars mentioned in paragraphs 1(a) and (b) as are not apparent on the face of the document or part.
- (3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

**Statement admissible by virtue of Section 34 of the Law: contents of notice (O.38, r.23)**

- 23.** (1) If the statement is admissible by virtue of Section 34 of the Law, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain -
- (a) particulars of -
    - (i) the person by whom the record containing the statement was compiled;
    - (ii) the person who originally supplied the information from which the record was compiled; and
    - (iii) any other person through whom that information was supplied to the compiler of that record,

and, in the case of any such person as is referred to in (i) or (ii) above, a description of the duty under which that person was acting when compiling that record or supplying information from which that record was compiled, as the case may be;
  - (b) if not apparent on the face of the document annexed to the notice, a description of the nature of the record which, or part of which, contains the statement; and

- (c) particulars of the time, place and circumstances at or in which that record or part was compiled.
- (2) If the party given the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

**Statement admissible by virtue of Section 35 of the Law: contents of notice (O.38, r.24)**

- 24.** (1) If the statement is contained in a document produced by a computer and is admissible by virtue of Section 35 of the Law, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain particulars of -
- (a) a person who occupied a responsible position in relation to the management of the relevant activities for the purpose of which the computer was used regularly during the material period to store or process information;
  - (b) a person who at the material time occupied such a position in relation to the supply of information to the computer, being information which is reproduced in the statement or information from which the information contained in the statement is derived;
  - (c) a person who occupied such a position in relation to the operation of the computer during the material period,

and where there are two or more persons who fall within any of the foregoing subparagraphs and some only of those persons are at the date of service of the notice capable of being called as witnesses at the trial or hearing, the person, particulars of whom are to be contained in the notice, must be such one of those persons as is at the date so capable.

- (2) The notice must also state whether the computer was operating properly throughout the material period and, if not, whether any respect in which it was not operating properly or was out of operation during any part of that period was such as to affect the production of the document in which the statement is contained or the accuracy of its contents.
- (3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

**Reasons for not calling a person as a witness (O.38, r.25)**

25. The reasons referred to in rules 22(3), 23(2) and 24(3) are that the person in question is dead, or beyond the seas or unfit by reason of his bodily or mental condition to attend as a witness or that despite the exercise of reasonable diligence it has not been possible to identify or find him or that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the notice relates.

**Counter-notice requiring person to be called as a witness (O.38, r.26)**

26. (1) Subject to paragraphs (2) and (3), any party to a cause or matter on whom a notice under rule 21 is served may within 21 days after service of the notice on him serve on the party who gave the notice a counter notice requiring that party to call as a witness at the trial or hearing of the cause or matter any person (naming him) particulars of whom are contained in the notice.
- (2) Where any notice under rule 21 contains a statement that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness for the reason specified therein, a party shall not be entitled to serve a counter-notice under this rule requiring that person to be called as a witness at the trial or hearing of the cause or matter unless he contends that that person can or, as the case may be, should be called, and in that case he must include in his counter-notice a statement to that effect.
- (3) Where a statement to which a notice under rule 21 relates is one to which rule 28 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this rule in relation to that statement, but the foregoing provision is without prejudice to the right of any party to apply to the Court under rule 28 for directions with respect to the admissibility of that statement.
- (4) If any party to a cause or matter by whom a notice under rule 21 is served fails to comply with a counter-notice duly served on him under this rule, then unless any of the reasons specified in rule 25 applies in relation to the person named in the counter-notice, and without prejudice to the powers of the Court under rule 29, the statement to which the notice under rule 21 relates shall not be admissible at the trial or hearing of the cause or matter as evidence of any fact stated therein by virtue of Section 32, 34 or 35 of the Law, as the case may be.

**Determination of question whether person can or should be called as a witness (O.38, r.27)**

27. (1) Where in any cause or matter a question arises whether any of the reasons specified in rule 25 applies in relation to a person, particulars of whom are contained in a notice under rule 21, the Court may, on the application of any party to the cause or matter, determine the question before the trial or hearing of the cause or matter or give directions for it to be determined before the trial or hearing and for the manner in which it is to be so determined.



- (2) Unless the Court otherwise directs, the summons by which an application under paragraph (1) is made must be served by the party making the application on every other party to the cause or matter.
- (3) Where any such question as is referred to in paragraph (1) has been determined under or by virtue of that paragraph, no application to have it determined afresh at the trial or hearing of the cause or matter may be made unless the evidence which it is sought to adduce in support of the application could not with reasonable diligence have been adduced at the hearing which resulted in the determination.

**Directions with respect to statement made in previous proceedings (O.38, r.28)**

- 28.** Where a party to a cause or matter has given notice in accordance with rule 21 that he desires to give in evidence at the trial or hearing of the cause or matter -
- (a) a statement falling within Section 32(1) of the Law which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal); or
  - (b) a statement falling within Section 34(1) of the said Law which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal),

any party to the cause or matter may apply to the Court for directions under this rule, and the Court hearing such an application may give directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved.

**Power of Court to allow statement to be given in evidence (O.38, r.29)**

- 29.** (1) Without prejudice to Sections 32(2)(a) and 34(2)(a) of the Law and rule 28, the Court may, if it thinks it just to do so, allow a statement falling within Section 32(1), 34(1) or 35(1) to be given in evidence at the trial or hearing of a cause or matter notwithstanding -
- (a) that the statement is one in relation to which rule 21(1) applies and that the party desiring to give the statement in evidence has failed to comply with that rule; or
  - (b) that that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on him in accordance with rule 26.
- (2) Without prejudice to the generality of paragraph (1), the Court may exercise its power under that paragraph to allow a statement to be given in evidence at the trial or hearing of a cause or matter if a refusal to exercise that power might oblige the

party desiring to give the statement in evidence to call as a witness at the trial or hearing an opposite party or person who is or was at the material time the servant or agent of an opposite party.

**Restriction on adducing evidence as to credibility of maker, etc., of certain statements (O.38, r.30)**

**30.** Where -

- (a) a notice given under rule 21 in a cause or matter relates to a statement which is admissible by virtue of Section 32 or 34 of the Law; and
- (b) the person who made the statement, or, as the case may be, the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the trial or hearing of the cause or matter; and
- (c) none of the reasons mentioned in rule 25 applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the cause or matter shall be entitled, except with the leave of the Court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of Section 37 of the Law unless he gave a counter-notice under rule 26 in respect of that person or applied under rule 28 for a direction that that person be called as a witness at the trial or hearing of the cause or matter.

**Notice required of intention to give evidence of certain inconsistent statements (O.38, r.31)**

- 31.** (1) Where a person, particulars of whom were contained in a notice given under rule 21 in a cause or matter, is not to be called as a witness at the trial or hearing of the cause or matter, any party to the cause or matter who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in Section 37(1)(b) of the Law must, not more than 21 days after service of that notice on him, serve on the party who gave that notice, notice of his intention to do so.
- (2) Rule 22(1) and (2) shall apply to a notice under this rule as if the notice were a notice under rule 21 and the statement to which the notice relates were a statement admissible by virtue of Section 32 of the Law.
- (3) The Court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of a cause or matter any evidence which is admissible for the purpose mentioned in the said Section 37(1)(b) notwithstanding that that party has failed to comply with the provisions of paragraph (1).

**Costs (O.38, r.32)****32. If -**

- (a) a party to a cause or matter serves a counter-notice under rule 26 in respect of any person who is called as a witness at the trial of the cause or matter in compliance with a requirement of the counter-notice; and
- (b) it appears to the Court that it was unreasonable to require that person to be called as a witness,

then the Court may direct that any costs to that party in respect of the preparations and service of the counter-notice shall not be allowed to him and that any costs occasioned by the counter-notice to any other party shall be paid by him to that other party.

**Certain powers exercisable in Chambers (O.38, r.33)**

- 33.** The jurisdiction of the Court under Section 32(2)(a), 32(3), 34(2)(a) and 36(1) of the Law may be exercised in Chambers.

**Statements of opinion (O.38, r.34)**

- 34.** When a party to a cause or matter desires to give in evidence by virtue of Part IV of the Law a statement of opinion other than a statement to which Part IV of this Order applies, the provisions of rules 20 to 23 and 25 to 33 shall apply with such modifications as the Court may direct or the circumstances may require.

**IV. EXPERT EVIDENCE****Interpretation (O.38, r.35)**

- 35.** In this Part of this Order a reference to a summons for directions includes a reference to any summons or application to which, under any of these Rules, Order 25, rules 2 to 7, apply.

**Restrictions on adducing expert evidence (O.38, r.36)**

- 36.** (1) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence has applied to the Court to determine whether a direction should be given under rule 37 or 41 (whichever is appropriate) or has complied with automatic directions taking effect under Order 25, rule 8(1)(b).

- (2) Nothing in paragraph (1) shall apply to evidence which is permitted to be given by affidavit or shall affect the enforcement under any other provision of these Rules (except Order 45, rule 5) of a direction given under this Part of this Order.

**Direction that expert report be disclosed (O.38, r.37)**

37. Where in any cause or matter an application is made under rule 36(1) in respect of oral expert evidence, then unless the Court considers that there are special reasons for it not doing so, it shall direct that the substance of the evidence be disclosed in the form of a written report or reports to such other parties and within such period as the Court may specify.

**Meeting of experts (O.38, r.38)**

38. In any cause or matter the Court may, if it thinks fit, direct that there be a meeting "without prejudice" of such experts within such periods before or after the disclosure of their reports as the Court may specify, for the purpose of identifying those parts of their evidence which are in issue. Where such a meeting takes place the experts may prepare a joint statement indicating those parts of their evidence on which they are, and those on which they are not, in agreement.

**Disclosure of part of expert evidence (O.38, r.39)**

39. Where the Court considers that any circumstances rendering it undesirable to give a direction under rule 37 relating to part only of the evidence sought to be adduced, the Court may, if it thinks fit, direct disclosure of the remainder.

**No rule (O.38 r.40)**

**Expert evidence contained in statement (O.38, r.41)**

41. Where an application is made under rule 36 in respect of expert evidence contained in a statement and the applicant alleges that the maker of the statement cannot or should not be called as a witness, the Court may direct that the provisions of rules 20 to 23 and 25 to 33 shall apply with such modifications as the Court thinks fit.

**Putting in evidence expert report disclosed by another party (O.38, r.42)**

42. A party to any cause or matter may put in evidence any expert report disclosed to him by any other party in accordance with this Part of this Order.

**Time for putting expert report in evidence (O.38, r.43)**

43. Where a party to any cause or matter calls as a witness the maker of a report which has been disclosed in accordance with a direction given under rule 37, the report may be put in evidence at the commencement of its maker's examination in chief or at such other time as the Court may direct.

**Revocation and variation of directions (O.38, r.44)**

44. Any direction given under this Part of this Order may on sufficient cause being shown be revoked or varied by a subsequent direction given at or before the trial of the cause or matter.



**ORDER 39****EVIDENCE BY DEPOSITION: EXAMINERS OF THE COURT****Power to order depositions to be taken (O.39, r.1)**

1. (1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order for the examination on oath before a Judge, the Clerk of the Court, an attorney or some other person at any place, of any person.
- (2) An order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit and may contain an order for the production of any document which appears to the Court to be necessary for the purpose of the examination.

**Where person to be examined is out of the jurisdiction (O.39, r.2)**

2. (1) Where the person in relation to whom an order under rule 1 is required is out of the jurisdiction, an application may be made -
  - (a) for an order under that rule for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person; or
  - (b) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for an order under that rule appointing a special examiner to take the evidence of that person in that country.
- (2) An application may be made for the appointment as special examiner of a British Consul in the country in which the evidence is to be taken or his deputy -
  - (a) if there subsists with respect to that country a Civil Procedure Convention providing for the taking of the evidence of any person in that country for the assistance of proceedings in the Court; or
  - (b) with the consent of the Secretary of State for Commonwealth and Foreign Affairs.

**Order for issue of letter of request (O.39, r.3)**

3. (1) Where an order is made under rule 1 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any person in that country the following provisions of this rule shall apply.

- (2) The party obtaining the order must draw up the letter of request in Form No. 19 of Appendix I with such amendments as the order may require and present it to the Clerk of the Court together with one copy thereof.
- (3) If the evidence of the person to be examined is to be obtained by means of written questions, the party obtaining the order must draw up the list of the interrogatories and cross-interrogatories and present them to the Clerk of the Court together with one copy thereof.
- (4) Each document presented to the Clerk of the Court under paragraph (2) or (3) must be accompanied by a translation of the document in the official language of that country, or if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where the examination is to be taken, together with one copy thereof, unless the official language or one of the official languages of that country is English.
- (5) Every translation presented to the Clerk of the Court under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.
- (6) The party obtaining the order must, when he presents to the Clerk of the Court the documents mentioned in paragraphs (2) to (5), also file an undertaking signed by him or his attorney to be responsible personally for all expenses incurred by the Secretary of State in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the Financial Secretary on behalf of the Secretary of State and to produce a receipt for the payment to the Clerk of the Court.
- (7) Upon being presented with a letter of request and other documents referred to in paragraphs (2) to (6), the Clerk of the Court shall present the letter of request to a Judge for his signature.
- (8) As soon as the letter of request has been signed by a Judge, the Clerk of the Court shall send it to the relevant judicial authority and file the copy thereof.

**Examination otherwise than on oath (O.39, r.3A)**

- 3A.** Notwithstanding the provisions of rule 1, where the person to be examined is out of the jurisdiction that person may be examined on oath or affirmation or otherwise in accordance with the procedure of the country in which the examination is to take place.

**Enforcing attendance of witness at examination (O.39, r.4)**

- 4.** Where an order has been made under rule 1 -



- (a) for the examination of any person before the Clerk of the Court, an attorney or some other person (in this rule and rules 5 to 14 referred to as "the examiner"); or
- (b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by writ of subpoena in like manner as the attendance of a witness and the production by a witness of a document at a trial may be enforced.

**Refusal of witness to attend, be sworn, etc. (O.39, r.5)**

- 5. (1) If any person, having been duly summoned by writ of subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document therein, a certificate of his refusal or failure, signed by the examiner, must be filed in the Court, and upon the filing of the certificate the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn or to answer any question or produce any document, as the case may be.
- (2) An application for an order under this rule may be made ex parte.
- (3) If the Court makes an order under this rule it may order the person against whom the order is made to pay any costs occasioned by his refusal or failure.
- (4) A person who wilfully disobeys any order made against him under paragraph (1) is guilty of contempt of court.

**Appointment of time and place for examination (O.39, r.6)**

- 6. (1) The examiner must give the party on whose application the order for examination was made a notice appointing the place and time at which, subject to any application by the parties, the examination shall be taken, and such time shall, having regard to the convenience of the persons to be examined and all the circumstances of the case, be as soon as practicable after the making of the order.
- (2) The party to whom a notice under paragraph (1) is given must on receiving it forthwith give notice of the appointment to all the other parties.

**Examiner to have certain documents (O.39, r.7)**

- 7. The party on whose application the order for examination before the examiner was made must furnish the examiner with copies of such of the documents in the cause or matter as are necessary to inform the examiner of the questions at issue in the cause or matter.

**Conduct of examination (O.39, r.8)**

8. (1) Subject to any directions contained in the order for examination -
- (a) any person ordered to be examined before the examiner may be cross-examined and re-examined; and
  - (b) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in like manner as at the trial of a cause or matter.
- (2) The examiner may put any question to any person examined before him as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.
- (3) The examiner may, if necessary, adjourn the examination from time to time.

**Examination of additional witnesses (O.39, r.9)**

9. The examiner may, with the written consent of all the parties to the cause or matter, take the examination of any person in addition to those named or provided for in the order for examination, and must annex such consent to the original deposition of that person.

**Objection to questions (O.39, r.10)**

10. (1) If any person being examined before the examiner objects to answer any questions put to him, or if objection is taken to any such question, that question, the ground for the objection and the answer to any such question to which objection is taken must be set out in the deposition of that person or in a statement annexed thereto.
- (2) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by the Court and not by the examiner, but the examiner must state to the parties his opinion thereon, and the statement of his opinion must be set out in the deposition or in a statement annexed thereto.
- (3) If the Court decides against the person taking the objection it may order him to pay the costs occasioned by his objection.

**Taking of depositions (O.39, r.11)**

11. (1) The deposition of any person examined before the examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner but, subject to paragraph (2) and rule 10(1), the deposition need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.

- (2) The examiner may direct the exact words of any particular question and the answer thereto to be set out in the deposition if that question and answer appear to him to have special importance.
- (3) The deposition of any person shall be read to him, and he shall be asked to sign it, in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with the foregoing provision.

If a person refuses to sign a deposition when asked under this paragraph to do so, the examiner must sign the deposition.

- (4) The original deposition of any person, authenticated by the signature of the examiner before whom it was taken, must be sent by the examiner to the Clerk of the Court and shall be filed.

**Time taken by examination to be indorsed on depositions (O.39, r.12)**

- 12. Before sending any deposition to the Clerk of the Court under rule 11(4), the examiner must indorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees received in respect thereof.

**Special report by examiner (O.39, r.13)**

- 13. The examiner may make a special report to the Court with regard to any examination taken before him and with regard to the absence or conduct of any person thereof and the Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

**Order for payment of examiner's fees (O.39, r.14)**

- 14. (1) If the fees and expenses due to an examiner are not paid he may report that fact to the Court and the Court may direct the Clerk of the Court to apply for an order against the party on whose application the order for examination was made to pay the examiner the fees and the expenses due him in respect of the examination.
- (2) An order under this rule shall not prejudice any determination on the taxation of costs or otherwise as to the party by whom the costs of the examination are ultimately to be borne.

**Perpetuation of testimony (O.39, r.15)**

- 15. (1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for the purpose.
- (2) Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any real or personal property, the right or

claim to which cannot be brought to trial by him before the happening of such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.

- (3) No action to perpetuate the testimony of witnesses shall be set down for trial.

**Examiners of the Court (O.39, r.16)**

16. A sufficient number of attorneys, of not less than 3 years standing, may be appointed by the Chief Justice to act as examiners of the Court for a period not exceeding 5 years at a time, but the Chief Justice may at any time revoke any such appointment.

**No rules (O.39, rr.17-18)**

**Fees and expenses of examiners of the Court (O.39, r.19)**

19.
  - (1) The fees of examiners of Court shall be agreed with and paid by the party prosecuting the order.
  - (2) If such party is unable to reach agreement with the examiner of Court that party may apply to the Court for an order fixing the amount or rate of fees to be paid.

**ORDER 40**  
**COURT EXPERT**

**Appointment of expert to report on certain questions (O.40, r.1)**

1. (1) In any cause or matter which is to be tried without a jury and in which any question for an expert witness arises the Court may at any time, on the application of any party, appoint an independent expert or, if more than one such question arises, two or more such experts, to inquire and report upon any question of fact or opinion not involving questions of law or of construction.

An expert appointed under this paragraph is referred to in this Order as a "court expert".

- (2) Any court expert in a cause or matter shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court.
- (3) The question to be submitted to the court expert and the instructions (if any) given to him shall, failing agreement between the parties, be settled by the Court.
- (4) In this rule "expert", in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence.

**Report of court expert (O.40, r.2)**

2. (1) The court expert must send his report to the Court, together with such number of copies thereof as the Court may direct, and the Clerk of the Court must send copies of the report to the parties or their attorneys.
- (2) The Court may direct the court expert to make a further or supplemental report.
- (3) Any part of a court expert's report which is not accepted by all the parties to the cause or matter in which it is made shall be treated as information furnished to the Court and be given such weight as the Court thinks fit.

**Experiments and tests (O.40, r.3)**

3. If the court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report, he shall inform the parties or their attorneys and, if possible, make an arrangement with them as to the expenses involved, the persons to attend and other relevant matters; and if the parties are unable to agree on any of those matters it shall be settled by the Court.

**Cross-examination of court expert (O.40, r.4)**

4. Any party may, within 14 days after receiving a copy of the court expert's report, apply to the Court for leave to cross-examine the court expert on his report, and on that application the Court shall make an order for the cross-examination of the court expert by all the parties either -
  - (a) at the trial; or
  - (b) before an examiner or Judge at such time and place as may be specified in the order.

**Remuneration of court expert (O.40, r.5)**

5.
  - (1) The remuneration of the court expert shall be fixed by the Court and shall include a fee for his report and a proper sum for each day during which he is required to be present either in Court or before an examiner.
  - (2) Without prejudice to any order providing for payment of the court expert's remuneration as part of the costs of the cause or matter, the parties shall be jointly and severally liable to pay the amount fixed by the Court for his remuneration but, where the appointment of a court expert is opposed, the Court may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the court expert as the Court thinks fit.

**Calling of expert witnesses (O.40, r.6)**

6. Where a court expert is appointed in a cause or matter, any party may, on giving to the other parties a reasonable time before the trial notice of his intention to do so, call one expert witness to give evidence on the question reported on by the court expert but no party may call more than one such witness without the leave of the Court, and the Court shall not grant leave unless it considers the circumstances of the case to be exceptional.

**ORDER 41**  
**AFFIDAVITS**

**Form of affidavit (O.41, r.1)**

1. (1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or matter.
- (2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words "and other matters", and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.
- (3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words "and others", and similarly with respect to defendants.
- (4) Every affidavit must be expressed in the first person and must state the place of residence or business of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact.  

In the case of a deponent who is giving evidence in a professional, business or other occupational capacity the affidavit may, instead of stating the deponent's residence, state the address at which he works, the position he holds and the name of his firm or employer, if any.
- (5) Every affidavit must follow continuously from page to page.
- (6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject and each paragraph or group of paragraphs may be preceded by headings and sub-headings.
- (7) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.
- (8) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.
- (9) At the top right hand corner of the first page of every affidavit there shall be written -
  - (a) the party on whose behalf it is filed;

- (b) the initials and surname of the deponent;
- (c) the number of the affidavit in relation to the deponent; and
- (d) the date when it was sworn.

**Affidavit by two or more deponents (O.41, r.2)**

2. Where an affidavit is made by two or more deponents, the names of the persons making the affidavit must be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

**Affidavit by illiterate or blind person (O.41, r.3)**

3. Where it appears to the person administering the oath that the deponent is illiterate or blind, he must certify in the jurat that -
- (a) the affidavit was read in his presence to the deponent;
  - (b) the deponent seemed perfectly to understand it; and
  - (c) the deponent made his signature or mark in his presence,

and the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

**Use of defective affidavit (O.41, r.4)**

4. An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

**Contents of affidavit (O.41, r.5)**

5. (1) Subject to Order 14, rules 2(2) and 4(2), to Order 86, rule 2(1), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.
- (2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.
- (3) An affidavit sworn by an attorney shall not be admissible in any cause or matter unless the attorney has direct personal knowledge of the facts and matters to which he deposes and does not appear as advocate in the cause or matter.



**Scandalous, etc., matter in affidavit (O.41, r.6)**

6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

**Alterations in affidavits (O.41, r.7)**

7. An affidavit which has in the jurat or body thereof an interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

**Affidavits to be sworn (O.41, r.8)**

8. (1) Subject to paragraph (2), every affidavit shall be sworn before a justice of the peace or a notary public.
- (2) No affidavit shall be admissible if sworn before an attorney who will also appear on behalf of the party on whose behalf the affidavit is to be used.
- (3) A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a court, judge, notary public or person having authority to administer oaths outside the Islands in testimony of an affidavit being sworn before it or him shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person.

**Filing of affidavits (O.41, r.9)**

9. (1) Every affidavit used in a cause or matter proceeding in the Court must be filed.
- (2) The exhibits to an affidavit shall not be filed and it shall be the duty of the party on whose behalf an affidavit is filed to preserve the exhibits for use by the Court.

**Use of original affidavit or office copy (O.41, r.10)**

10. (1) Subject to paragraph (2), an original affidavit may be used in any proceedings without leave of the Court notwithstanding that it has not been filed in accordance with rule 9.
- (2) Where an original affidavit is used, the party using it must undertake to file it.
- (3) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

- (4) Where an affidavit has been sworn outside the Islands, a copy transmitted by facsimile to the Islands may be used, unless the Court directs otherwise, upon the party's attorney undertaking to file the original.

**Document to be used in conjunction with affidavit to be exhibited to it (O.41, r.11)**

11. (1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit.
- (2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn. The certificate must be entitled in the same manner as the affidavit and rule 1(1), (2) and (3) shall apply accordingly.

**Form of documentary exhibits (O.41, r.12)**

12. (1) Every documentary exhibit shall have attached to it a frontsheet entitled in the cause or matter and specifying -
- (a) the affidavit to which it is exhibited;
  - (b) the exhibit number; and
  - (c) at the top right hand corner the information specified in rule 1(9).
- (2) Every exhibit shall bear a number comprising the initials of the deponent.
- (3) Where a deponent swears more than one affidavit to which there are exhibits, the numbering of such exhibits shall run consecutively throughout and shall not begin again with each affidavit.
- (4) Clearly legible photographic copies of original documents may be exhibited provided that the originals are made available at the hearing if required to be produced by notice served by any other party not less than 2 clear days prior to the hearing.
- (5) Any document which the Court is being asked to construe or enforce or the trusts of which it is being asked to vary, shall be separately exhibited and not included in any bundle of documents.
- (6) Where a number of documents are contained in one exhibit they shall be arranged in chronological order; be paginated; and the frontsheet shall contain an index.
- (7) Letters shall not be made separate exhibits.
- (8) Exhibits comprising letters shall be collected together in bundles; arranged in chronological order; be paginated; and the frontsheet shall contain an index

listing each letter and specifying whether it is an original (or copy of an original) or copy (or copy of a copy).

- (9) Documentary exhibits may be -
- (a) firmly stapled;
  - (b) bound together;
  - (c) placed in ring binders provided that they are clearly separated by dividers; or
  - (d) tied with tape,

as may be convenient, provided that bundles are firmly held together and the pages easily turned.

**Exhibits other than documents (O.41, r.13)**

13. (1) Exhibits other than documents must be clearly marked with labels firmly attached to the item.
- (2) Exhibit labels must contain the information, in abbreviated form if necessary, required by rule 12(1) and shall be numbered in the manner required by rule 12(2) and (3).

**Court documents not to be exhibited (O.41, r.14)**

14. (1) Copies of originating process, pleadings, affidavits and other documents filed in Court shall not be exhibited to affidavits.
- (2) A party wishing to refer to a document contained in a Court file shall serve notice of his intention to do so and shall provide the opposing party with an office copy thereof.

**Reference to exhibits (O.41, r.15)**

15. (1) Copies of the same document shall not be exhibited twice in any proceeding.
- (2) Where a deponent wishes to refer to a document already exhibited to some other deponent's affidavit, he shall not also exhibit it to his own affidavit, but must identify it by reference to its number and the affidavit to which it is exhibited.



**ORDER 42**  
**JUDGMENTS AND ORDERS**

**Form of judgment, etc. (O.42, r.1)**

1. (1) Every judgment or order made by a judge shall contain the following information in addition to its operative parts -
  - (a) the name of the Judge who made it;
  - (b) whether it was made in open Court or in Chambers;
  - (c) the date from which it takes effect;
  - (d) the date upon which it was filed;
  - (e) the summons, notice or other application in respect of which it was made;
  - (f) the identity of those parties who appeared and those who did not appear and in the case of those who appeared, whether they appeared in person or by an attorney;
  - (g) except in the case of a judgment given in the trial of an action begun by writ, a statement of the affidavits read and witnesses who gave oral evidence;
  - (h) if it was made upon any undertaking given by any party or parties, the full terms of such undertaking or undertakings; and
  - (i) at the foot of its last page, the name and address of the party by whom it was drawn up and presented for filing.
- (2) If, in the case of any judgment, a form thereof is prescribed by Appendix I the judgment must be in that form.
- (3) Every judgment or order shall be signed by the Judge who made it except that the Clerk of the Court may sign it if the Judge is unable to do so by reason of his subsequent death, illness or absence from the Islands.
- (4) This Clerk of the Court shall be authorised to sign -
  - (a) any consent judgment or order to which rule 5A applies; and
  - (b) any default judgment or order to which rule 6 applies.

**No rule (O.42, r.1A)****Judgment, etc., requiring act to be done: time for doing it (O.42, r.2)**

2. (1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.
- (2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified in the judgment or order by virtue of paragraph (1) but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

**Date from which judgment or order takes effect (O.42, r.3)**

3. (1) Subject to the provisions of rule 3A, a judgment or order of the Court takes effect from the day of its date.
- (2) Such judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders it to be dated as of some earlier or later day, in which case it shall be dated as of that other day.
- (3) Whenever any judgement or order is drawn up and filed after the date upon which it is pronounced, given or made, it shall bear the date of filing in addition to the date upon which it was pronounced, given or made.
- (4) It shall be the duty of the attorney drawing up a judgment or order to include in it the date upon which it was pronounced, given or made and it shall be the duty of the Clerk of the Court to include in it the date of filing.

**Judgment against a State (O.42, r.3A)**

- 3A. When a judgment on failure to acknowledge service has been entered against a State, as defined in Section 14 of the State Immunity Act 1978, the judgment shall not take effect until 2 months after service on the State of -
  - (a) a copy of the judgment; and
  - (b) a copy of the affidavit in support of the application for leave to enter judgment, unless one has already been served pursuant to a direction under Order 13, rule 7A(4).

**Orders required to be drawn up (O.42, r.4)**

4. (1) Subject to paragraph (2), every order of the Court shall be drawn up and filed unless the Court otherwise directs.
- (2) An order -
- (a) which -
- (i) extends the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act; or
- (ii) grants leave for the doing of any of the acts mentioned in paragraph (3); and
- (b) which neither imposes any special terms nor includes any special directions other than a direction as to costs,
- need not be drawn up and filed unless the Court otherwise directs.
- (3) The acts referred to in subparagraph (2)(a)(ii) are -
- (a) the issue of any writ, other than a writ for service out of the jurisdiction;
- (b) the amendment of a writ or other originating process or a pleading;
- (c) the filing of any document;
- (d) any act to be done by the Clerk of the Court.

**Drawing up and filing of judgments and orders (O.42, r.5)**

5. (1) The party seeking to have any judgment or order filed must draw up the judgment or order and present it to the Clerk of the Court together with the number of copies required by paragraph (8) or (9), as the case may be.
- (2) In the event that any judgment or order requires that any money be paid into or out of Court, the party seeking to have it filed must also draw up the necessary lodgment or payment schedule in accordance with Order 92, rule 10, and present it to the Clerk of the Court at the same time as presenting the judgment or order.
- (3) It shall be the duty of the Clerk of the Court to provide at the request of any party a copy of any minute of order.
- (4) A party presenting a judgment or order for filing (other than one in default or by consent) must identify to the Clerk of the Court the relevant cause number.

- (5) Where more than one party has appeared in a proceeding in which a judgment or order has been made and all those parties are represented by attorneys, the attorney for the successful party shall draw up the judgment or order and circulate it to the attorneys for the other parties who shall indorse it "approved as to form and content".
- (6) Upon being presented with a judgment or order complying with rule 5A or rule 6 or indorsed in accordance with paragraph (5), the Clerk of the Court shall sign it and file it by sealing it and placing it on the Court file.
- (7) Upon being presented with an ex-parte order or an interparties order which has not been indorsed in accordance with paragraph (5), the Clerk of the Court shall present it to the judge for signature.
- (8) The Clerk of the Court shall notify the party who drew up the judgment or order when it has been filed and shall provide such party with as many sealed copies as he may require upon payment of the prescribed fee.
- (9) A party seeking to file a final judgment or order or a default judgment shall provide the Clerk of the Court with at least three copies, two of which shall be retained for filing.
- (10) A party seeking to file an interlocutory judgment or order other than a final one shall provide the Clerk of the Court with at least two copies, one of which shall be retained for filing.
- (11) An office copy of every judgment or order of the kind specified in paragraph (9) shall be placed by the Clerk of the Court on the Register of Judgments maintained in accordance with Order 63, rule 7

#### **Consent judgments and orders (O.42, r.5A)**

- 5A.**
- (1) Subject to paragraphs (2), (3) and (4), where all the parties to a cause or matter are agreed upon the terms in which a judgment should be given or an order should be made, a judgment or order in such terms may be given effect as a judgment or order of the Court by the procedure provided in rule 5 without the need for any party to appear before a Judge.
  - (2) This rule applies to any judgment or order which consists of one or more of the following -
    - (a) any judgment or order for -
      - (i) the payment of liquidated sum, or damages to be assessed, or the value of goods to be assessed;



- (ii) the delivery up of goods, with or without the option of paying the value of the goods to be assessed, or the agreed value; or
  - (iii) the possession of land;
- (b) any order for -
- (i) the dismissal, discontinuance or withdrawal of any proceedings, wholly or in part;
  - (ii) the stay of proceedings, either unconditionally or upon conditions as to the payment of money;
  - (iii) the stay of proceedings upon terms which are scheduled to the order but which are not otherwise part of it (a "Tomlin order");
  - (iv) the stay of enforcement of a judgment, either unconditionally or upon condition that money due under judgment is paid by instalments specified in the order;
  - (v) the setting aside of a judgment in default;
  - (vi) the payment out of money in Court;
  - (vii) the discharge from liability of any party; or
  - (viii) the payment, taxation or waiver of costs, or such other provision for costs as may be agreed;
- (c) any order, to be included in a judgment or order to which the preceding subparagraphs apply, for -
- (i) the extension of the period required for the service or filing of any pleading or other document;
  - (ii) the withdrawal of the record; or
  - (iii) liberty to apply, or to restore.
- (3) Before any judgment, or order to which this rule applies may be filed, it must be drawn up in terms agreed and entitled "Consent Order" and it must be indorsed by attorneys acting for each of the parties.
- (4) This rule shall not apply to any judgment or order in proceedings in which any of the parties is a litigant in person or a person under disability.

**Default judgments (O.42, r.6)**

6. (1) A party seeking to have a default judgment entered pursuant to Order 13 or Order 19 shall make an application to the Clerk of the Court in Form No. 20 of Appendix I referred to in this rule as an "application for default judgment".
- (2) An application for default judgment shall be accompanied by a draft of the judgment sought together with such number of copies specified in rule 5(9).
- (3) When an application for default judgment has been filed the Court file shall be deemed to be closed and no notice of intention to defend, pleading, summons or other document shall be filed until after the default judgment has been made or, if the application for default judgment is found to be irregular, until after it has been rejected.
- (4) Upon receipt of an application for default judgment the Clerk of the Court shall-
- (a) if it appears to him that the requirements of Order 13 or Order 19 have been met, sign the judgment and file it in accordance with rule 5(6) and notify the applicant in accordance with rule 5(8); or
- (b) if it appears to him that the requirements of Order 13 or Order 19 have not been met or that it is otherwise irregular, indorse the application to the effect that it is irregular, indorse the application to the effect that it is irregular specifying this reason, whereupon the Court file shall be deemed to be open and he shall return the notice of application for default judgment to the applicant.
- (5) Any notice of intention to defend or pleading which purports to have been filed whilst the Court file is closed pursuant to paragraph (3) shall be deemed to be a nullity, unless the application for default judgment is rejected, whereupon it shall be deemed to have been filed on such date of such rejection.
- (6) A party seeking to file -
- (a) a judgment or order made in open Court including such a judgment or order made by consent; or
- (b) a default judgment; or
- (c) a judgment or order made in Chambers which by the direction of the Judge pursuant to Order 32, rule 27 or by the consent of all the parties noted thereon is to be filed on the Register of Judgments under Order 63, rule 7(1),
- shall provide the Clerk of the Court with at least three copies, two of which shall be retained for filing.

- (7) A party seeking to file a judgment or order made in Chambers other than such a judgment or order referred to in subparagraph (7)(c) shall provide the Clerk of the Court with at least two copies, one of which shall be retained for filing.

**Original and office copies of judgments etc. (O.42, r.7)**

7. (1) The original of any judgment or order is that which bears the Judge's or Clerk of the Court's signature as the case may be and shall be filed on the Court file.
- (2) An office copy of any judgment or order is one which bears the official facsimile of the signature of the Judge who signed the original.
- (3) The Clerk of the Court may issue any number of office copies.
- (4) Both original and office copies of judgments and orders must be sealed with the Court seal.
- (5) A duplicate original of any judgment or order may be signed only if the Judge considers that there is some special reason for doing so.

**Judgments given in foreign currencies (O.42, r.8)**

8. (1) Every judgment providing for payment of any sum of money shall specify the currency or currencies in which judgment is given.
- (2) A judgment expressed only in "dollars" or "\$" shall be deemed to mean Cayman Islands dollars.

**Application in respect of orders of the Privy Council (O.42, r.9)**

9. An application to make an order of the Privy Council an order of the Grand Court may be made ex parte by affidavit to the Court.



**ORDER 43**  
**ACCOUNTS AND INQUIRIES**

**Summary order for account (O.43, r.1)**

1. (1) Where a writ is indorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has acknowledged service or after the time limited for acknowledging service, apply for an order under this rule.
  - (1A) A defendant to an action begun by writ who has served a counterclaim, which includes a claim for an account or a claim which necessarily involves taking an account, on -
    - (a) the plaintiff; or
    - (b) any other party; or
    - (c) any person who becomes a party by virtue of such service,may apply for an order under this rule.
- (2) An application under this rule must be made by summons and, if the Court so directs, must be supported by affidavit or other evidence.
- (3) On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

**Court may direct taking of accounts, etc. (O.43, r.2)**

2. (1) The Court may, on an application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.
- (2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

**Directions as to manner of taking account or making inquiry (O.43, r.3)**

3. (1) Where the Court orders an account to be taken or inquiry to be made it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched or the inquiry is to be made.
- (2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking an account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objection thereto as they think fit.

**Account to be made, verified etc. (O.43, r.4)**

4. (1) Where an account has been ordered to be taken, the accounting party must make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the account must be exhibited.
- (2) The items on each side of the account must be numbered consecutively.
- (3) Unless the order for the taking of the account otherwise directs, the accounting party must file the account with the Court and must at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

**Notice to be given of alleged omissions, etc. in account (O.43, r.5)**

5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any amount in his account is erroneous in respect of amount or in any other respect must give him notice thereof stating, so far as he is able, the amount sought to be charged with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.

**Allowances (O.43, r.6)**

6. In taking any account directed by any judgment or order all just allowance shall be made without any direction to that effect.

**Delay in prosecution of accounts, etc. (O.43, r.7)**

7. (1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.

- (2) The Court may direct any party to take over the conduct of the proceedings in question and to carry out any directions made by an order under this rule.

**Distribution of fund before all persons entitled are ascertained (O.43, r.8)**

8. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

**No rule (O.43, r.9)**





**ORDER 44****PROCEEDINGS UNDER JUDGMENTS AND ORDERS****Application to orders (O.44, r.1)**

1. In this Order references to a judgment include references to an order.

**Service of notice of judgment on person not a party (O.44, r.2)**

2. (1) Where in an action for -

- (a) the administration of the estate of a deceased person; or
- (b) the execution of a trust; or
- (c) the sale of any property,

the Court gives a judgment or makes a direction which affects persons not parties to the action, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been made a party to the action.

- (2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served the Court may dispense with service and may also order that such person be bound by the judgment.
- (3) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No. 9 of Appendix I with such modifications as may be appropriate.
- (4) A person served with notice of a judgment may, within 1 month after service of the notice on him, and after acknowledging service, apply to the Court to discharge, vary or add to the judgment.
- (5) A person served with notice of a judgment may, after acknowledging service of the notice, attend the proceedings under the judgment.
- (6) Order 12, rules 1 to 4, shall apply in relation to the acknowledgment of service of a notice of judgment as if the judgment were a writ, the person by whom the notice is served were the plaintiff and the person on whom it is served were a defendant.

**Directions by the Court (O.44, r.3)**

3. (1) Where a judgment given in a cause or matter contains directions which make it necessary to proceed in Chambers under the judgment, the Court hearing the summons to proceed shall give directions with respect to the proceedings to be taken under the judgment and the conduct thereof, including, in particular, directions with respect to -
- (a) the manner in which any account or inquiry is to be prosecuted;
  - (b) the evidence to be adduced in support thereof;
  - (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft;
  - (d) without prejudice to Order 15, rule 17, the parties required to attend all or any part of the proceedings;
  - (e) the representation by the same attorney of parties who constitute a class and by different attorneys of parties who ought to be separately represented; and
  - (f) the time within which each proceeding is to be taken,
- and may fix a day or days for the further attendance of the parties.
- (2) The Court may revoke or vary any directions given under this rule.

**Application of rr.5 to 8 (O.44, r.4)**

4. Rules 5 to 8 apply -
- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other unascertained claimants to be made; and
  - (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,
- and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs any account of debts or other liabilities to be taken or any inquiry to be made.

**Advertisements for creditors and other claimants (O.44, r.5)**

5. The Court may, when giving a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

**Examination of claims (O.44, r.6)**

6. (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must -
- (a) examine the claims of persons claiming to be creditors of the estate;
  - (b) determine, so far as he is able, to which of such claims the estate is liable; and
  - (c) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.
- (2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must -
- (a) examine the claims;
  - (b) determine, so far as he is able, to which of such claims the estate is liable; and
  - (c) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them.
- (3) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

**Adjudication on claims (O.44, r.7)**

7. For the purpose of adjudicating on claims the Court may -
- (a) allow any claim after or without proof thereof;
  - (b) direct any claim to be investigated in such manner as it thinks fit; or
  - (c) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it.

**Notice of adjudication (O.44, r.8)**

8. The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

**Interest on debts (O.44, r.9)**

9. (1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed -
- (a) on any such debt as carries interest, at the rate it carries; and
  - (b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.
- (2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with subparagraph (1)(b) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.
- (3) For the purposes of this rule "debt" includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in subparagraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

**Interest on legacies (O.44, r.10)**

10. When an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the prescribed rate beginning at the expiration of 1 year after the testator's death.

**No rules (O.44, rr.11-12)**

**ORDER 45****ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL****Enforcement of judgment, etc., for payment of money (O.45, r.1)**

1. (1) Subject to the provisions of these Rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into Court, may be enforced by one or more of the following means, that is to say -
  - (a) writ of fieri facias;
  - (b) garnishee proceedings;
  - (c) a charging order;
  - (d) the appointment of a receiver;
  - (e) an order for committal;
  - (f) writ of sequestration;
  - (g) an attachment of earnings order.
- (2) Subject to the provisions of these Rules, a judgment or order for the payment of money into Court may be enforced by one or more of the following means, that is to say -
  - (a) the appointment of a receiver;
  - (b) an order of committal;
  - (c) writ of sequestration.
- (3) Paragraphs (1) and (2) are without prejudice to the enactments relating to bankruptcy or the winding up of companies.
- (4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

**No rule (O.45, r.2)**

**Enforcement of judgment for possession of land (O.45, r.3)**

3. (1) Subject to the provisions of these Rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say -
- (a) writ of possession;
  - (b) in a case in which rule 5 applies, an order of committal;
  - (c) in such a case, writ of sequestration.
- (2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court.
- (3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.
- (4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

**Enforcement of judgment for delivery of goods (O.45, r.4)**

4. (1) Subject to the provisions of these Rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say -
- (a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as a "writ of specific delivery");
  - (b) in a case in which rule 5 applies, an order of committal;
  - (c) in such a case, writ of sequestration.
- (2) Subject to the provisions of these Rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say -
- (a) writ of delivery to recover the goods or their assessed value;
  - (b) with the leave of the Court, writ of specific delivery;
  - (c) in a case in which rule 5 applies, writ of sequestration.

An application for an order under subparagraph (b) shall be made by summons, which must, notwithstanding Order 65, rule 9, be served on the defendant against whom the judgment or order sought to be enforced was given or made.

- (3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.
- (4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

**Enforcement of judgment to do or abstain from doing any act (O.45, r.5)**

**5.** (1) Where -

- (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time, or, as the case may be, within that time as extended or abridged under Order 3, rule 5.; or
- (b) a person disobeys a judgment or order requiring him to abstain from doing an act,

then, subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means, that is to say -

- (i) with the leave of the Court, writ of sequestration against the property of that person;
  - (ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;
  - (iii) an order of committal against that person or, where that person is a body corporate, against any such officer.
- (2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under rule 6.
  - (3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the Court may, on the application of the person entitled to enforce the

judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

**Judgment, etc. requiring act to be done: order fixing time for doing (O.45, r.6)**

6. (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, rule 5, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.
- (2) Where, notwithstanding Order 42, rule 2(1), or by reason of Order 42, rule 2(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.
- (3) An application for an order under this rule must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the person required to do the act in question.

**Service of copy of judgment, etc., prerequisite to enforcement under r.5 (O.45, r.7)**

7. (1) In this rule references to an order shall be construed as including references to a judgment.
- (2) Subject to Order 24, rule 20(3), Order 26, rule 6(3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless -
  - (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and
  - (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.
- (3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5(1), (ii) or (iii) unless -
  - (a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought; and
  - (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.



- (4) There must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served -
- (a) in the case of service under paragraph (2), that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the order, he is liable to process of execution to compel him to obey it; and
  - (b) in the case of service under paragraph (3), that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he is liable to process of execution to compel the body to obey it.
- (5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3, rule 5, extending or abridging the time for doing the act and, where the first mentioned order was made under rule 5(3) or 6 of this Order, a copy of the previous order requiring the act to be done.
- (6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either -
- (a) by being present when the order was made; or
  - (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.
- (7) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

**Court may order act to be done at expense of disobedient party (O.45, r.8)**

8. If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to any other power it may have including its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

**Execution by or against person not being a party (O.45, r.9)**

9. (1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.
- (2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

**Conditional judgment: waiver (O.45, r.10)**

10. A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

**Matters occurring after judgment: stay of execution, etc. (O.45, r.11)**

11. Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

**Forms of writs (O.45, r.12)**

12. (1) A writ of fieri facias must be in Form No. 26 of Appendix I, adapted as may be appropriate to meet the circumstances of the particular case or in Form No. 27 of Appendix I.
- (2) A writ of possession must be in Form No. 28 of Appendix I.
- (3) A writ of sequestration must be in Form No. 29 of Appendix I.

**Enforcement of judgments and orders for recovery of money, etc. (O.45, r.13)**

13. (1) Rule 1(1) of this Order, with the omission of subparagraphs (e) and (f) thereof, and Orders 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.
- (2) Rule 3 of this Order, with the omission of subparagraphs (1)(b) and (c) thereof, and Order 47, rule 3(2), shall apply in relation to a judgment or order that a person do have a return of any goods and to a judgment or order for the recovery of

possession of land as they apply in relation to judgment or order for the giving or delivery of possession of land.

- (3) Rule 4 of this Order, with the omission of subparagraphs 1(b) and (c) and (2)(c) thereof, and Order 47, rule 3(2) shall apply in relation to a judgment or order that a person do have a return of any goods and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

**No rules (O.45, rr.14-15)**



**ORDER 46****WRITS OF EXECUTION: GENERAL****Definition (O.46, r.1)**

1. In this Order, unless the context otherwise requires, "writ of execution" includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

**When leave to issue any writ of execution is necessary (O.46, r.2)**

2. (1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases, that is to say -
  - (a) where 6 years or more have elapsed since the date of the judgment or order;
  - (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
  - (c) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;
  - (d) where under the judgment or order any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled;
  - (e) where any goods or land sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.
- (2) Paragraph (1) is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.
- (3) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within 1 year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

**Leave required for issue of writ in aid of other writ (O.46, r.3)**

3. A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

**Application for leave to issue writ (O.46, r.4)**

4. (1) An application for leave to issue a writ of execution may be made ex parte unless the Court directs it to be made by summons.
- (2) Such an application must be supported by an affidavit -
  - (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;
  - (b) stating, where the case falls within rule 2(1)(a), the reason for the delay in enforcing the judgment or order;
  - (c) stating, where the case falls within rule 2(1)(b), the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;
  - (d) stating, where the case falls within rule 2(1)(c) or (d), that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so; and
  - (e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.
- (3) The Court hearing such application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case may impose such terms as to costs or otherwise as it thinks just.

**Application for leave to issue writ of sequestration (O.46, r.5)**

5. (1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration must be made to a Judge by motion.
- (2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.
- (3) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

- (4) The Judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 6, but except in such a case, the application shall be heard in open Court.

**Issue of writ of execution (O.46, r.6)**

6. (1) Issue of a writ of execution takes place on its being sealed by the Clerk of the Court.
- (2) Before such a writ is issued a praecipe for its issue must be filed.
- (3) The praecipe must be signed by the attorney of the person entitled to execution or, if that person is acting in person, by him.
- (4) No such writ shall be sealed unless at the time of the tender thereof for sealing -
- (a) the person tendering it identifies in the Court file -
    - (i) the judgment or order on which the writ is to issue, or an office copy thereof;
    - (ii) where the writ may not issue without the leave of the Court, the order granting such leave or evidence of the granting of it;
  - (b) where judgment on failure to acknowledge service has been entered against a State, as defined in Section 14 of the State Immunity Act 1978, the person tendering it produces evidence that the State has been served in accordance with Order 42, rule 3A and that the judgment has taken effect; and
  - (c) the Clerk of the Court is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.
- (5) Every writ of execution shall bear the date of the day on which it is issued.

**No rule (O.46, r.7)**

**Duration and renewal of execution (O.46, r.8)**

8. (1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.
- (2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any time beginning with the day on which the order is made, if an application for extension

is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any, as the Court may allow.

- (3) Before a writ, the validity of which has been extended under paragraph (2), is executed either the writ must be sealed with the seal of the Court showing the date on which the order extending its validity was made or the applicant for the order must serve a notice, sealed as aforesaid, on the Bailiff to whom the writ is directed informing him of the making of the order and the date thereof.
- (4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the Bailiff.
- (5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3), purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ or, as the case may be, of the writ referred to in that notice, has been extended under paragraph (2).

**Return of writ of execution (O.46, r.9)**

9. (1) Any party at whose instance a writ of execution was issued may serve a notice on the Bailiff to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.
- (2) If the Bailiff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the Court for an order directing the Bailiff to comply with the notice.



**ORDER 47**  
**WRITS OF FIERI FACIAS**

**Power to stay execution by writ of fieri facias (O.47, r.1)**

1. (1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution -
  - (a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or
  - (b) that the applicant is unable from any cause to pay the money,then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the Court thinks fit.
- (2) An application under this rule, if not made at the time the judgment is given or order made, must be made by summons and may be so made notwithstanding that the party liable to execution did not acknowledge service of the writ or originating summons in the action or did not state in his acknowledgment of service that he intends to apply for a stay of execution under this rule pursuant to Order 13, rule 8.
- (3) An application made by summons must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property, whether real or personal, of his and the amount of any other liabilities of his.
- (4) The summons and a copy of the supporting affidavit must, not less than 4 clear days before the return day, be served on the party entitled to enforce the judgment or order.
- (5) An order staying execution under this rule may be varied or revoked by a subsequent order.

**No rule (O.47, r.2)**

**Separate writs to enforce payment of costs, etc. (O.47, r.3)**

3. (1) Where only the payment of money, together with costs to be taxed, is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been taxed, the party entitled to enforce that judgment or order may issue a writ of fieri facias to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than 8 days after the issue of that writ, he may issue a second writ to enforce payment of the taxed costs.

A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, issue a separate writ of fieri facias to enforce payment of any damages or costs awarded to him by that judgment or order.

**ORDER 48****EXAMINATION OF JUDGMENT DEBTOR, ETC.****Order for examination of judgment debtor (O.48, r.1)**

1. (1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as "the judgment debtor") of money, the Clerk of the Court may, on an application made by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before a Judge and be orally examined on the question -
  - (a) whether any and, if so, what debts are owing to the judgment debtor, and
  - (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order,and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.
- (2) An application under this rule shall be made in Form 30A and shall be determined by the Clerk of the Court without hearing the applicant.
- (3) The application must be supported by an affidavit -
  - (a) identifying the judgment or order and stating the amount unpaid at the time of the application;
  - (b) stating the date and place at which the judgment or order was served upon the judgment debtor;
  - (c) giving particulars of the document sought to be produced and the reasons for believing that such documents are in the possession of the judgment debtor; and
  - (d) where the judgment debtor is a body corporate, particulars of its relationship with the person to be summoned for examination.
- (4) An order under this rule must be in Form No. 30 of Appendix I and must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

**Examination of party liable to satisfy other judgment (O.48, r.2)**

2. Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

**Examiner to make record of debtor's statement (O.48, r.3)**

3. The Judge shall take down, or cause to be taken down, in writing the statement made by the judgment debtor or other person at the examination. The judge shall certify the accuracy of the statement by signing it.

**ORDER 49**  
**GARNISHEE PROCEEDINGS**

**Attachment of debt due to judgment debtor (O.49, r.1)**

1. (1) Where a person (in this Order referred to as "the judgment creditor") has obtained a judgment or order for the payment by some other person (in this Order referred to as "the judgment debtor") of money, not being a judgment or order for the payment of money into Court, and any other person within the jurisdiction (in this Order referred to as "the garnishee") is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.
- (2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1) or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

**Application for order (O.49, r.2)**

2. An application for an order under rule 1 must be made ex parte supported by an affidavit -
  - (a) stating the name and last known address of the judgment debtor;
  - (b) identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application; and
  - (c) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief.

**Service and effect of order to show cause (O.49, r.3)**

3. (1) Unless the Court otherwise directs, an order under rule 1 to show cause must be served -
  - (a) on the garnishee personally, at least 14 days before the day appointed thereby for the further consideration of the matter; and

- (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the day appointed for the further consideration of the matter.
- (2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

**No appearance or dispute of liability by garnishee (O.49, r.4)**

- 4. (1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 against the garnishee.
- (2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

**Dispute of liability by garnishee (O.49, r.5)**

- 5. Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried.

**Claims of third persons (O.49, r.6)**

- 6. (1) If in garnishee proceedings it is brought to the notice of the Court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the Court may order that person to attend before the Court and state the nature of the claim with particulars thereof.
- (2) After hearing any person who attends before the Court in compliance with an order under paragraph (1), the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

**No rule (O.49, r.7)**

**Discharge of garnishee (O.49, r.8)**

- 8. Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied

notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

**Money in Court (O.49, r.9)**

9. (1) Where money is standing to the credit of the judgment debtor in Court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the Court by summons for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.
- (2) Unless the Court otherwise directs, the summons must be served on the judgment debtor at least 7 days before the day named therein for the hearing of it.
- (3) Subject to Order 75, rule 24, the Court hearing an application under this rule may make such order with respect to the money in Court as it thinks just.

**Costs (O.49, r.10)**

10. The costs of any application for an order under rule 1 or 9 and of any proceedings arising therefrom or incidental thereto, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.





**ORDER 50**  
**CHARGING ORDERS, STOP ORDERS, ETC.**

**Order imposing a charge on a beneficial interest (O.50, r.1)**

1. (1) The power to make a charging order under paragraph 1 of the Law shall be exercisable by the Court.
- (2) An application by a judgment creditor for a charging order in respect of a judgment debtor's beneficial interest in any property may be made by an ex parte originating motion, and any order made on such an application shall in the first instance be an order, made in Form No. 33 in Appendix 1, to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time.
- (3) The application shall be supported by an affidavit -
  - (a) identifying the judgment or order to be enforced and stating the amount unpaid at the date of the application;
  - (b) stating the name of the judgment debtor and of any creditor of whom the applicant can identify;
  - (c) giving full particulars of the subject matter of the intended charge, including -
    - (i) in the case of securities other than securities in Court, the full title of the securities, their amount and the name in which they stand;
    - (ii) and, in the case of funds in Court, the number of the account; and
    - (iii) in the case of land, the registration details.
  - (d) verifying that the interest to be charged is owned beneficially by the judgment debtor.
- (4) In any case where the subject matter of the intended charge is an interest in land, the supporting affidavit shall have exhibited to it an uncertified extract of the relevant Land Register.
- (5) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

- (6) An application may be made for a single charging order in respect of more than one judgment or order against the debtor provided that an order is first made pursuant to Order 4, rule 3, for all the causes or matters to be consolidated.

**Interpretation (O.50, r.1A)**

- 1A.** (1) In this Order "the Law" means the Third Schedule of The Judicature Law and any expressions used in this Order and in the Law have the same meanings in this Order as they have in the Law.
- (2) References to "Form RL9A", "Form RL10A" and "Form RL10B" are references to such forms as prescribed in the Third Schedule of the Registered Land Rules(2001 Revision).

**Service of notice of order to show cause (O.50, r.2)**

- 2.** (1) On the making of an order to show cause, notice of the order shall, unless the Court otherwise directs, be served as follows -
- (a) a copy of the order, together with a copy of the affidavit in support, shall be served on the judgment debtor;
  - (b) where the order relates to securities, other than securities in Court, copies of the order shall also be served -
    - (i) in the case of securities issued by or on behalf of the government of the Islands, the Financial Secretary and the stock transfer agent (if any);
    - (ii) in the case of shares in any company, not being a registered mutual fund, upon its registered office and share transfer agent (if any);
    - (iii) in the case of shares or units of any registered mutual fund, upon its licensed mutual fund administrator and its share transfer agent (if any);
  - (c) where the order relates to a fund in Court, a copy of the order shall be served on the Accountant General at the Court Funds Office; and
  - (d) where the order relates to an interest under a trust, not being a registered mutual fund, copies of the order shall be served on such of the trustees as the Court may direct.
- (2) Without prejudice to the provisions of paragraph (1), the Court may, on the making of the order to show cause, direct the service of copies of the order, and of the affidavit in support, on any other creditor of the judgment debtor or on any other interested person as may be appropriate in the circumstances.

- (3) Documents to be served under this rule must be served at least 7 days before the time appointed for the further consideration of the matter.

**Order made on further consideration (O.50, r.3)**

3. (1) On the further consideration of the matter the Court shall, either make the order absolute, with or without modifications, or discharge it.
- (2) Where the order is made absolute, it shall be made in Form No. 34 of Appendix 1, and where it is discharged, the provisions of rule 7, regarding the service of copies of the order of discharge, shall apply.

**Order imposing a charge on an interest held by a trustee (O.50, r.4)**

4. (1) Save as provided by this rule, the provisions of rules 1, 2 and 3 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest.
- (2) Instead of verifying the judgment debtor's beneficial ownership of the interest to be charged, the affidavit required by rule 1(3) shall state the ground on which the application is based and shall verify the material facts.
- (3) On making the order to show cause, the Court shall give directions for copies of the order, and of the affidavit in support, to be served on such of the trustees and beneficiaries, if any, as may be appropriate.
- (4) Rules 5, 6 and 7 shall apply to an order charging an interest held by a trustee as they apply to an order charging the judgment debtor's beneficial interest, except that, where the order is made under subsection (ii) or (iii) of paragraph 2(1)(b) of the Law references in those rules to "the judgment debtor" shall be references to the trustee.
- (5) Form Nos. 33 and 34 of Appendix 1 shall be modified so as to indicate that the interest is held by the debtor as trustee or, as the case may be, that it is held by a trustee (to be named in the order) on trust for the debtor beneficially.

**Registration of order imposing a charge on an interest in land (O.50, r.4A)**

- 4A. (1) An order made under rule 1 in respect of any interest in land shall be registered in the incumbrances section of the relevant land register.
- (2) When making an order, in Form 33 of Appendix I, to which this rule applies the Judge shall also sign an order in Form RL9A and it shall be the judgment creditor's duty to present the original of such order, together with at least three copies, to the Registrar of Lands for registration.

- (3) When the judgment creditor receives back from the Registrar of Lands the receipted copies of the order, he shall forthwith file one copy in Court and serve one copy on the judgment debtor.
- (4) If an order nisi to which this rule applies -
  - (a) is made absolute without any modification, the fact that it is made absolute shall not be registered;
  - (b) is made absolute with modifications, a variation of charge order in Form RL10B shall be signed by the Judge; or
  - (c) is discharged, a discharge of charge order in Form RL10A shall be signed by the Judge,

and it shall be the duty of the judgment creditor to present such order together with the appropriate number of copies to the Registrar of Lands and file and serve the receipted copies in accordance with the provisions of paragraph (3) of this rule.

- (5) If an order to which this rule applies relates to more than one registered parcel of land, the Judge shall sign separate orders, Form RL9A or RL10A or RL10B, as the case may be, in respect of each parcel.
- (6) A charging order or variation of charge or discharge of a charging order to which this rule applies shall take effect from the date upon which it is registered in the incumbrances section of the relevant land register.

**Effect of order in relation to securities out of Court (O.50, r.5)**

- 5. (1) No disposition by the judgment debtor of his interest in any securities to which an order to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.
- (2) Until such order is discharged or made absolute, any person or body served in accordance with rule 2(1)(b) shall not permit any transfer of any of the securities specified in the order, or pay any dividend, interest or redemption payment in relation thereto, except with the authority of the Court, and, if it does so, shall be liable to pay the judgment creditor the value of the securities transferred or, as the case may be, the amount of the payment made or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.
- (3) If the Court makes the order absolute, a copy of the order, including a stop notice as provided in Form No. 34 of Appendix 1, shall be served on such person or body specified in rule 2(1)(b) as may be appropriate and, save as provided in rule 7(5), rules 11 to 14 shall apply to such a notice as they apply to a stop notice made and served under rule 11.

- (4) This rule does not apply to orders in respect of securities in Court.

**Effect of order in relation to funds in Court (O.50, r.6)**

6. (1) Where an order to show cause has been made in relation to funds in Court (including securities in Court) and a copy thereof has been served on the Accountant General in accordance with rule 2, no disposition by the judgment debtor of any interest to which the order relates, made after the making of that order, shall, so long as the order remains in force, be valid as against the judgment creditor.
- (2) If the Court makes the order absolute, a copy of the order shall be served on the Accountant General at the Court Funds Office.

**Discharge, etc., of charging order (O.50, r.7)**

7. (1) Subject to paragraph (2), on the application of the judgment debtor or any other person interested in the subject matter of the charge, the Court may, at any time, whether before or after the order is made absolute, discharge or vary the order on such terms (if any) as to costs or otherwise as it thinks fit.
- (2) Notice of the application for the discharge or variation of the order shall be served on such interested parties as the Court may direct.
- (3) Where an order is made for the discharge or variation of a charging order in respect of funds in Court, a copy thereof shall be served on the Accountant General at the Court Funds Office.
- (4) Where an order is made for the discharge or variation of a charging order in respect of securities other than securities in Court, a copy thereof shall be served on the body or person specified in rule 2(1)(b) as may be appropriate, and the service thereof shall discharge, or, as the case may be, vary any stop notice in respect of such securities which may be in force pursuant to the original order.
- (5) Where an order is made under this rule for the discharge or variation of a charge of an interest in land, the provisions of rule 4A shall apply.

**Enforcement of order charging an interest in land (O.50, r.8)**

8. (1) A registered charge of an interest in land may be enforced by sale or the appointment of a receiver only if an order absolute has been made in accordance with rule 3.
- (2) A judgment creditor may exercise his power of sale in respect of a charge to which this rule applies by public auction in accordance with Section 75 of the Registered Land Law (1995 Revision) without applying to the Court for an order for sale and

without giving any notice in accordance with Section 72 of the Registered Land Law (1995 Revision).

- (3) A judgment creditor may apply to the Court for an order for sale by private treaty, tender or any other means and upon such application the Court shall give directions for sale in accordance with Order 31, rule 2.
- (4) An application for an order for sale under this rule shall be supported by an affidavit -
  - (a) identifying the charging order sought to be enforced and giving full particulars of the registered title of the land;
  - (b) specifying the amount in respect of which the charge was imposed and the balance outstanding at the date of the affidavit;
  - (c) identifying any persons having a prior interest registered in the incumbrances section in the relevant land register; and
  - (d) setting out the judgment creditor's proposals as to the manner of sale.
- (5) Order 31, rule 3, shall apply to sales made pursuant to paragraph (2) or pursuant to an order made under paragraph (3) of this rule.

**Enforcement of order charging property other than land (O.50, r.9)**

9. (1) An application for an order for sale of any property other than land made subject to a charging order shall be made by summons and Order 31 shall apply, with such variations as may be necessary, as if the charged property were land.
- (2) An application for the appointment of a receiver of property other than land shall be made by summons and Order 30 shall apply.

**Funds in Court: stop order (O.50, r.10)**

10. (1) The Court, on the application of any person -
  - (a) who has a charge on the interest of any person in funds in Court; or
  - (b) to whom that interest has been assigned; or
  - (c) who is a judgment creditor of the person entitled to that interest,

may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.

- (2) An application for an order under this rule must be made by summons in the cause or matter relating to the funds in Court, or, if there is no cause or matter, by originating summons.
- (3) The summons must be served on every person whose interest may be affected by the order applied for and on the Accountant General but shall not be served on any other person.
- (4) Without prejudice to the Court's powers and discretion as to costs, the Court may order the applicant for an order under this rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

**Securities not in Court: stop notice (O.50, r.11)**

- 11. (1) Any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in paragraph 2(2)(b) of the Law, other than securities in Court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.
- (2) A person claiming to be so entitled must file in Court -
  - (a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises; and
  - (b) a notice in Form No. 34A of Appendix 1 (a stop notice) signed by the deponent to the affidavit, and annexed to it, addressed to the person, body, state, territory or mutual fund concerned and must serve an office copy of the affidavit, and a sealed copy of the notice, on the other person or body, as provided in rule 2(1)(b).
- (3) There must be indorsed on the affidavit filed under this rule a note stating the address to which any such notice as is referred to in rule 12 is to be sent and, subject to paragraph (4), that address shall for the purposes of that rule be the address for service of the person on whose behalf the affidavit is filed.
- (4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 12 by serving on the other person or body, a notice to that effect, and, as from the date of service of such a notice, the address stated therein shall for the purposes of that rule be the address for service of that person.

**Effect of stop notice (O.50, r.12)**

- 12. Where a stop notice has been served in accordance with rule 11, then, so long as the stop notice is in force, the person or body on which it is served shall not register a transfer of the securities or take any other steps restrained by the stop notice until 14 days after

sending notice thereof, by post, to the person on whose behalf the stop notice was filed, but shall not by reason only of that notice refuse to register a transfer, or to take any other step, after the expiry of that period.

**Amendment of stop notice (O.50, r.13)**

13. If any securities are incorrectly described in a stop notice which has been filed and of which a sealed copy has been served in accordance with rule 11, an amended stop notice may be filed and served in accordance with the same procedure and shall take effect as a stop notice on the day on which the sealed copy of the amended notice is served.

**Withdrawal etc. of stop notice (O.50, r.14)**

14. (1) The person on whose behalf a stop notice was filed may withdraw it by serving a request for its withdrawal on the person or body on whom the notice was served.
- (2) Such request must be signed by the person on whose behalf the notice was filed and his signature must be witnessed by a practising attorney.
- (3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, may by order discharge the notice.
- (4) An application for an order under paragraph (3) must be made by notice of motion served on the person on whose behalf the stop notice was filed.

**Order prohibiting transfer, etc. of securities (O.50, r.15)**

15. (1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any securities of the kinds set out in paragraph 2(2)(b) of the Law, may by order prohibit the person or body concerned from registering any transfer of the securities or taking any other step to which paragraph 4(4) of the Law applies.

The order shall specify the securities to which the prohibition relates, the name in which they stand and the steps which must not be taken, and shall state whether the prohibition applies to the securities only or to the dividends or interest as well.

- (2) An application for an order under this rule must be made by motion.
- (3) The Court, on the application of any person claiming to be entitled to an interest in any securities to which an order under this rule relates, may discharge or vary the order on such terms (if any) as to costs or otherwise as it thinks fit.



**ORDER 50A****ATTACHMENT OF EARNINGS ORDERS****Interpretation (O.50A, r.1)**

1. In this Order,
  - (a) "the Law" means the Second Schedule of The Judicature Law and, unless the context otherwise requires, expressions used in the Second Schedule of that Law have the same meaning as in that Law; and
  - (b) "maintenance order" means an order of a kind mentioned in paragraph 1(1)(b) of the Law.

**Register of orders (O.50A, r.2)**

2.
  - (1) The Clerk of the Court shall create a file containing, in chronological order, an office copy of every attachment of earnings order, including consolidated orders, made by the Court, which shall be referred to as the Register of Attachment of Earnings Orders.
  - (2) The Clerk of the Court shall, on the request of any person having a judgment or order against a person, cause a search to be made in the Register and shall issue a certificate of the result of the search.

**Non-resident debtors (O.50A, r.3)**

3. An application for an attachment of earnings order may be made to the Court notwithstanding that the judgment debtor does not reside within the Islands.

**Mode of applying (O.50A, r.4)**

4.
  - (1) An application by a judgment creditor for an attachment of earnings order shall be in Form No. 35 of Appendix I.
  - (2) The application shall be supported by an affidavit -
    - (a) identifying the judgment or order in respect of which the attachment of earnings order is sought;
    - (b) verifying the amount due under the judgment or order; and
    - (c) stating whether a writ of execution has been issued to enforce it.

**Service and reply (O.50A, r.5)**

5. (1) The application, together with a form of reply as to the debtor's means in Form No. 36 of Appendix I, shall be served on the debtor in the manner prescribed by Order 65.
- (2) The debtor shall within 8 days after service on him of the documents mentioned in paragraph (1), file a statement of means in the form provided, and the instruction to that effect in the notice to the debtor shall constitute a requirement imposed by virtue of paragraph 10(3) of the Law:
 

Provided that no proceedings shall be taken for an offence alleged to have been committed under paragraph 14(1)(c) or (f) of the Law in relation to the requirement unless the said documents have been served on the debtor personally or the Court is satisfied that they came to his knowledge in sufficient time for him to comply with the requirement.
- (3) Nothing in paragraph (2) shall require a defendant to file a statement of means if, within the period of time mentioned in that paragraph, he pays to the judgment creditor the money remaining due under the judgment or order and, where such payment is made, the judgment creditor shall so inform the Clerk of the Court.
- (4) On receipt of a statement of means the Clerk of the Court shall send a copy to the applicant.

**Notice to employer (O.50A, r.6)**

6. Without prejudice to the powers conferred by paragraph 10(1) of the Law, the Court may of its own motion, at any stage of the proceedings, send to any person appearing to have the debtor in his employment a notice in Form No. 37 of Appendix I requesting him to give to the Court, within such period as may be specified in the notice, a statement of the debtor's earnings and anticipated earnings with such particulars as may be specified.

**Attachment of earnings order (O.50A, r.7)**

7. (1) On receipt of the debtor's reply, the Judge may, if he has sufficient information to do so, make an attachment of earnings order in Form No. 38 of Appendix I and a copy of the order shall be sent to the parties and the debtor's employer.
- (2) Where an order is made under paragraph (1), the judgment creditor or the debtor may, within 14 days of service of the order on him and giving his reasons, make an application for the order to be reconsidered and, upon receipt of any such application (in whatever form), the Clerk of the Court shall fix a day for the hearing of the application and give notice of hearing in Form No. 39 of Appendix I to the judgment creditor and the debtor.

- (3) On hearing an application under paragraph (2), the Judge may confirm the order or set it aside and make such new order as he thinks fit and the order so made shall be filed in accordance with Order 42, rule 5.
- (4) Where the Judge does not determine the application under paragraph (1), he shall direct that a day be fixed for the hearing of the application whereupon the Clerk of the Court shall fix such a day and give notice of hearing in Form No. 40 of Appendix I to the judgment creditor and the debtor.
- (5) If the creditor does not appear at the hearing of the application under paragraph (4), but the creditor requests the Court in writing to proceed in his absence, the Court may, notwithstanding anything in Order 35, rule 1, proceed to hear the application and to make an order thereon.
- (6) An attachment of earnings order may be made to secure the payment of a judgment debt if the debt is -
  - (a) of not less than \$100; or
  - (b) for the amount remaining payable under a judgment for a sum of not less than \$100.

**Failure by debtor (O.50A, r.8)**

8. (1) If the debtor fails to comply with rule 5(2) or to make payment to the judgment creditor, the Court of its own motion shall issue a notice in Form No. 41 of Appendix I calling on him to show good reason why he should not be imprisoned or fined and such notice shall be served on the debtor personally not less than 5 days before the hearing.
- (2) Order 52, rule 12, shall apply where a notice is issued under paragraph (1).
- (3) On a hearing under paragraph (1), the Judge may, if he has sufficient information to do so, determine the application for an attachment of earnings order or may direct that a day be fixed for the hearing of the application, whereupon the Clerk of the Court shall fix such a day and give to the judgment creditor and the debtor not less than 8 days' notice of the day so fixed.
- (4) An application by a debtor for the revocation of an order committing him to prison and, if he is already in custody, for his discharge shall be made to the Judge ex parte in writing showing the reasons for the debtor's failure to attend the Court or his refusal to be sworn or to give evidence, as the case may be, and containing an undertaking by the debtor to attend the Court or to be sworn or to give evidence when next ordered or required to do so.

- (5) Before dealing with the application the Judge may, if he thinks fit, cause notice to be given to the judgment creditor that the application has been made and of a day and hour when he may attend and be heard.

**Costs (O.50A, r.9)**

9. On the hearing of an application for an attachment of earnings order, the Court may award costs against the judgment debtor and such costs shall be assessed in accordance with Order 62, rule 3.

**Contents and service of order (O.50A, r.10)**

10. (1) An attachment of earnings order shall be in Form No. 38 or Form No. 45 of Appendix I and shall contain such of the following particulars relating to the debtor as are known to the Court -

- (a) his full name and address;
- (b) his employer's name and address;
- (c) the nature of his work; and
- (d) where the debtor has a work permit, the work permit's number,

and those particulars shall be the prescribed particulars for the purposes of paragraph 3(3) of the Law.

- (2) An attachment of earnings order and any order varying or discharging such an order shall be served on the debtor and on the person to whom the order is directed, and Order 65, rule 5, shall apply.

**Application to determine whether particular payments are earnings (O.50A, r.11)**

11. An application to the Court under paragraph 12 of the Law to determine whether payments to the debtor of a particular class or description are earnings for the purposes of an attachment of earnings order may be made by summons supported by an affidavit, which shall be served on the persons mentioned in the said paragraph 12(2)(a), (b) and (c).

**Notice of cessation (O.50A, r.12)**

12. Where an attachment of earnings order ceases to have effect under paragraph 6(2) of the Law, the Clerk for the Court shall give notice of its cessation to the person to whom the order was directed.

**Variation and discharge by Court of own motion (O.50A, r.13)**

13. (1) The powers conferred by paragraph 7(1) of the Law may be exercised by the Court of its own motion in the circumstances mentioned in the following paragraphs.
- (2) Where it appears to the Court that a person served with an attachment of earnings order directed to him does not have the debtor in his employment, the Court may discharge the order.
- (3) Where an attachment of earnings order which has lapsed under paragraph 7(4) of the Law is again directed to a person who appears to the Court to have the debtor in his employment, the Court may make such consequential variations in the order as it thinks fit.
- (4) Where, after making an attachment of earnings order, the Court makes or is notified of the making of another such order in respect of the same debtor, the Court may discharge or vary the first mentioned order.
- (5) Where it appears to the Court that a bankruptcy order has been made against a person in respect of whom an attachment of earnings order is in force to secure the payment of a judgment debt, the Court may discharge the attachment of earnings order.
- (6) Where an attachment of earnings order has been made to secure the payment of a judgment debt and the Court grants leave to issue execution for the recovery of the debt, the Court may discharge the order.
- (7) Before varying or discharging an attachment of earnings order of its own motion under any of the foregoing paragraphs of this rule, the Court shall, unless it thinks it unnecessary in the circumstances to do so, give the debtor and the person on whose behalf the order was made an opportunity of being heard on the question whether the order should be varied or discharged, and for that purpose the Clerk of the Court may give them notice of a date and time when the question will be considered.

**Exercise of power to obtain statement of earnings (O.50A, r.14)**

14. (1) An order under paragraph 10(1)(b) of the Law shall be in Form No. 42 of Appendix I and shall be indorsed with or incorporate a notice warning the person to whom it is directed of the consequences of disobedience to the order and shall be served on him personally.
- (2) If a person served with an order made pursuant to paragraph (1) fails to obey it, the Court of its own motion shall issue a notice in Form No. 43 of Appendix I calling on that person to show good reason why he should not be imprisoned or

fined and such notice shall be served on that person personally not less than 5 days before the hearing.

- (3) In this rule "statement of earnings" means a statement given under paragraph 10(1)(b) of the Law, specifying -
- (a) the nature of the debtor's employment;
  - (b) if the debtor's employment is temporary, the anticipated length of employment;
  - (c) if the debtor is paid a salary, the weekly or monthly amount;
  - (d) if the debtor is paid overtime, the average amount of such payments over the preceding 3 months;
  - (e) if the debtor is paid by the hour, the hourly rate(s) and his average earnings over the preceding 6 weeks; and
  - (f) particulars of any other benefits to which the debtor is entitled under his contract of employment.

#### **Offenses (O.50A, r.15)**

- 15.** (1) Where it is alleged that a person has committed any offence under paragraph 14(1)(a), (b), (c), (d), (e) or (f) of the Law in relation to proceedings in, or to an attachment of earnings order made by the Court, the Clerk of the Court shall issue a summons in accordance with Section 14 of the Criminal Procedure Code to compel the attendance of that person before a Summary Court, unless the Court shall have dealt with such person pursuant to a notice to show cause served in accordance with rule 14.
- (2) The summons shall be served on the alleged offender in accordance with Sections 17 or 18 of the Criminal Procedure Code, as the case may be.

#### **Maintenance orders (O.50A, r.16)**

- 16.** (1) An application for an attachment of earnings order to secure payments under a maintenance order may be made on the making of the maintenance order or an order varying the maintenance order, in which case rules 4 and 5 shall not apply.
- (2) In a case in which no attachment of earnings order was made in accordance with paragraph (1), an application for an attachment of earnings order to secure payments under a maintenance order may be made whenever the payments are in arrears.
- (3) An application under paragraph (2) shall be in Form No. 44 of Appendix I.

- (4) Rule 13 shall have effect as if for paragraphs (4) to (6) there were substituted the following paragraph -
- "(4) Where an attachment of earnings order has been made and it appears to the Court that the related maintenance order has ceased to have effect, whether by virtue of the terms of the maintenance order, or otherwise, the Court may discharge or vary the attachment of earnings order."
- (5) An attachment of earnings order made under this rule shall be in Form No. 45 of Appendix I.

**Cases in which consolidated order may be made (O.50A, r.17)**

17. Subject to the provisions of rules 18 to 21, a Court may make a consolidated attachment order where -
- (a) two or more attachment of earnings orders are in force to secure payment of judgment debts by the same debtor; or
- (b) on an application for an attachment of earnings order to secure the payment of a judgment debt, or for a consolidated attachment order to secure the payment of two or more judgment debts, it appears to the Court that an attachment of earnings order is already in force to secure the payment of a judgment debt by the same debtor.

**Application for consolidated order (O.50A, r.18)**

18. (1) An application for a consolidated attachment order may be made -
- (a) by the debtor in respect of whom the order is sought; or
- (b) by any person who has obtained or is entitled to apply for an attachment of earnings order to secure the payment of a judgment debt by the same debtor,
- provided that an order is first made pursuant to Order 4, rule 3, for all the causes or matters to be consolidated.
- (2) An application under paragraph (1) may be made in the proceedings in which any attachment of earnings order is in force. The application shall be in Form No. 46 of Appendix I and rules 4 and 5 of this Order shall not apply.
- (3) Where an application for a consolidated attachment order is made, the Clerk of the Court shall -
- (a) notify any party who may be affected by the application of its terms; and

- (b) require him to notify the Court in writing, within 14 days of service of notification upon him, giving his reasons for any objection he may have to the granting of the application.
- (4) If notice of any objection is not given within the time stated, the Clerk of the Court shall make a consolidated attachment of earnings order.
- (5) If any party objects to the making of a consolidated attachment of earnings order, the Judge, after considering the objection made and the reasons given, may grant the application or may cause notice to be given to any party affected by the application of a day and hour when he may attend and be heard.
- (6) In the foregoing paragraphs of this rule, a party affected by the application means -
  - (a) where the application is made by the debtor, the creditor in the proceedings in which the application is made and any other creditor who has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor;
  - (b) where the application is made by the judgment creditor, the debtor, and every person who, to the knowledge of the applicant, has obtained an attachment of earnings order which is in force to secure the payment of a judgment debt by the debtor.
- (7) A person to whom two or more attachment of earnings orders are directed to secure the payment of judgment debts by the same debtor may make an application in Form No. 46 of Appendix I for the Court to make a consolidated attachment order to secure the payment of those debts, and on receipt of such an application paragraphs (4) to (7) shall apply, with the necessary modifications, as if the request were an application by the judgment creditor.
- (8) A consolidated attachment of earnings order shall be in Form No. 47 of Appendix I.

#### **Making of consolidated order by Court of its own motion (O.50A, r.19)**

- 19.** Where an application is made for an attachment of earnings order to secure the payment of a judgment debt by a debtor in respect of whom an attachment of earnings order is already in force to secure the payment of another judgment debt and no application is made for a consolidated order, the Court of its own motion may make such an order after giving all persons concerned an opportunity of submitting written objections and the provisions of rule 18 shall apply with the necessary modifications.

#### **Extension of consolidated order (O.50A, r.20)**

- 20.** Where a consolidated attachment order is in force to secure payment of one or more judgment debts, any creditor to whom another judgment debt is owed by the same



judgment debtor may apply to the Court in Form No. 46 of Appendix I for the order to be extended so as to secure the payment of that debt as well as the first mentioned debts and, if the application is granted, the Court may either vary the order accordingly or may discharge it and make a new consolidated attachment order to secure payment of all the aforesaid judgment debts.

**Payments under consolidated order (O.50A, r.21)**

21. Where payments are made in compliance with a consolidated attachment order, the sums paid shall be treated if they had been paid by the debtor to satisfy the relevant adjudications in proportion to the amounts payable thereunder, and for that purpose dividends may from time to time be declared and distributed among the creditors entitled thereto.



**ORDER 51****RECEIVERS: EQUITABLE EXECUTION****Appointment of receiver by way of equitable execution (O.51, r.1)**

1. Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

**No rule (O.51, r.2)****Application of rules as to appointment of receiver, etc. (O.51, r.3)**

3. An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 30, rule 1 and rules 2 to 6 of that Order shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose.



**ORDER 52****COMMITTAL****I. GENERAL PROVISIONS****Committal for contempt of court (O.52, r.1)**

1. The power of the Court to punish for contempt of court may be exercised by an order of committal.

**No rules (O.52, rr.2-3)****Application for committal (O.52, r.4)**

4. (1) An application to the Court for an order of committal must be made by notice of motion in Form No. 48 of Appendix I and be supported by an affidavit.
- (2) Subject to paragraph (3), the notice of motion stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed.
- (3) Without prejudice to its power under Order 65, rule 4, the Court may dispense with the service of the notice of motion under this rule if it thinks it just so to do.

**Committal by the Court of its own motion (O.52, r.5)**

5. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of court.

**Provisions as to hearing (O.52, r.6)**

6. (1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say -
  - (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of a child, or rights of access to a child;
  - (b) where the application arises out of proceedings relating to a person who is or appears to be mentally disordered within the meaning of Section 2 of the Mental Health Law (1997 Revision);

- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue; or
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private,

but, except as aforesaid, the application shall be heard in open Court.

- (2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open Court state -
  - (a) the name of that person;
  - (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
  - (c) the length of the period for which he is being committed.
- (3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the notice of motion under rule 4.

The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.

- (4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

**Power to suspend execution of committal order (O.52, r.7)**

- 7. (1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.
- (2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

**Discharge of person committed (O.52, r.8)**

- 8. (1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.
- (2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in

Court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

**Saving for other powers (O.52, r.9)**

9. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

**Warrant of committal (O.52, r.10)**

10. (1) If an order is made for the committal of a person to prison with immediate effect, the Court shall issue a warrant of committal in Form No. 49 of Appendix I.

**II. IMPRISONMENT FOR NON-PAYMENT OF JUDGMENT DEBTS**

**No Rule (O.52, r.11)**

**Application for committal (O.52, r.12)**

12. (1) An application to commit a debtor to a term of imprisonment shall be made by motion in Form No. 50 of Appendix I.
- (2) Notice of a motion under this rule must be served on the debtor personally and Order 65, rules 4 and 5 shall not apply.
- (3) A notice of motion under this rule must be accompanied by a statement of means form in Form No. 36 of Appendix I which shall be completed and returned to the Court office within 8 days from the date of service.
- (4) A notice of motion under this rule must be supported by an affidavit verifying the amount owing by the debtor and explaining why the applicant believes the conditions specified in Section 30(1) of The Judicature Law to be satisfied.
- (5) If a suspended order has been made pursuant to rule 15(1)(b) and the debtor has failed to comply with the conditions of the order, an application for the issue of a

warrant of committal may be made ex parte by motion, supported by an affidavit verifying non-compliance with the conditions of the order.

**Attendance of debtor (O.52, r.13)**

- 13.** (1) The debtor shall attend before the Court at the time and date specified in the notice of motion.
- (2) A debtor who has failed to complete and return a statement of means in accordance with rule 12(3) may do so at the hearing of the notice of motion.
- (3) The debtor may give oral evidence to explain why he is in default of payment of any sum due and the applicant may cross-examine the debtor upon his statement of means.
- (4) The Court may issue a warrant for the arrest of a debtor who, having been served with a notice of motion in accordance with rule 12, fails to attend before the Court at the time and on the date specified.

**Payment of the judgment debt (O.52, r.14)**

- 14.** (1) The provisions of rule 13 shall not apply in the case of any debtor who satisfies the judgment debt in full by paying the amount due into Court and complying with the requirements of Order 22, rule 1, prior to the date specified in the notice of motion for his attendance before the Court and the application for his committal shall be dismissed.
- (2) No order for costs shall be made against a debtor who satisfies the judgment debt in full in accordance with paragraph (1).

**Order for committal (O.52, r.15)**

- 15.** (1) If the Court is satisfied as to the matters specified in Section 30(1) of the Law, it may -
- (a) sentence the debtor to a fixed term of imprisonment with immediate effect;
- (b) sentence the debtor to a fixed term of imprisonment, suspended on terms that the debtor pays the debt or any instalment thereof within a fixed period not exceeding 28 days;
- (c) make an attachment of earnings order in accordance with Order 50A; or
- (d) make no order.
- (2) An order made under paragraph 1(a) shall be in Form No. 51 and an order made under paragraph 1(b) shall be in Form No. 51A of Appendix I.



- (3) If an order is made under paragraph (1)(a) the Court shall issue a warrant of committal in Form No. 49 of Appendix I.
- (4) In every case where an order is made under this rule, the Court shall award costs to the judgment creditor which shall be assessed by the Judge in accordance with Order 62, rule 3.

**Discharge of debtor (O.52, r.16)**

- 16.** A debtor who has been sentenced to a term of imprisonment in accordance with rule 15(1)(a) and satisfies the judgment debt by paying the full amount into Court in accordance with rule 14(1) prior to the expiry of the term of imprisonment shall be discharged forthwith and the Court shall issue a warrant of discharge in Form No. 52 of Appendix.



**ORDER 53****APPLICATIONS FOR JUDICIAL REVIEW****Cases appropriate for application for judicial review (O.53, r.1)**

1. (1) An application for -
- (a) an order of mandamus, prohibition or certiorari; or
  - (b) an injunction restraining a person from acting in any substantive office of a public nature and permanent character which is held under the Crown or which has been created by any statutory provision, regulation or directive,

shall be made by way of an application for judicial review in accordance with the provisions of this Order.

- (2) An application for a declaration or an injunction (not being an injunction mentioned in subparagraph (1)(b)) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to -
- (a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;
  - (b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and
  - (c) all the circumstances of the case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

**Joinder of claims for relief (O.53, r.2)**

2. On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

**Grant of leave to apply for judicial review (O.53, r.3)**

3. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.
- (2) An application for leave must be made ex parte to a Judge by filing -

- (a) a notice in Form No. 53 of Appendix I containing a statement of -
    - (i) the name and description of the applicant;
    - (ii) the relief sought and the grounds upon which it is sought;
    - (iii) the name and address of the applicant's attorney (if any); and
    - (iv) the applicant's address for service; and
  - (b) an affidavit which verifies the facts relied on.
- (3) The Judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open Court; in any case, the Clerk of the Court shall serve a copy of the Judge's order on the applicant.
- (4) Where the application for leave is refused by the Judge, or is granted on terms, the applicant may renew it by applying to a single Judge sitting in open Court:
- Provided that no application for leave may be renewed in any non-criminal cause or matter in which the Judge has refused leave under paragraph (3) after a hearing.
- (5) In order to renew his application for leave the applicant must within 10 days of being served with notice of the Judge's refusal, file notice of his intention in Form No. 54 of Appendix I.
- (6) Without prejudice to its powers under Order 20, rule 8, the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.
- (7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.
- (9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.
- (10) Where leave to apply for judicial review is granted, then -
- (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which

the application relates until the determination of the application or until the Court otherwise orders;

- (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

**Delay in applying for relief (O.53, r.4)**

- 4. (1) An application for leave to apply for judicial review shall be made promptly and in any event within 3 months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.
- (2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.
- (3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

**Mode of applying for judicial review (O.53, r.5)**

- 5. (1) In any cause or matter, where leave has been granted to make an application for judicial review, the application shall be made by originating motion to a Judge sitting in open Court, unless the Court directs that it shall be made to a Judge in Chambers. Any such direction shall be without prejudice to the Judge's powers under Order 32, rule 13.
- (2) Within 7 days of being granted leave, the applicant shall serve copies of -
  - (a) the notice of motion;
  - (b) the supporting affidavits;
  - (c) the order for leave; and
  - (d) the Form 53 application
 upon the defendant and all other persons directly affected.
- (3) Where the application relates to any proceedings in or before a Court and the object of the application is either to compel the Court or an officer of the Court to do any act in relation to the proceedings or to quash them or any order made therein, the documents specified in paragraph (2) must also be served on the Clerk

or Registrar of the Court and, where any objection to the conduct of a Justice of the Peace or Magistrate is made, on such Justice of the Peace or Magistrate.

- (4) Unless the defendant and all other persons served agree, the first hearing of the notice of motion shall be treated as a directions hearing.
- (5) Unless the Court granting leave has otherwise directed, there must be at least 14 days between the service of the notice of motion and the first hearing.
- (6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion must be filed before the motion is listed for hearing and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it.
- (7) If on the hearing of the motion the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice may be served on that person.

#### **Statements and affidavits (O.53, r.6)**

6. (1) Copies of the statement in support of an application for leave under rule 3 must be served with the notice of motion and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.
- (2) The Court may on the hearing of the motion allow the applicant to amend his statement, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.
- (3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party and the affidavit shall be before the Court on the hearing of the motion.
- (4) Any respondent who intends to use an affidavit at the hearing shall file it as soon as practicable and in any event, unless the Court otherwise directs, within 56 days after service upon him of the documents required to be served by paragraph (1).
- (5) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

**Claim for damages (O.53, r.7)**

7. (1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if -
- (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and
  - (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.
- (2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

**Interlocutory applications (O.53, r.8)**

8. (1) Unless the Court otherwise directs, any interlocutory applications shall be made at the first hearing of the notice of motion.
- (2) In this rule "interlocutory applications" includes an application under Order 24, Order 26, Order 38, r.2(3) or for an order granting relief or dismissing the proceedings by consent of the parties.

**Hearing of application for judicial review (O.53, r.9)**

9. (1) On the hearing of any motion under rule 5, any person who desires to be heard in opposition to the motion, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion.
- (2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion he has filed a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion.
- (3) Where an order for certiorari is made in any such case as is referred to in paragraph (2) the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the Court.
- (4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority

concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

- (5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ.

**Saving for person acting in obedience to mandamus (O.53, r.10)**

10. No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

**No rule (O.53, r.11)**

**Consolidation of Applications (O.53, r.12)**

12. Where there is more than one application pending against several persons in respect of the same office, and on the same grounds, the Court may order the applications to be consolidated.

**Appeal from Court's order (O.53, r.13)**

13. No appeal shall lie from an order made under paragraph (3) of rule 3 on an application for leave which may be renewed under paragraph (4) of that rule.



**ORDER 54****APPLICATIONS FOR WRIT OF HABEAS CORPUS****Application for writ of habeas corpus ad subjiciendum (O.54, r.1)**

1. (1) An application for a writ of habeas corpus ad subjiciendum shall be made to the Court, except that an application on behalf of a minor must be made in the first instance to a Judge in Chambers.
- (2) An application for such writ may be made ex parte and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.
- (3) When the person restrained is unable for any reason to make the affidavit required by paragraph (2) the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

**Power of Court to whom ex parte application is made (O.54, r.2)**

2. (1) The Court or Judge to whom an application under rule 1 is made ex parte may make an order forthwith for the writ to issue, or may -
  - (a) where the application is made to a Judge in Chambers, direct that an originating summons for the writ be issued, or that an application therefor be made by originating motion to the Court;
  - (b) where the application is made to the Court, adjourn the application so that notice thereof may be given or direct that an application be made by originating motion.
- (2) The summons or notice of motion must be served on the person against whom the issue of the writ is sought and on such other persons as the Judge may direct, and, unless the Judge otherwise directs, there must be at least 8 clear days between the service of the summons or notice and the date named therein for the hearing of the application.

**Copies of affidavits to be supplied (O.54, r.3)**

3. Every party to an application under rule 1, must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing of the application.

**Power to order release of person restrained (O.54, r.4)**

4. Without prejudice to rule 2(1) the Court or Judge hearing an application for a writ of habeas corpus ad subjiciendum may in its or his discretion order that the person restrained be released, and such order shall be sufficient warrant to any prison officer, constable or other person for the release of the person under restraint.

**Directions as to return to writ (O.54, r.5)**

5. Where a writ of habeas corpus ad subjiciendum is ordered to issue the Judge by whom the order is made shall give directions as to the Judge before whom, and the date on which the writ is returnable.

**Service of writ and notice (O.54, r.6)**

6. (1) Subject to paragraphs (2) and (3), a writ of habeas corpus ad subjiciendum must be served personally on the person to whom it is directed.
- (2) If it is not possible to serve such a writ personally, or if it is directed to a prison officer or constable, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.
- (3) If the writ is directed to more than one person, the writ must be served in the manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.
- (4) There must be served with the writ a notice stating the Judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

**Return to the writ (O.54, r.7)**

7. (1) The return to a writ of habeas corpus ad subjiciendum must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.
- (2) The return may be amended or another return substituted therefor, by leave of the Judge before whom the writ is returnable.

**Procedure at hearing of writ (O.54, r.8)**

8. When a return to a writ of habeas corpus ad subjiciendum is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his attorney shall be heard first, then the attorney for the Crown and then the attorney for the person restrained in reply.

**Bringing up prisoner to give evidence, etc. (O.54, r.9)**

9. (1) An application for a writ of habeas corpus ad testificandum or habeas corpus ad respondendum must be made on affidavit to a Judge in Chambers.
- (2) An application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any civil cause or matter before any Court, tribunal or justice, must be made on affidavit to a Judge in Chambers.

**Form of writ (O.54, r.10)**

10. A writ of habeas corpus ad subjiciendum must be in Form No. 55 of Appendix I.



**ORDER 55****APPEALS TO GRAND COURT FROM GOVERNOR-IN-COUNCIL, REGISTRAR OF  
LANDS, TRIBUNAL OR OTHER PERSON: GENERAL****Application (O.55, r.1)**

1. (1) Subject to paragraphs (2) and (3), this Order shall apply to every appeal which by or under any enactment lies to the Court from the Governor-in-Council, the Registrar of Lands, any tribunal or person.
- (2) This Order shall not apply -
  - (a) to any appeal to which Order 73 applies;
  - (b) to any appeal under the Criminal Procedure Code;
  - (c) to any appeal under the Summary Jurisdiction Law;
  - (d) to an appeal by case stated.
- (3) The following rules of this Order shall, in relation to an appeal to which this Order applies, have effect subject to any provision made in relation to that appeal by any other provision of these Rules or by or under any enactment.
- (4) In this Order references to a tribunal shall be construed as references to any tribunal, board or authority constituted by or under any enactment other than any of the ordinary courts of law.

**Court to hear appeal (O.55, r.2)**

2. Except where it is otherwise provided by these Rules or by any enactment an appeal to which this order applies shall be heard and determined by a single Judge.

**Bringing of appeal (O.55, r.3)**

3. (1) An appeal to which this Order applies shall be by way of rehearing and must be brought by originating motion.
- (2) Every notice of the motion by which such an appeal is brought must state the grounds of the appeal and, if the appeal is against part only of any order, determination, award or other decision, must state whether the appeal is against the whole or part of that order, determination, award or other decision and, if against a part only, must specify the part.

- (3) The bringing of such an appeal shall not operate as a stay of proceedings on the order, determination, award or other decision against which the appeal is brought unless the Court by which the appeal is to be heard or the Governor-in-Council, the Registrar of Lands, tribunal, arbitrator or person by which or by whom the decision was given so orders.

**Service of notice of motion and entry of appeal (O.55, r.4)**

4. (1) The persons to be served with notice of the motion by which an appeal against an order, determination, award or other decision of the Governor-in-Council, the Registrar of Lands, any tribunal or person is brought, are the Secretary to Executive Council, the Registrar of Lands, the chairman of the tribunal or person, as the case may be, and every party to the proceedings in which the decision was given who is directly affected by the appeal.
- (2) In the absence of any other statutory time limit, the notice must be served, and the appeal entered, within 28 days after the date of the order, determination, award or other decision against which the appeal is brought.
- (3) The period specified in paragraph (2) shall be calculated from the date on which notice of the order, decision, determination or award was given to the appellant by the person or persons who made it or by a person authorised in that behalf to do so.

**Date of hearing of appeal (O.55, r.5)**

5. Unless the Court otherwise directs, an appeal to which this Order applies shall not be heard sooner than 21 days after service of notice of the motion by which the appeal is brought.

**Amendment of grounds of appeal, etc. (O.55, r.6)**

6. (1) The notice of the motion by which an appeal to which this Order applies is brought may be amended by the appellant, without leave, by supplementary notice filed and served not less than 7 days before the day appointed for the hearing of the appeal, on each of the persons on whom the notice to be amended was served.
- (2) Except with the leave of the Court no grounds other than those stated in the notice of the motion by which the appeal is brought or any supplementary notice under paragraph (1) may be relied upon by the appellant at the hearing; but the Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination of the merits of the real question in controversy between the parties.
- (3) The foregoing provisions of this rule are without prejudice to the powers of the Court under Order 20.

**Powers of Court hearing appeal (O.55, r.7)**

7. (1) In addition to the power conferred by rule 6(2), the Court when hearing an appeal to which this Order applies shall have the powers conferred by the following provisions of this rule.
- (2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in Court, by affidavit, by deposition taken before an examiner or in some other manner.
- (3) The Court shall have power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose.
- (4) It shall be the duty of the appellant to apply to the person presiding at the proceedings in which the decision appealed against was given for a signed copy of any note made by him of the proceedings and to furnish that copy for the use of the Court; and in default of production of such note, or, if such note is incomplete, in addition to such note, the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient.

Except where the Court otherwise directs, an affidavit or note by a person present at the proceedings shall not be used in evidence under this paragraph unless it was previously submitted to the person presiding at the proceedings for his comments.

- (5) The Court may give any judgment or decision or make any order which ought to have been given or made by the Governor-in-Council, the Registrar of Lands, tribunal or other person and make such further or other order as the case may require or may remit the matter with the opinion of the Court for rehearing and determination by it or him.
- (6) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.
- (7) The Court shall not be bound to allow the appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court substantial wrong or miscarriage has been thereby occasioned.

**Right of Governor-in-Council to appear and be heard (O.55, r.8)**

8. Where an appeal to which this Order applies is against an order, determination or other decision of the Governor-in-Council, the Registrar of Lands or other person, he shall be entitled to appear and be heard in the proceedings on the appeal.





**ORDER 56****APPEALS TO COURT BY CASE STATED: GENERAL**

**No rules (O.56, rr.1-6)**

**Case stated by Governor-in-Council, the Registrar of Lands, tribunal or other person (O.56, r.7)**

7. (1) The jurisdiction of the Court under any enactment to hear and determine a case stated by the Governor-in-Council, the Registrar of Lands, tribunal or other person, or question of law referred to the Court by the Governor-in-Council, the Registrar of Lands, tribunal or other person by way of case stated, shall be exercised by a single Judge, except where it is otherwise provided by these Rules or by or under any enactment.
- (2) The following rules of this Order shall apply to proceedings for the determination of such a case, question or application and, in relation to any such proceedings, shall have effect subject to any provision made in relation to those proceedings by any other provision of these Rules or by or under any enactment.
- (3) In this Order references to a tribunal shall be construed as references to any tribunal, board or authority constituted by or under any enactment other than any of the ordinary Courts of law.
- (4) In the following rules and in this rule "case" includes a special case.

**Application for order to state a case (O.56, r.8)**

8. (1) An application to the Court for an order directing the Governor-in-Council, the Registrar of Lands, tribunal or other person to state a case for determination by the Court or to refer a question of law to the Court by way of case stated must be made by originating motion; and the persons to be served with notice thereof are the Secretary to Executive Council, the Registrar of Lands, secretary of the tribunal or other person, as the case may be, and every party (other than the applicant) to the proceedings to which the application relates.
- (2) The notice of motion must state the grounds of the application, the question of law on which it is sought to have the case stated and any reasons given by the Governor-in-Council, the Registrar of Lands, tribunal or other person for his or its refusal to state a case.
- (3) The motion must be entered for hearing, and the notice thereof served, within 14 days after receipt by the applicant of notice of the refusal of his request to state a case.

**Signing and service of case (O.56, r.9)**

9. (1) A case stated by the Governor-in-Council, must be signed by the Secretary to Executive Council.
- (2) A case stated by a tribunal must be signed by the chairman or president of the tribunal, and a case stated by the Registrar of Lands or any other person must be signed by him or by a person authorised in that behalf to do so.
- (3) The case must be served on the party at whose request, or as a result of whose application to the Court, the case was stated; and if the Governor-in-Council, the Registrar of Lands, tribunal, arbitrator or other person is entitled by virtue of any enactment to state a case, or to refer a question of law by way of case stated, for determination by the Court without request being made by any party to the proceedings before that person, the case must be served on such party to those proceedings as the Governor-in-Council, the Registrar of Lands, secretary of the tribunal, arbitrator or other person, as the case may be, thinks appropriate.
- (4) When a case is served on any party under paragraph (3) notice must be given to every other party to the proceedings in question that the case has been served on the party named, and on the date specified, in the notice.

**Proceedings for determination of case (O.56, r.10)**

10. (1) Proceedings for the determination by the Court of a case stated, or a question of law referred by way of case stated, by the Governor-in-Council, the Registrar of Lands, tribunal, arbitrator, or other person must be begun by originating motion by the person on whom the case was served in accordance with rule 9(3) or, when the case is stated without a request being made, by the Governor-in-Council, the Registrar of Lands, secretary of the tribunal, arbitrator or other person by whom the case is stated.
- (2) The applicant shall serve notice of a motion under paragraph (1) together with a copy of the case on -
- (a) the Secretary to Executive Council, the Registrar of Lands, secretary of the tribunal, arbitrator or other person by whom the case was stated, unless the Governor-in-Council, the Registrar of Lands, tribunal, arbitrator or other person is the applicant; and
- (b) every party (other than the applicant) to the proceedings in which the question of law to which the case relates arose; and
- (c) any other person (other than the applicant) served with the case under rule 9(3).

- (3) The notice of such motion must set out the applicant's contentions on the question of law to which the case stated relates.
- (4) The motion must be entered for hearing and the notice thereof served, within 14 days after the case stated was served on the applicant.
- (5) If the applicant fails to enter the motion within the period specified in paragraph (4) then, after obtaining a copy of the case from the Governor-in-Council, the Registrar of Lands, tribunal, arbitrator or other person by whom the case was stated, any other party to the proceedings in which the question of law to which the case relates arose may, within 14 days after the expiration of the period so specified, begin proceedings for the determination of the case, and paragraphs (1) to (4) shall have effect accordingly with the necessary modifications.

The references in this paragraph to the period specified in paragraph (4) shall be construed as including references to that period as extended by any order of the Court.

- (6) Unless the Court otherwise directs, the motion shall not be heard sooner than 7 days after service of notice of the motion.

**Amendment of case (O.56, r.11)**

- 11. The Court hearing a case stated by the Governor-in-Council, the Registrar of Lands, tribunal, arbitrator or other person may amend the case or order it to be returned to that person for amendment, and may draw inferences of fact from the facts stated in the case.

**Right of Governor-in-Council, etc. to appear and be heard (O.56, r.12)**

- 12. In proceedings for the determination of a case stated, or of a question of law referred by case stated, the Governor-in-Council, the Registrar of Lands, chairman or president of the tribunal, arbitrator or other person by whom the case was stated shall be entitled to appear and be heard.

**No Rules (O.56, rr.12A-13)**



**ORDERS 57-61**

**NO ORDERS**



**ORDER 62****COSTS****PART I: PRELIMINARY****Application (O.62, r.1)**

1. (1) This Order shall have effect, with such modifications as may be necessary, where by virtue of any Law the costs of any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Law not being proceedings in the Court, are taxable in the Court.
- (2) The powers and discretion of the Court under Section 24 of the Judicature Law (2002 Revision) (which relates to the costs of proceedings in the Court) shall be exercised subject to and in accordance with this Order.

**Transitional provisions (O.62, r.2)**

2. (1) This Order shall come into operation on the first day of January, 2002, referred to in this Order as the "Commencement Date".
- (2) This Order shall apply to -
  - (a) every proceeding commenced on or after the Commencement Date;
  - (b) every step taken or costs incurred after the Commencement Date in any proceeding pending on that date.
- (3) The parties' rights and liabilities under an order for costs made prior to the Commencement Date shall be determined in accordance with the Grand Court (Taxation of Costs) Rules 1995.
- (4) Where an order for costs made after the Commencement Date relates in part to steps taken prior to the Commencement Date, the parties' rights and liabilities shall be determined in accordance with the Grand Court (Taxation of Costs) Rules 1995 insofar as it relates to steps taken prior to the Commencement Date and in accordance with this Order insofar as it relates to steps taken after the Commencement Date.
- (5) Parts V and VI of this Order shall apply to -
  - (a) every taxation commenced on or after the Commencement Date;

- (b) every taxation pending on the Commencement Date, provided that nothing contained in this Order shall invalidate any step taken prior to the Commencement Date in respect of a pending taxation;
- (6) Part VII of this Order shall apply in respect of –
- (a) every decision of the taxing officer made on or after the Commencement Date; and
  - (b) every appeal against a decision of the taxing officer pending on the Commencement Date.
- (7) No appeal to a Judge (pursuant to the practice existing prior to the Commencement Date) and no application for review by a Judge (pursuant to Part VII of this Order) shall be entertained in respect of any decision of the taxing officer made prior to the Commencement Date unless such appeal or application was commenced within 14 days after the relevant decision was made.

### **Definitions (O.62, r.3)**

3. (1) In this Order, unless the context otherwise requires –

"assessed costs" means costs assessed by a Judge in accordance with rule 8 or by a taxing officer in accordance with rule 26(2);

"assisted person" means a person to whom a legal aid Certificate has been granted pursuant to the Legal Aid Law (1999 Revision) in respect of the relevant proceedings;

"Commencement Date" means 1<sup>st</sup> January 2002;

"Court" includes the Court of Appeal;

"foreign lawyer" means a person who is engaged in practice as a professional lawyer in any country outside the Islands;

"the Guidelines" means the guidelines made from time to time by the Rules Committee pursuant to rule 16;

"party", in relation to a cause or matter, includes a party who is treated as being a party to that cause or matter by virtue of Order 4, rule 3(2) and an appellant or respondent to any appeal;

"paying party" includes, in the case of taxation of costs payable out of a fund, any person to whom the Court has directed that notice of the appointment for taxation be given;



"person under disability" has the same meaning as in Order 80, rule 1;

"proceedings" includes any cause or matter or any step in any cause or matter and any appeal and any step in any appeal;

"successful party" means a party in whose favour an order for costs is made or who is otherwise entitled to receive costs from another party or out of a fund.

"the standard basis" and "the indemnity basis" have the meanings assigned to them by rules 13(1) and (3), respectively;

"taxed costs" means costs taxed in accordance with this Order;

"taxing officer" means any person appointed as a taxing officer by the Chief Justice and includes every Judge who shall be ex officio taxing officers.

- (2) References to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to -
- (a) any estate or property, whether real or personal, held for the benefit of any person or class of persons; and
  - (b) the assets of a company or partnership which is the subject of a winding up proceeding,

and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

- (3) References to costs shall be construed as including references to fees, charges, disbursements, expenses and remuneration in relation to proceedings (including taxation proceedings) and shall include references to costs of or incidental to those proceedings.
- (4) References to \$ means Cayman Islands dollars but shall be interpreted to include the United States dollar equivalent.
- (5) Bills of costs may be drawn up either in Cayman Islands dollars or United States dollars.

## **PART II: ENTITLEMENT TO COSTS**

### **General principles (O.62, r.4)**

4. (1) This rule shall have effect unless otherwise provided by any Law.

- (2) The overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court.
- (3) A person who claims to be entitled pursuant to a contract to recover the legal fees and expenses incurred in enforcing that contract shall be entitled to judgment for the amount found due under the contract and such amount shall not be subject to taxation pursuant to this Order.
- (4) Except as provided in paragraph (3), no party to any proceedings shall be entitled to recover any of the costs of those proceedings from any other party to those proceedings except under an order of the Court.
- (5) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.
- (6) The amount of the costs which a successful party shall be entitled to recover from any other party is -
  - (a) the fixed costs prescribed in rule 7;
  - (b) the amount assessed by the Judge in accordance with rule 8;
  - (c) the amount allowed after taxation on the standard basis; or
  - (d) the amount allowed after taxation on the indemnity basis.
- (7) The orders which the court may make under this rule include an order that a party must pay -
  - (a) a proportion of another party's costs;
  - (b) a stated amount in respect of another party's costs;
  - (c) costs from or until a certain date only;
  - (d) costs incurred before proceedings have begun;
  - (e) costs relating to particular steps taken in the proceedings;
  - (f) costs relating only to a distinct part of the proceedings; and
  - (g) interest on costs (at the prescribed rate for Cayman Islands dollars) from or until a certain date, including a date before judgment.

- (8) No order for costs shall be made against an assisted person.
- (9) A term mentioned in the first column of the table below, when used in an order for costs, shall have the effect indicated in the second column of the table.

<b>Term</b>	<b>Effect</b>
<i>Costs or Costs in any event</i>	The party in whose favour the order is made is entitled to the costs in respect of the part of the proceedings to which the order relates whatever other costs orders are made in the proceedings.
<i>Costs reserved</i>	The issue of costs will be determined on a subsequent application.
<i>Costs here and below</i>	<p>The party in whose favour the costs order is made shall be entitled not only to his costs in respect of the proceedings in which it is made but also to his costs of the same proceedings in any lower court,</p> <p>save that where such an order is made by the Court of Appeal on an appeal from the Grand Court the party shall not be entitled by virtue of that order to any costs which he has incurred in any court below the Grand Court.</p>
<i>Costs in the cause or</i>	
<i>Costs in the application</i>	The party in whose favour the Court makes an order for costs at the end of the proceedings is entitled to his costs of the part of the proceedings to which the order relates.
<i>Plaintiff's costs in the cause or</i>	
<i>Defendant's costs in the cause</i>	If the party in whose favour the costs order is made is awarded costs at the end of the proceedings, that party is entitled to his costs of the part of the proceedings to which the order relates. If any other party is awarded costs at the end of the proceedings, the party in whose favour the final costs order is made is not liable to pay the costs of any other party in respect of the part of the proceedings to which the order relates.
<i>Costs thrown away</i>	Where proceedings or any part of them have been ineffective or have been subsequently set aside, the party in whose favour this order is made shall be entitled to his

costs of those proceedings or that part of the proceedings in respect of which it is made.

*No order for costs*

Each party is to bear his own costs of the part of the proceedings to which the order relates whatever costs order the Court makes at the end of the proceedings.

- (10) When used in an order of the Court, the expressions *Costs*, *Order for costs* and *Costs to be taxed if not agreed* shall mean costs to be taxed on the standard basis.
- (11) The Court may make an inter partes order for costs to be taxed on the indemnity basis only if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently.

**Cases where order for costs deemed to have been made (O.62, r.5)**

- 5. (1) In each of the circumstances mentioned in this rule an order for costs shall be deemed to have been made to the effect respectively described in the following paragraphs of this rule.
- (2) Where a party by notice in writing and without leave discontinues an action or counterclaim or withdraws any particular claim made by him as against any other party (except for the purpose of obtaining a default judgment), that other party shall be entitled to his costs of the action or counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.
- (3) Where a plaintiff by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into Court in satisfaction of the cause of action or of all the causes of action in respect of which he claims, or accepts money paid in satisfaction of one or more specified causes of action and gives notice that he abandons the others, he shall be entitled to his costs of the action incurred up to the time of giving notice of acceptance.
- (4) Where in an action for libel or slander against several defendants sued jointly a plaintiff, by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into Court by one of the defendants he shall be entitled to his costs of the action against that defendant incurred up to the time of giving notice of acceptance.
- (5) A defendant who has counterclaimed shall be entitled to the costs of the counterclaim if -

(a) he pays money into Court and his notice of payment in states that he has taken into account and satisfied the causes of action in respect of which he counterclaims; and

(b) the plaintiff accepts the money paid in,

but the costs of such counterclaim shall be limited to those incurred up to the time when the defendant receives notice of acceptance by the plaintiff of the money paid into court.

**Cases where costs do not follow the event (O.62, r.6)**

6. (1) The provisions of this rule shall apply in the circumstances mentioned in this rule unless the Court orders otherwise.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative, mortgagee, chargee or official liquidator he shall be entitled to the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the fund and the Court may order otherwise only on the ground that he has acted unreasonably or, in the case of a trustee, personal representative or official liquidator has in substance acted for his own benefit rather than for the benefit of the fund or the creditors as the case may be.

(3) Where any person claiming to be a creditor -

(a) seeks to establish any claim to a debt under any judgment or order in accordance with Order 44, or

(b) comes in to prove his title, debt or claim in relation to a company in pursuance of any such procedure as is mentioned in Order 102, rule 13,

he shall, if his claim succeeds, be entitled to his costs incurred in establishing it: and, if his claim or any part of it fails, he may be ordered to pay the costs of any person incurred in opposing it.

(4) Where a claimant (other than a person claiming to be creditor) has established a claim to be entitled under a judgment or order in accordance with Order 44 and has been served with notice of the judgment or order pursuant to rule 2 of that Order, he shall, if he acknowledges service of that notice, be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

(5) The costs of any amendment made without leave in the writ or any pleadings shall be borne by the party making the amendment.

- (6) The costs of any application to extend the time fixed by these rules or by any direction or order thereunder shall be borne by the party making the application.
- (7) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 14 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts and the costs occasioned by and thrown away as a result of his failure to admit the facts shall be borne by him.
- (8) If a party -
  - (a) on whom a list of documents is served under Order 24, or
  - (b) on whom a notice to admit documents is served under Order 27, rule 5, gives notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2), as the case may be, the costs of proving that document and the costs occasioned by and thrown away as a result of his non-admission shall be borne by him.

**Claim for fixed costs (O.62, r.7)**

- 7. (1) Where a writ is indorsed with a claim for a liquidated sum only, it may include a claim for fixed costs on the following scale -
  - (a) the sum of \$50 where the principal sum claimed does not exceed \$2,000;
  - (b) the sum of \$250 where the principal sum claimed exceeds \$2,000 but does not exceed \$10,000;
  - (c) the sum of \$500 where the principal sum claimed exceeds \$10,000,
 plus in each case the prescribed fee paid upon issue of the writ.
- (2) Where a writ is indorsed with a claim of the kind mentioned in Order 13, rules 2, 3 or 4 and Order 19, rule 3, 4 or 5, it may include a claim for fixed costs in the sum of \$250.
- (3) Nothing in this rule shall preclude a plaintiff from waiving his right to claim fixed costs and instead claiming costs to be assessed or taxed.

**Assessment of Costs (O.62, r.8)**

- 8. (1) The amount of costs which a successful party is entitled to recover against another party shall be assessed if the order is made in respect of -
  - (a) an appeal from the Summary Court; or

- (b) an action in which the Writ is indorsed only with a claim for a liquidated sum not exceeding \$25,000 (or where other relief claimed is abandoned).
- (2) Except in a case to which paragraph (1) applies, whenever the Court makes an order for costs, the party entitled to the benefit of the order shall be entitled, at his option -
  - (a) to an order that such costs shall be taxed if not agreed; or
  - (b) to have the amount of such costs assessed by the Judge.
- (3) Subject to paragraph (4), where the Court is required to assess costs the Judge shall make his own summary assessment of the amount of legal fees and disbursements which he considers that a reasonable litigant is likely to have incurred and award that amount.
- (4) The amount of costs payable by any party pursuant to an order for costs to be assessed shall not exceed -
  - (a) \$1,000 where the order relates to the costs of an interlocutory application; or
  - (b) \$10,000 where the order relates to the costs of an entire proceeding, together with the court fees which have been paid by the successful party.

**Stage of proceedings at which costs to be taxed (O.62, r.9)**

- 9. (1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.
- (2) If it appears to the Court when making an order for costs that all or any part of the costs ought to be taxed at an earlier stage it may order accordingly.
- (3) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal, may be dealt with by the Court hearing the appeal.
- (4) Where it appears to the Court on application that there is no likelihood of any further order being made in a cause or matter, it may forthwith order the costs of any interlocutory proceedings which have taken place to be taxed.

**Matters to be taken into account in exercising discretion (O.62, r.10)**

- 10. The Court in exercising its discretion to make an order for costs shall take into account-
  - (a) any offer of contribution brought to its attention in accordance with Order 16, rule 10;

- (b) any payment of money into court and the amount of such payment;
- (c) any written offer made under Order 33, rule 4A(2); and
- (d) any written offer made under Order 22, rule 14.

### **PART III: WASTED COSTS ORDERS**

#### **Personal liability of attorney for costs (O.62, r.11)**

- 11.** (1) In Part III of this Order the expression "attorney" shall include a "foreign lawyer".
- (2) Where it appears to the Court in any proceedings that anything has been done or that any omission has been made improperly, unreasonably or negligently by or on behalf of any party, the Court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him to that other party.
- (3) Subject to the following provisions of this rule, where it appears to the Court that costs have been incurred improperly, unreasonably or negligently in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, the Court may order -
- (a) the attorney whom it considers to be responsible (whether personally or through an employee or agent) to repay to his client costs which the client has been ordered to pay to any other party to the proceedings; or
  - (b) the attorney personally to indemnify such other parties against costs payable by them.
- (4) The amount payable under a wasted costs order made under paragraph 3(b) of this rule shall be taxed on the indemnity basis.

#### **Application for wasted costs orders (O. 62, r.12)**

- 12.** (1) A wasted costs order may be made by the Court of its own motion if the attorney's liability is plain and obvious and can fairly be determined without the need for extensive evidence or any extensive investigation of the circumstances giving rise to that liability.
- (2) Subject to paragraph (3), before an order may be made under paragraph (1) of this rule the Court shall give the attorney a reasonable opportunity to appear and show cause why an order should not be made.



- (3) The Court shall not be obliged to give the attorney a reasonable opportunity to appear and show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the attorney -
  - (a) fails to attend in person or by a proper representative;
  - (b) fails to deliver any document for the use of the Court, which ought to have been delivered or to be prepared with any proper evidence or account, or
  - (c) otherwise fails to proceed.
- (4) In any other case, an application for a wasted costs order shall be made by summons setting out the grounds of the application which shall be supported by an affidavit containing full particulars of all the facts and matters relied upon by the applicant.
- (5) A copy of a summons issued under this rule and the supporting affidavit must be served -
  - (a) on the attorney personally; or
  - (b) in the case of an application against Crown Counsel or any other attorney acting on behalf of the Attorney General, on the Attorney General.
- (6) The Court may direct that notice of any proceedings or order against an attorney under this rule be given to his client in such manner as may be specified in the direction.
- (7) The Court shall direct that notice of any proceedings or order under this rule against Crown Counsel shall be given to the Attorney General.

#### **PART IV: TAXATION OF COSTS**

##### **Basis of taxation (O.62, r.13)**

13. (1) On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these rules the term "the standard basis" in relation to the taxation of costs shall be construed accordingly.
- (2) Where the amount of costs is to be taxed on the standard basis, the taxing officer will only allow costs which are not only reasonable but are also proportionate to the matters in issue having regard to -

- (a) the amount of money involved;
  - (b) the importance of the case; and
  - (c) the complexity of the issues.
- (3) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term "the indemnity basis" in relation to the taxation of costs shall be construed accordingly.
- (4) Where the Court makes an order for costs without indicating the basis of taxation or an order that costs be taxed on a basis other than the standard basis or the indemnity basis, the costs shall be taxed on the standard basis.

**Costs payable to a trustee, personal representative or official liquidator out of any fund (O.62, r.14)**

- 14.** (1) Unless the Court otherwise orders, every taxation of a trustee's, personal representative's or official liquidator's costs where -
- (a) he is or has been a party to any proceedings in that capacity; and
  - (b) he is entitled to be paid his costs out of any fund, shall be on the indemnity basis.
- (2) On a taxation to which this rule applies, costs shall be taxed on the indemnity basis but shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the trustee or personal representative or official liquidator as such.

**Costs payable to an attorney where money claimed by or on behalf of a person under disability (O.62, r.15)**

- 15.** (1) This rule applies to any proceedings in which -
- (a) money is claimed or recovered by or on behalf of, or adjudged, or ordered, or agreed to be paid to, or for the benefit of, a person under disability, or
  - (b) money paid into court is accepted by or on behalf of a person under disability.

- (2) The costs of proceedings to which this rule applies which are payable by any plaintiff to his attorney shall, unless the Court otherwise orders, be taxed on the indemnity basis but shall be presumed -
- (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client, and
  - (b) to have been reasonable in amount if their amount was expressly or impliedly approved by the client, and
  - (c) to have been unreasonably incurred if in the circumstances of the case they are of an unusual nature unless the attorney satisfies the taxing officer that prior to their being incurred he informed his client that they might not be allowed on a taxation of costs *inter partes*;

and for purposes of this rule "plaintiff" shall include any person acting on behalf of such person under disability.

- (3) On a taxation under paragraph (2), the taxing officer shall also tax any costs payable to that client in those proceedings and shall certify -
- (a) the amount allowed on the taxation of the attorney's bill to his own client, and
  - (b) the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings, and
  - (c) the amount (if any) by which the amount mentioned in sub-paragraph (a) exceeds the amount mentioned in sub-paragraph (b), and
  - (d) where necessary, the proportion of the amount of such excess payable by, or out of money belonging to, respectively any claimant who is a person under disability or patient and any other party.
- (4) Nothing in the foregoing provisions of this rule shall prejudice any attorney's lien for costs.
- (5) The foregoing provisions of this rule shall apply in relation to -
- (a) a counterclaim by or on behalf of a person who is a person under disability; and
  - (b) a claim made by or on behalf of a person who is a person under disability in an action by any other person for relief under section 504 of the Merchant Shipping Act 1894,

as if for references to a plaintiff there were substituted references to a defendant.

**Amount of costs (O.62, r.16)**

16. (1) The amount of costs to be allowed on taxation shall (subject to rule 17 and to any order of the Court fixing the costs to be allowed) be in the discretion of the taxing officer.
- (2) In exercising his discretion the taxing officer shall have regard the Guidelines issued by the Rules Committee pursuant to paragraph (3), to all the relevant circumstances, and in particular to -
- (a) the circumstances of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
  - (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the attorney;
  - (c) the number and importance of the relevant documents (however brief), properly prepared or perused;
  - (d) where money or property is involved, its amount or value;
- (3) The Rules Committee may issue guidelines relating to -
- (a) the procedure in respect of taxation;
  - (b) the form and content of bills of costs; and
  - (c) the nature and amount of fees, charges, disbursements, expenses or remuneration which may be allowed on taxation;

**Allowance or disallowance of items and allowance of increased sums (O.62, r.17)**

17. (1) Where the costs of any action or matter are to be taxed the Court may, if it thinks fit, direct that any item of work shall be allowed, disallowed, restricted or qualified on taxation.
- (2) An application for a direction under paragraph (1) may be made at the trial or hearing of the proceeding or on notice to be served on the party by whom the costs are payable within 14 days after the making of the order for their payment, provided that where an application which could have been made at the trial or hearing is made subsequent thereto, the Court may refuse the application on the ground that it ought to have been made at the trial or hearing.

**Foreign lawyers (O.62, r.18)**

18. (1) Work done by foreign lawyers may be recovered on taxation under these rules on the standard basis provided that -

- (a) the foreign lawyer has been temporarily admitted as an attorney; and
  - (b) the work was done after he was admitted.
- (2) Work done by foreign lawyers who are temporarily admitted must be fully itemised in the bill of costs and may not be treated as a disbursement.
  - (3) Whenever a claim is made for work done by foreign lawyers, the taxing officer will investigate whether it has resulted in a duplication or increase in the cost of the proceedings and any such increase shall be disallowed.
  - (4) Work done by local attorneys for the purpose of instructing foreign lawyers and vice versa shall be disallowed.
  - (5) The taxing officer shall disallow any item which appears to have been incurred, or the costs of which appears to have been increased, because the successful party has engaged both local attorneys and foreign attorneys.
  - (6) Time spent and disbursements incurred in respect of written and oral communication between foreign lawyers and local attorneys will be disallowed.
  - (7) The overriding principle is that a paying party should not be required to pay more because the successful party has engaged a foreign lawyer than he would have been required to pay if the successful party had employed only local attorneys.

**Litigants in person (O.62, r.19)**

- 19.**
- (1) The costs of a litigant in person to be taxed on the standard basis shall be taxed subject to the provisions of this rule.
  - (2) Where it appears to the taxing officer that the litigant in person has suffered pecuniary loss in doing any item of work to which the costs relate, there may be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by an attorney on the litigant's behalf together with any payments reasonably made by him for legal advice relating to the conduct of or the issues raised by the proceedings, provided that the amount allowed in respect of any such item of work shall be such sum as the taxing officer thinks fit but not exceeding, except in the case of a disbursement or expense, two-thirds of the sum which would have been allowed in respect of that item of work if an attorney had been employed or the actual amount of pecuniary loss suffered, whichever is the less.
  - (3) Where it appears to the taxing officer that the litigant has not suffered any pecuniary loss in doing any item of work to which the costs relate, he shall be allowed in respect of the time reasonably spent by him on that item an amount not exceeding \$15 per hour.

- (4) A litigant who is allowed costs in respect of a pre-trial examination or of attending court to conduct his case shall not be entitled to a witness payment or allowance in addition.
- (5) For the purposes of this rule a litigant in person includes a litigant who is a practising attorney.
- (6) For the purposes of this rule, a company acting without an attorney is to be treated as a litigant in person.

## **PART V: POWERS OF TAXING OFFICERS**

### **Powers of taxing officers (O.62, r.20)**

- 20.** A taxing officer shall have power to tax -
- (a) the costs of or arising out of any proceedings to which this Order applies,
  - (b) the costs ordered by an award made on a reference to arbitration under any Law or payable pursuant to an arbitration agreement, and
  - (c) any other costs the taxation of which is ordered by the Court.

### **Extensions of time (O.62, r.21)**

- 21.** (1) The Court or the taxing officer may extend the period within which a party is required by or under this Order to commence proceedings for taxation or within which a party is required to do anything in or in connection with such proceedings on such terms (if any) as it thinks just and the Court or the taxing officer may do so although the application for such extension is not made until after the expiration of that period.
- (2) Where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with proceedings for taxation a taxing officer may specify the period within which the thing is to be done.

### **Costs Certificates (O.62, r.22)**

- 22.** (1) The taxing officer -
- (a) shall, at the conclusion of taxation proceedings before him, issue a certificate in Form 305 for the net amount of the costs allowed by him (after making such set-offs as may be required) ;

- (b) may from time to time in the course of the taxation issue an interim certificate in Form 308 for any part of the costs which have been taxed or agreed;
  - (c) may correct any clerical mistake in any certificate issued by him or any error arising therein from any accidental slip or omission.
- (2) If the successful party and paying party agree the amount of costs, either party may apply to the taxing officer for a costs certificate (either interim or final) for the amount agreed.
- (3) The successful party may apply to the taxing officer for the issue of a default costs certificate in Form 309 if the paying party fails to comply with any time limit prescribed by the rules or the Guidelines or fixed by the taxing officer.
- (4) A default costs certificate -
- (a) must be set aside by the taxing officer if it appears to him that the successful party was not entitled to it; and
  - (b) in any other case, may be set aside by the taxing officer if it appears to him that there is some good reason why he should conduct a taxation.
- (5) A paying party who seeks to set aside a default costs certificate shall within 14 days of service of the default costs certificate -
- (a) lodge an application in Form 313;
  - (b) lodge the bill of costs signed and completed in accordance with rule 27(3);
  - (c) lodge an affidavit explaining the reasons for his default; and
  - (d) pay into Court the whole amount specified in the certificate.
- (6) A costs certificate shall be enforceable as if it were a judgment or order of the Court.

**Power of taxing officer to effect set offs (O.62, r.23)**

- 23.** (1) Where a party entitled to be paid costs is also liable to pay costs, the taxing officer shall -
- (a) tax the costs which the party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and certify payment of any balance; or

- (b) delay the issue of a certificate for the costs the party is entitled to be paid, until he has paid or tendered the amount he is liable to pay.

**Taxation of bill of costs comprised in an account (O.62, r.24)**

- 24.** (1) Where the Court orders an account to be taken and the account consists in part of costs, the Court may direct a taxing officer to tax those costs and the taxing officer shall after taxation of the bill of costs return it, together with his report on it, to the Court.
- (2) A taxing officer taxing a bill of costs in accordance with a direction under paragraph (1) shall have the same powers, and the same fee shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

**Powers of taxing officers on taxation of costs out of a fund (O.62, r.25)**

- 25.** (1) Where any costs are to be paid out of a fund the Court may give directions as to the parties who are entitled to receive notice of the taxation of those costs.
- (2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund it may direct the party whose bill is to be taxed to send to any person entitled to notice of the taxation a copy of the bill, or of any part thereof, free of charge, together with the following information, that is to say -
- (a) that the bill of costs, a copy of which or of part of which is sent has been referred to a taxing officer for taxation;
  - (b) the time appointed by the taxing officer at which an oral hearing will take place or be continued; and
  - (c) such other information, if any, as the Court may direct.

**Powers of taxing officers in relation to costs of taxation proceedings (O.62, r.26)**

- 26.** (1) Subject to the provisions of this Order, the party whose bill is being taxed shall be entitled to his costs of the taxation proceedings which shall be assessed by the taxing officer.
- (2) Subject to paragraph (3) the taxing officer shall make his own assessment of the costs which he considers that a reasonable litigant is likely to have incurred in preparing his bill of costs and attending the taxation and award that amount.
- (3) The amount of costs payable by any party pursuant to an order made by a taxing officer under this rule shall not exceed -
- (a) \$2,500 in the case of taxations conducted by a Judge;



- (b) \$1,000 in all other cases.
- (4) Where an order is made in favour of the paying party, the amount shall be deducted from the costs ordered to be paid by him and a certificate issued for the balance.
- (5) The party liable to pay the costs of the proceedings which gave rise to the taxation proceedings may make a written offer to pay a specified sum in satisfaction of those costs which is expressed to be "without prejudice save as to the costs of taxation" at any time before the expiration of 14 days after the delivery to him of a copy of the bill of costs under rule 31(3) and, where such an offer is made, the fact that it has been made shall not be communicated to the taxing officer until question of the costs of the taxation proceedings falls to be decided.
- (6) The taxing officer may take into account any offer made under paragraph (4) which has been brought to his attention.

## **PART VI: PROCEDURE ON TAXATION**

### **Service of a bill of costs (O.62, r.27)**

- 27. (1) The successful party shall prepare a bill of costs in Form 314 and serve it on the paying party.
- (2) Where more than one party is liable jointly or severally to pay the whole or part of the costs, a copy of the bill of costs shall be served on every party.
- (3) The paying party shall state the extent to which he agrees with and accepts liability to pay the amounts claimed in the bill of costs by completing column 4 and returning the completed bill of costs to the successful party within 21 days or such longer period as may be agreed.
- (4) In addition to completing column 4, the paying party may also serve a written statement of objections.

### **Commencement of taxation proceedings (O.62, r.28)**

- 28. (1) Proceedings for the taxation of costs shall be commenced by lodging the following documents with the taxing officer -
  - (a) an application for taxation in such of Forms 301 to 304 as may be appropriate;

- (b) a bill of costs completed and signed by each of the paying parties in accordance with rule 27(3);
  - (c) any statement of objections received from the paying party;
  - (d) any reply to the Statement of Objections relied upon by the successful party;
  - (e) where a party is entitled to require taxation of any costs directed to be paid by any award made on an arbitration under any Law or pursuant to any arbitration agreement and no order of the Court for enforcement of the award has been made, a true copy of the award; and
  - (f) where a party is entitled to require taxation of any costs directed to be paid by any order, award or other determination of any tribunal or other body constituted by or under any Law or Regulation, a true copy of the order, award or determination, as the case may be.
- (2) Where a party is entitled to recover taxed costs or to require any costs to be taxed by virtue of -
- (a) a judgment, direction or order given or made in proceedings in the Court; or
  - (b) rule 5; or
  - (c) an award made on an arbitration under any Law or pursuant to an arbitration agreement; or
  - (d) an order, award or other determination of a tribunal or other body constituted by or under any Law,

he must commence proceedings for the taxation of those costs either within 3 months after the judgment, direction, or order was filed or the award or other determination was signed or otherwise perfected or, within 3 months after his right to taxation arose in accordance with rule 9, whichever is the later.

- (3) The taxing officer may summarily dismiss any application for taxation which is made out of time.

### **Subsequent procedure (0.62, r.29)**

- 29.** (1) A taxation shall be inquisitorial in nature.
- (2) The taxing officer shall enquire into the bill of costs and determine the amount to be paid in accordance with this Order and the Guidelines for which purpose the taxing officer shall obtain such written explanations from the successful

party and/or such written submissions on behalf of the paying party as may be appropriate to enable him to make such determination fairly.

- (3) If the taxing officer considers that he cannot properly tax a bill of costs or complete his taxation of a bill of costs without hearing an oral submission from the successful party and/or the paying party, he shall fix a hearing date and send a notice of appointment to
  - (a) the successful party; and
  - (b) every paying party who has completed column 4 and signed the bill of costs;
- (4) The taxing officer may require the successful party to produce the following documents -
  - (a) the engagement letters or other documents which evidence the terms upon which he engaged his attorneys and foreign lawyers;
  - (b) the invoices (and detailed versions of the invoices) rendered on him by his attorneys and foreign lawyers;
  - (c) an index and/or bundle of the pleadings, affidavits and orders relating to the proceeding before the Court;
  - (d) the invoice, account or other document evidencing the payment of any disbursement;
  - (e) time records relating to legal fees;
  - (f) instructions, briefs, opinions or reports;
  - (g) the whole or any part of the correspondence files of his attorneys and foreign lawyers;
  - (h) any other documents which he considers relevant for the purpose of justifying the amounts claimed in the bill of costs.
- (5) The taxing officer may require that any document produced by the successful party is made available for inspection by the paying party, provided that the document in question is not privileged.
- (6) The taxing officer shall not give reasons for any of his decisions.
- (7) The taxing officer shall send an office copy of his costs certificate to each of the successful and paying parties.

**PART VII: REVIEW OF TAXATION AND APPEAL ON POINTS OF CONSTRUCTION****Review by the Judge (O.62, r.30)**

30. (1) Any party who is dissatisfied with the amount of any costs certificate may apply to a Judge to review the taxing officer's decision.
- (2) In the event that the taxation was conducted by a Judge in his capacity as an ex officio taxing officer, the review shall be conducted by a different Judge.
- (3) An application under this rule for review of the taxing officer's decision must be made within 14 days after the decision to be reviewed or within such other period as may be fixed by the taxing officer.
- (4) Every applicant for review under this rule must at the time of making his application -
- (a) deliver to the Judge his objections in writing specifying what is objected to and stating concisely the nature and grounds of the objection in each case;
  - (b) deliver a copy of the objections to all parties affected by the application;
  - (c) if the applicant is the paying party, pay the amount as taxed into court; and
  - (d) serve notice of payment into court on every party referred to in subparagraph (b) above.
- (5) Any party to whom a copy of the objections is delivered under this rule may, within 14 days after delivery of the copy to him or such other period as may be fixed by the Judge, deliver to the Judge answers in writing to the objections stating concisely the grounds on which he will oppose the objections and must at the same time deliver a copy of the answers to the party applying for review and to any other party who was entitled to receive notice under paragraph (4).
- (6) A review under this rule shall be inquisitional in nature and the Judge may receive further evidence and may exercise all the powers which he might have exercised on an original taxation, including the power to award costs of the proceedings before him.
- (7) In the event that the Judge considers that he cannot properly review the taxing officer's decision without hearing oral submissions, he shall fix a hearing date and any party to whom a copy of the objections was delivered under paragraph (4) shall be entitled to be heard in respect of all or any of the objections notwithstanding that he did not deliver written answers to the objections under paragraph (5).

**Appeal to the Court of Appeal on points of construction (O.62, r.31)**

- 31.** (1) A party to any taxation proceeding who is dissatisfied with any decision of a Judge (whether or not such decision has been reviewed in accordance with rule 30) may apply to the Judge for leave to appeal to the Court of Appeal which shall be granted only if the Judge is satisfied that the proposed appeal involves a point of construction of general importance.
- (2) There shall be no other right of appeal to the Court of Appeal in respect of a decision made by a Judge, whether acting as an ex officio taxing officer or conducting a review under rule 30.



**ORDER 63****OFFICE OF THE GRAND COURT****Distribution of business in the Court (O.63, r.1)**

1. The office of the Court shall be divided into such departments and the business performed in the office of the Court shall be distributed amongst the departments in such manner as the Chief Justice may direct.

**Court files (O.63, r.2)**

2.
  - (1) The Clerk of the Court shall create a Court file in respect of every proceeding immediately prior to issuing the writ, originating summons, originating motion or petition by which such proceeding is commenced.
  - (2) The Court file shall be identified by the cause number and, subject to paragraph (3), the full title of the proceeding to which it relates.
  - (3) If the full title of the proceeding is too long to be typed or printed on one sheet of 11" x 8-1/2" paper, the Court file shall be given an abbreviated title.
  - (4) If the Court file comprises more than one volume, each volume shall be identified by the cause number, the full or abbreviated title of the proceeding, as appropriate, the volume number in a chronological sequence and the period of time to which the volume relates.

**Filing of documents (O.63, r.3)**

3.
  - (1) Every document required to be filed in any proceeding must be placed on the Court file relating to such proceeding and sealed with a seal showing the date upon which the document was filed.
  - (2) Any document requiring to be filed which is more than 50 pages shall be placed in a ring binder or otherwise suitably bound and be kept with and deemed to form part of the Court file.
  - (3) Subject to paragraphs (4) and (5), the Court file relating to any proceeding shall be open to inspection only by the parties to that proceeding.
  - (4) The Court may order that the Court file relating to any proceeding or any specific document therein be closed and not open to inspection by any party or other person except with the prior leave of the Court.
  - (5) The Court may give leave in special circumstances on application to any person not a party to the proceedings to inspect the Court file or to take a copy of any document on the Court file relating to those proceedings.

- (6) This rule shall have no application to Court files in respect of proceedings relating to –
- (a) the estate of any deceased person;
  - (b) the winding up of any company; or
  - (c) the bankruptcy of any person,

which shall be open to inspection in accordance with the Succession Law (1995 Revision); the applicable winding up rules; and The Grand Court (Bankruptcy) Rules 1977, respectively.

**Restriction on removal of documents (O.63, r.4)**

4. (1) No document shall be removed from a Court file except -
- (a) by order of the Court; or
  - (b) by the Clerk of the Court in the event that it has been mistakenly placed on the wrong Court file.
- (2) A document may be temporarily removed from the Court file by or with the permission of the Clerk of the Court for the purpose of photocopying it.
- (3) When a Court file is contained in more than one volume, the volumes shall not be separated unless they are so numerous or so large that it is inconvenient for the Judge using such file to have before him the whole of it.

**Identity of party filing documents (O.63, r.5)**

5. Every document filed in or process issued out of the Court office shall contain a statement (at the foot of the last page) of the name and address of the party or his attorney responsible for filing or issuing it, as the case may be.

**Deposit of documents (O.63, r.6)**

6. (1) Where the Court orders any documents to be deposited in Court they must, unless otherwise directed, be deposited with the Clerk of the Court.
- (2) No document deposited in accordance with paragraph (1) shall be taken out of the Court office without the leave of the Court.

**Register of judgments (O.63, r.7)**

7. (1) The Clerk of the Court shall create a file upon which shall be placed an office copy of every final judgment given or made by the Court of the kind referred to in



Order 42, rule 5(8), unless otherwise directed by the Court, which shall be referred to as "the Register of Judgments".

- (2) The Register of Judgments shall be open to public inspection upon payment of the prescribed fee.
- (3) Any person shall be entitled, upon payment of the prescribed fee, to obtain from the Clerk of the Court a certified copy of any judgment or order contained in the Register of Judgments.

**Register of writs and other originating process (O.63, r.8)**

8. (1) The Clerk of the Court shall create a file containing, in chronological order, an office copy of every writ, originating summons, originating motion or petition issued by the Court, which shall be referred to as "the Register of Writs and other Originating Process".
- (2) The Register of Writs and other Originating Process shall be open to public inspection upon payment of the prescribed fee.
- (3) Any person shall be entitled, upon payment of the prescribed fee, to obtain from the Clerk of the Court a certified copy of any writ, originating summons, originating motion or petition contained in the Register of Writs and other Originating Process.

**Office hours (O.63, r.9)**

9. The office of the Court shall be open on every day of the year except -
  - (a) Saturdays and Sundays; and
  - (b) public holidays.

The hours during which the office of the Court shall be open to the public shall be such as the Chief Justice may from time to time direct.



**ORDER 64**

**NO ORDER**



**ORDER 65**  
**SERVICE OF DOCUMENTS**

**When personal service required (O.65, r.1)**

1. (1) Any document which by virtue of these Rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these Rules or by order of the Court is required to be so served.
- (2) Paragraph (1) shall not affect the power of the Court under any provision of these Rules to dispense with the requirement for personal service.

**Personal service: how effected (O.65, r.2)**

2. Personal service of a document is effected by leaving a copy of the document with the person to be served.

**Service on body corporate (O.65, r.3)**

3. Personal service of a document on a body corporate other than a company registered under the Companies Law (Revised) may, in cases for which provision is not otherwise made by any enactment, be effected by serving it in accordance with rule 2 on the chairman or president of the body corporate or the secretary, treasurer or other similar officer thereof.

**Substituted service (O.65, r.4)**

4. (1) If, in the case of any document which by virtue of any provision of these Rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order for substituted service of that document.
- (2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.
- (3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

**Ordinary service: how effected (O.65, r.5)**

5. (1) Service of any document, not being a document which by virtue of any provision of these Rules is required to be served personally, may be effected -

- (a) by leaving the document at the proper address of the person to be served;
  - (b) by post;
  - (c) by facsimile, in accordance with paragraph (2); or
  - (d) in such other manner as the Court may direct.
- (2) Service by facsimile may be effected only where -
- (a) the party serving the document acts by an attorney;
  - (b) the party on whom the document is served acts by an attorney and service is effected by transmission to the business address of such an attorney;
  - (c) the attorney acting for the party on whom the document is served has indicated in writing to the attorney serving the document that he is willing to accept service by facsimile at a specified facsimile number and the document is transmitted to that number; and for this purpose the inscription of a facsimile number on the writing paper of an attorney shall be deemed to indicate that such an attorney is willing to accept service in accordance with this paragraph unless he states otherwise in writing; and
  - (d) as soon as practicable after service by facsimile, the attorney acting for the party serving the document despatches a copy of it to the attorney acting for the other party by any of the methods described for service by paragraph (1), and if he fails to do so the document shall be deemed never to have been served by facsimile.
- (3) Where a facsimile is transmitted on a business day before 4 p.m., it shall, unless the contrary is shown, be deemed to be served on that day, and, in any other case, on the business day next following.
- (4) For the purposes of this rule and Section 53 of the Interpretation Law (1995 Revision), in its application to this rule, the proper address of any person on whom a document is to be served in accordance with this rule shall be the address for service of that person, but if at the time when service is effected that person has no address for service his address for the purposes aforesaid shall be -
- (a) in any case, the business address of the attorney (if any) who is acting for him in the proceedings in connection with which service of the document in question is to be effected; or
  - (b) in the case of an individual, his usual or last known address; or

- (c) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction; or
  - (d) in the case of a body corporate, the registered or principal office of the body.
- (5) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any enactment which provides for the manner in which documents may be served on bodies corporate.

**Service on Governor-in-Council, etc., in proceedings which are not by or against the Crown (O.65, r.6)**

6. Where for the purpose of or in connection with any proceedings in the Court, not being civil proceedings by or against the Crown within the meaning of the Crown Proceedings Law, any document is required by any enactment or these Rules to be served on a government department or on the Attorney General, Section 12 of the said Law and Order 77, rule 4, shall apply in relation to the service of the document as they apply in relation to the service of documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown.

**Effect of service after certain hours (O.65, r.7)**

7. Any document (other than a writ or other originating process) service of which is effected under rule 2 or under rule 5(1)(a) between midnight on a Friday and midnight on the following Sunday or after 4 p.m. on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Friday or on the day following that other weekday, as the case may be.

**Affidavit of service (O.65, r.8)**

8. An affidavit of service of any document must state by whom the document was served, the day of the week and date on which and the time when it was served, where it was served and how.

**No service required in certain cases (O.65, r.9)**

9. Where by virtue of these Rules any document is required to be served on any person but is not required to be served personally, and at the time when service is to be effected that person is in default as to acknowledgment of service or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these Rules otherwise provides.

**Service of process on Sunday (O.65, r.10)**

10. (1) No process shall be served or executed within the jurisdiction on a Sunday except, in case of urgency, with the leave of the Court.
- (2) For the purpose of this rule "process" includes a writ, judgment, notice, order, petition, originating or other summons or warrant.



**ORDER 66****PAPER, PRINTING, BINDING AND COPIES****Quality and size of paper (O.66, r.1)**

1. (1) Unless it is impracticable, every document prepared by a party for use in the Court must be on letter sized paper (11" long and 8 1/2" wide) of durable quality, having a margin, not less than 1" wide, to be left blank on the left side of the face of the paper, and on the right side of the reverse.
- (2) When the use of A4 paper is unavoidable, it shall have a margin of at least 1" to be left blank at the top and bottom of each page.

**Regulations as to printing, etc. (O.66, r.2)**

2. (1) Except where these Rules otherwise provide, every document prepared by a party for use in the Court must be produced by one of the following means, that is to say, printing, writing (which must be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by another or others of them.
- (2) For the purpose of these Rules a document shall be deemed to be printed if it is produced by type lithography or stencil duplicating.
- (3) Any type used in producing a document for use as aforesaid must be such as to give a clear and legible impression and must be not smaller than 11 point type for printing or elite type for type lithography, stencil duplicating or typewriting.
- (4) Any document produced by a photographic or similar process giving a positive and permanent representation free from blemishes shall, to the extent that it contains a facsimile of any printed, written or typewritten matter, be treated for the purposes of these Rules as if it were printed, written or typewritten, as the case may be.
- (5) Any notice required by these Rules may not be given orally except with the leave of the Court.

**Copies of documents for other party (O.66, r.3)**

3. Where a document prepared by a party for use in the Court is written or typewritten, the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and where the document in question is an affidavit, of any document exhibited to it. The copy must be ready for delivery within 48 hours after a written request for it, together with an undertaking to pay

the proper charges, is received and must be supplied thereafter on payment of those charges.

**Requirements as to copies (O.66, r.4)**

4. (1) Before a copy of a document is supplied to a party under these Rules, it must be indorsed with the name and address of the party or attorney by whom it was supplied.
- (2) The party by whom a copy is supplied under rule 3, or, if he sues or appears by an attorney, his attorney, shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

**Requirements as to binding (O.66, r.5)**

5. (1) Documents or bundles of documents not exceeding 50 pages in length may be firmly stapled in the top left hand corner and shall be punched with a hole for filing.
- (2) Documents or bundles of documents exceeding 50 pages shall be placed in ring binders or otherwise suitably bound and the cover thereof must bear a frontsheet containing the title of the action and a description or index of the documents contained therein.

**ORDER 67****CHANGE OF ATTORNEY****Notice of change of attorney (O.67, r.1)**

1. (1) A party to any cause or matter who sues or defends by an attorney may change his attorney without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served in accordance with this rule, the former attorney shall, subject to rules 5 and 6, be considered the attorney of the party until the final conclusion of the cause or matter in the Court.
- (2) The party giving the notice must serve on every other party to the cause or matter (not being a party in default as to acknowledgment of service) and on the former attorney a copy of the notice.
- (3) The party giving the notice may perform the duties prescribed by this rule in person or by his new attorney.

**No rule (O.67, r.2)****Notice of appointment of attorney (O.67, r.3)**

3. Where a party, after having sued or defended in person, appoints an attorney to act in the cause or matter on his behalf, the change may be made without an order for that purpose and rule 1 shall, with the necessary modifications, apply in relation to a notice of appointment of an attorney as it applies in relation to a notice of change of attorney.

**Notice of intention to act in person (O.67, r.4)**

4. Where a party, after having sued or defended by an attorney, intends and is entitled to act in person, the change may be made without an order for that purpose and rule 1 shall, with the necessary modifications, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of attorney except that the notice of intention to act in person must contain an address for service of the party giving it.

**Removal of attorney from record at instance of another party (O.67, r.5)**

5. (1) Where -
  - (a) an attorney who has acted for a party in a cause or matter has died or becomes bankrupt or cannot be found or has been struck off the roll of attorneys or has been suspended from practising or has for any other reason ceased to practice; and

- (b) the party has not given notice of change of attorney or notice of intention to act in person in accordance with the foregoing provisions of this Order,

any other party to the cause or matter may apply to the Court for an order declaring that the attorney has ceased to be the attorney acting for the first mentioned party in the cause or matter, and the Court may make an order accordingly.

- (2) An application for an order under this rule must be made by summons and the summons must, unless the Court otherwise directs, be served on the party to whose attorney the application relates.

The application must be supported by an affidavit stating the grounds of the application.

- (3) Where an order is made under this rule the party on whose application it was made must file the order and serve a copy on every other party to the cause or matter (not being a party in default as to acknowledgment of service).
- (4) An order made under this rule shall not affect the rights of the attorney and the party for whom he acted as between themselves.

**Withdrawal of attorney who has ceased to act for party (O.67, r.6)**

6. (1) Where an attorney who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 4, the attorney may apply to the Court for an order declaring that the attorney has ceased to be the attorney acting for the party in the cause or matter, and the Court may make an order accordingly, but unless and until the attorney files and serves a copy of the order on every party to the cause or matter (not being a party in default as to acknowledgment of service) he shall be considered the attorney of the party until the final conclusion of the cause or matter in the Court.

- (2) An application for an order under this rule must be made by summons and the summons must, unless the Court otherwise directs, be served on the party for whom the attorney acted.

The application must be supported by an affidavit stating the grounds of the application.

- (3) An order made under this rule shall not affect the rights of the attorney and the party for whom he acted as between themselves.
- (4) Notwithstanding anything in paragraph (1), where a certificate within the meaning of Section 2 of the Legal Aid Law (1999 Revision) in respect of any matter is

revoked or discharged, the attorney assigned to the person to whom the certificate was granted shall cease to be the attorney acting in the cause or matter; and if the person whose certificate has been revoked or discharged desires to proceed with the cause or matter without legal aid and appoints that attorney or another attorney to act on his behalf, the provisions of rule 3 shall apply as if that party had previously sued or defended in person.

**Address for service of party whose attorney is removed, etc. (O.67, r.7)**

7. Where -

- (a) an order is made under rule 5; or
- (b) an order is made under rule 6, and the applicant for that order has complied with rule 6(1); or
- (c) a certificate within the meaning of Section 2 of the Legal Aid Law (1999 Revision) is revoked or discharged,

then, unless and until the party to whose attorney or to whom, as the case may be, the order or certificate relates either appoints another attorney and complies with rule 3 or, being entitled to act in person, gives notice of his intention so to do and complies with rule 4, his last known address or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

**Copy of notice to be filed (O.67, r.8)**

8. A notice required to be given under rule 1, 3 or 4 shall be filed on the Court file.



**ORDER 68**

**NO ORDER**





**ORDER 69**  
**PROVISIONS AS TO FOREIGN PROCEEDINGS;**  
**SERVICE OF FOREIGN PROCESS**

**Definitions (O.69, r.1)**

**1.** In this Order -

"a convention country" means a foreign country in relation to which there subsists a civil procedure convention providing for service in that country of process of the Court, and includes a country which is a party to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at the Hague on 15th November 1965; and

"process" includes a citation.

**Applications (O.69, r.2)**

**2.** This Order applies to the service on a person in the Islands of any process in connection with civil or commercial proceedings in a foreign court or tribunal where the Clerk of the Court receives a written request for service -

- (a) from the Governor, with a recommendation by him that service should be effected; or
- (b) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country.

**Service of process (O.69, r.3)**

- 3.**
- (1) The request shall be accompanied by a translation thereof in English, two copies of the process and, unless the foreign court or tribunal certifies that the person to be served understands the language of the process, two copies of a translation thereof.
  - (2) Subject to paragraphs (3) and (4), and to any enactment providing for the manner of service of documents on corporate bodies, the process shall be served by the Bailiff's leaving a copy of the process and a copy of the translation or certificate, as the case may be, with the person to be served.
  - (3) The Bailiff shall send to the Clerk of the Court a copy of the process and an affidavit, certificate or report proving due service of the process or stating the reason why service could not be effected, as the case may be, and if the Court directs shall specify the costs involved in effecting or attempting to effect service.

- (4) Order 65, rule 4 (substituted service) shall apply to the service of foreign process as it applies to the service of writs except that a Judge may make an order for substituted service of foreign process on the basis of the Bailiff's affidavit, certificate or report, without an application being made to him in that behalf.
- (5) The Clerk of the Court shall send a certificate, together with a copy of the process, to the consular or other authority or the Governor, as the case may be, stating -
  - (a) when and how service was effected or the reason why service could not be effected, as the case may be; and
  - (b) where appropriate, the amount certified by the Clerk of the Court to be the costs of effecting or attempting to effect service.
- (6) The certificate under paragraph (5) shall be sealed with the seal of the Court for use out of the jurisdiction.

**Service of process by private process server (O.69, r.4)**

4. Nothing in this Order shall prevent the service of process in connection with civil or commercial proceedings in a foreign court or tribunal otherwise than pursuant to a civil procedure convention being effected by an attorney or private process server.

**ORDER 70****OBTAINING EVIDENCE FOR FOREIGN COURTS, ETC.****Interpretation (O.70, r.1)**

1. In this Order "the Law" means the Evidence (Proceedings in Other Jurisdictions) (Islands) Order 1978 (S.I. 1890/78) and the expressions used in the Law which are used in this Order shall have the same meaning as in the Law.

**Application for order (O.70, r.2)**

2. (1) Subject to rule 3, an application for an order under the Law may be made ex parte and must be supported by affidavit.  
(2) There shall be exhibited to the affidavit the request in pursuance of which the application is made and, if the request is not in the English language, a translation thereof in that language.  
(3) An order under this rule shall be in Form No. 56 of Appendix I.

**Application by Attorney General in certain cases (O.70, r.3)**

3. Where a request -
  - (a) is received by the Governor and sent by him to the Clerk of the Court with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in the Islands of any party to the matter pending before the Court or tribunal; or
  - (b) is received by the Clerk of the Court in pursuance of a civil procedure convention providing for the taking of the evidence of any person in the Islands for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such a party,

the Clerk of the Court shall send the document to the Attorney General and the Attorney General may make an application for an order under the Law and take such other steps as may be necessary to give effect to the request.

**Person to take and manner of taking examination (O.70, r.4)**

4. (1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by

the person applying for the order or before such qualified person as to the Court deems fit.

- (2) Subject to rule 6 and to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in manner provided by Order 39, rules 5 to 10 and 11(1) to (3), and an order may be made under Order 39, rule 14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

#### **Dealing with deposition (O.70, r.5)**

5. Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Clerk of the Court and the Clerk shall -
  - (a) give a certificate sealed with the seal of the Court identifying the documents annexed thereto, that is to say, the letter of request, the order of the Court for examination and the deposition taken in pursuance of the order; and
  - (b) send the certificate with the documents annexed thereto to the Governor, or, where the request was sent to the Clerk of the Court by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to the court or tribunal out of the jurisdiction requesting the examination.

#### **Claim to privilege (O.70, r.6)**

6. (1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in Section 3(1)(b) of the Law is not supported or conceded as mentioned in subsection (2) of that Section.
- (2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and if the examiner does not do so, the Court may do so, on the ex parte application of the person who obtained the order under Section 2.
- (3) If such evidence is taken -
  - (a) it must be contained in a document separate from the remainder of the deposition of the witness;
  - (b) the examiner shall send to the Clerk of the Court with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
  - (c) on receipt of the statement the Clerk of the Court shall, notwithstanding anything in rule 5, retain the document containing the part of the

witness' evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;

- (d) if the claim is rejected by the foreign court or tribunal, the Clerk of the Court shall send to that court or tribunal the document containing that part of the witness' evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under Section 2 of the Law of the court or tribunal's determination.



**ORDER 71****FOREIGN JUDGMENT RECIPROCAL ENFORCEMENT LAW (REVISED)****Interpretation (O.71, r.1)**

1. In this Order "the Law" means the Foreign Judgments Reciprocal Enforcement Law (Revised) and expressions used in the Law which are used in this Order shall have the same meaning as in the Law.

**Application for registration (O.71, r.2)**

2. An application under Section 4 of the Law to have a judgment registered in the Court shall be made by an ex parte originating summons unless the Court directs the summons to be served on the judgment debtor.

**Evidence in support of application (O.71, r.3)**

3. An application for registration must be supported by an affidavit -
  - (a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof, and where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by affidavit;
  - (b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;
  - (c) stating to the best of the information or belief of the deponent -
    - (i) that the judgment creditor is entitled to enforce the judgment;
    - (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied;
    - (iii) that the judgment does not fall within any of the cases in which a judgment may not be registered under Section 4 of the Law.

**Security for costs (O.71, r.4)**

4. Save as otherwise provided by any relevant Order in Council made under Section 3 of the Law, the Court may order the judgment creditor to give security for the costs for the application for registration and of any proceedings which may be brought to set aside the registration.

**Order for registration (O.71, r.5)**

5. (1) An order giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor.
- (2) No such order need be served on the judgment debtor, unless the Court otherwise directs.
- (3) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.
- (4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

**Filing of judgments (O.71, r.6)**

6. Every judgment ordered to be registered under the Law shall be filed in the Register of Judgments as if it were a judgment or order made by the Court of the kind referred to in Order 42, rule 5(8).

**Notice of registration (O.71, r.7)**

7. (1) Notice of registration of a judgment must be served on the judgment debtor by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in such other manner as the Court may direct.
- (2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 4, 5 and 6, shall apply in relation to such a notice as they apply in relation to a writ.
- (3) The notice of registration must state -
  - (a) full particulars of the judgment registered and the order for registration;
  - (b) the name and address of the judgment creditor or of his attorney or agent on whom, and at which, any summons issued by the judgment debtor may be served;
  - (c) the right of the judgment debtor to apply to have the registration set aside; and
  - (d) the period within which an application to set aside the registration may be made.

**No rule (O.71, r.8)**



**Application to set aside registration (O.71, r.9)**

9. (1) An application to set aside the registration of a judgment must be made by summons supported by affidavit.
- (2) The Court hearing the application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

**Issue of execution (O.71, r.10)**

10. (1) Execution shall not issue on a judgment registered under the Law until after the period which in accordance with rule 5(3) is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the Court, until after the expiration of that period as so extended.
- (2) If an application is made to set aside the registration of a judgment execution on the judgment shall not issue until after such application is finally determined.
- (3) Any party wishing to issue execution on a judgment registered under the Law must produce to the Clerk of the Court an affidavit of service of the notice of registration of the judgment and any order made by the Court in relation to the judgment.

**No rules (O.71, rr.11-12)****Certified copy of Grand Court judgment (O.71, r.13)**

13. (1) An application under Section 11 of the Law for a certified copy of a judgment entered in the Court must be made by ex parte summons in the proceeding in which the judgment is given.
- (2) Such an application must be supported by an affidavit stating -
- (a) that the judgment creditor wishes to enforce the judgment in a foreign country to which Part I of the Law extends;
  - (b) the name, trade or business and the usual or last known place of residence of the judgment debtor so far as known to the deponent;
  - (c) the extent to which the judgment is outstanding;
  - (d) that the judgment is not subject to any stay of execution and that the time for appealing has expired or, as the case may be, the date on which it will expire; and

- (e) that there is no other impediment to enforcement of the judgment or reason why it may not be enforced.
- (3) The certified copy of the judgment shall be an office copy sealed with the seal of the Court and indorsed with a certificate signed by the Clerk of the Court, certifying that the copy is a true copy of a judgment obtained in the Grand Court of the Islands and that it is issued in accordance with Section 11 of the Law.
- (4) There shall also be issued with such certified copy of the judgment a certificate of the Clerk of the Court having annexed to it a copy of the writ, originating summons or other process by which the proceedings were begun and stating -
- (a) the manner in which the writ or other process was served on the defendant or that the defendant acknowledged service thereof;
  - (b) what objections, if any, were made to the jurisdiction;
  - (c) what pleadings, if any, were served;
  - (d) the grounds on which the judgment was based;
  - (e) that the time for appealing has expired, or, as the case may be, the date on which it will expire;
  - (f) whether notice of appeal against the judgment has been filed; and
  - (g) such other particulars as may be necessary to give to the court in the foreign country in which it is sought to obtain execution of the judgment,
- and a certificate (signed and sealed as aforesaid) stating the rate at which the judgment carries interest.

**ORDER 72**

**NO ORDER**



**ORDER 73**  
**ARBITRATION PROCEEDINGS**

**Interpretation (O.73, r.1)**

**1.** In this Order -

- (a) "the 1974 Law" means the Arbitration Law 1974 (2001 Revision);
- (b) "the 1975 Law" means the Foreign Arbitral Awards Enforcement Law 1975 (1997 Revision);
- (c) "the 1988 Order" means The Multilateral Investment Guarantee Agency (Overseas Territories) Order 1988 (SI 1988/791);
- (d) "the Convention" means the Convention establishing the Multilateral Investment Guarantee Agency signed on behalf of the United Kingdom on 9th April, 1986.

**Applications by originating motion (O.73, r.2)**

**2.** (1) Every application to the Court -

- (a) to remit an award under Section 18 of the 1974 Law;
- (b) to remove an arbitrator or umpire under Section 19(1) of the 1974 Law;
- (c) to set aside an award under Section 19(2) of the 1974 Law; or
- (d) for relief under Section 20 of the 1974 Law,

must be made by originating motion.

- (2) A notice of motion to which subparagraph (1)(a), (b) or (c) relates must be issued within 28 days after the award has been made and published to the parties.

**Applications by originating summons (O.73, r.3)**

**3.** (1) Every application to the Court -

- (a) for the appointment of an arbitrator, umpire or third arbitrator under Section 11 of the 1974 Law;
- (b) for an enlargement of time under Section 12(2) of the 1974 Law;

- (c) for the removal of an arbitrator or umpire under Section 12(3) of the 1974 Law;
- (d) for an order under Section 17 of the 1974 Law requiring an arbitrator or umpire to state a special case; or
- (e) for an order under Section 29 of the 1974 Law extending time for the commencement of arbitration proceedings,

must be made by originating summons.

- (2) An application for a declaration that an award made by an arbitrator or an umpire is not binding on a party to the award on the ground that it was made without jurisdiction must be made by originating summons.

#### **Enforcement of arbitral awards (O.73, r.4)**

- 4. (1) An application for leave under Section 22 of the 1974 Law; Section 5 of the 1975 Law; or Section 4 of Schedule 1 of the 1988 Order to enforce an arbitral award shall be made by ex-parte originating summons.
- (2) An application for leave under paragraph (1) must be supported by affidavit –
  - (a) where the application is under Section 22 of the 1974 Law, exhibiting the arbitration agreement and the original award or, in either case, a copy thereof; or
  - (b) where the application is made under Section 5 of the 1975 Law, exhibiting the documents specified in Section 6 of the 1975 Law; or
  - (c) where the application is made under Section 4 of Schedule 1 of the 1988 Order, exhibiting a copy of the award certified pursuant to the Convention and stating whether at the date of the application the enforcement of the award has been stayed (either provisionally or otherwise) pursuant to the Convention and whether any, and if so what, application has been made pursuant to the Convention which, if granted might result in a stay of the award;

and in any case

- (d) stating the name and usual last place of abode or business of the applicant (hereinafter referred to as "the creditor") and the person against whom it is sought to enforce the award (hereinafter referred to as "the debtor") respectively; and

- (e) as the case may require, either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.
- (3) An order giving leave must be drawn up by or on behalf of the creditor and must be served on the debtor by delivering a copy to him personally or by sending a copy to him at his usual or last known place of abode or business or in such other manner as the Court may direct.
- (4) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such period as the Court may think fit, the debtor may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the debtor applies within the 14 day period to set aside the Order, until after the application is finally disposed of.
- (5) The copy of the order served on the debtor shall state the effect of paragraph (4).
- (6) In relation to a body corporate this rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered office of the body corporate, provided that nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

**Application to stay enforcement of award under 1988 Order (O.73, r.4A)**

- 4A.** (1) Where it appears to the Court on granting leave to register an award or on an application made by the judgment debtor after an award has been registered -
- (a) that the enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the Convention; or
  - (b) that an application has been made pursuant to the Convention, which, if granted, might result in a stay of the enforcement of the award,
- the Court shall, or, in the case referred to in subparagraph (b) may, stay execution of the award for such time as it considers appropriate in the circumstances.
- (2) An application by the judgment debtor under paragraph (1) shall be made by summons and supported by affidavit.

**Service out of the jurisdiction of summons, notice, etc. (O.73, r.5)**

- 5.** (1) Subject to paragraph (2), service out of the jurisdiction of -
- (a) an originating summons or notice of originating motion issued pursuant to rule 2 or 3 of this Order; or

- (b) any order made on such a summons or motion as aforesaid, is permissible without the leave of the Court provided that the arbitration to which the summons, motion or order relates is governed by Islands law or has been, is being, or is to be held within the jurisdiction.
- (2) service out of the jurisdiction of an originating summons under rule 4 for leave to enforce an award is permissible with the leave of the Court whether or not the arbitration is governed by Islands law.
- (3) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.
- (4) Order 11, rules 5, 6 and 8 shall apply in relation to any such summons, notice or order as is referred to in paragraph (1) as they apply in relation to a writ.



**ORDER 74**

**APPLICATIONS AND APPEALS UNDER THE**

**MERCHANT SHIPPING ACTS**

**Interpretation (O.74, r.1)**

**1. In this Order -**

- (a) "the Merchant Shipping Act 1970" shall mean the United Kingdom Merchant Shipping Act 1970 as modified and applied in the Cayman Islands by the Merchant Shipping Act 1970 (Cayman Islands) Order 1988 (SI 1988/246); and
- (b) "the Merchant Shipping Act 1894" shall mean the United Kingdom Merchant Shipping Act 1894 as modified and applied in the Cayman Islands by Schedule 2 of the Merchant Shipping Act 1988 (Cayman Islands) Order 1988 (SI 1988/1841).

**Rehearing of and appeal from inquiries and investigations (O.74, r.2)**

- 2. (1)** Orders 55 and 56 shall apply to the rehearing of and appeal from any inquiry or investigation conducted by the Governor-in-Council and for this purpose a rehearing and an application under Section 52(2) of the Merchant Shipping Act 1970 shall be treated as an appeal.
- (2)** Where a rehearing by the Court is ordered under Section 57 of the Merchant Shipping Act 1970 the Governor-in-Council shall cause such reasonable notice to be given to the parties whom he considers to be affected by the rehearing as the circumstances of the case may, in his opinion, permit.

**Order for sale on transmission of a ship to an unqualified person (O.74, r.3)**

- 3.** An application for an order for sale under Section 28 of the Merchant Shipping Act 1894 shall be made by originating motion which shall be served on all the persons having an interest, whether as owners or mortgagees, of the ship in question.

**Proceedings on forfeiture of ship (O.74, r.4) Proceedings on forfeiture of ship (O.74, r.4)**

- 4.** An application under Section 76 of the Merchant Shipping Act 1894 for adjudication where any ship has become subject to forfeiture shall be made by originating motion which shall be served on all the persons having an interest, whether as owners, mortgagees or charterers, of the ship in question.

**Proceedings before Courts of Survey (O.74, r.5)**

5. Proceedings before a Court of Survey established pursuant to Section 31 of the Merchant Shipping Law 1992 shall be conducted, as nearly as may be possible, in accordance with the United Kingdom Rules of the Court of Survey 1876 and the forms contained in Appendix B thereof shall be used with such modifications as may be necessary.

**Awards of wreck commissioners (O.74, r.6)**

6.
  - (1) An application pursuant to Section 42(4) of the Merchant Shipping Law 1992 for an award of a wreck commissioner to be made on order of the Court shall be made by letter in writing addressed to the Clerk of the Court and accompanied by a minute of the order sought.
  - (2) An award of costs made by a wreck commissioner shall be taxable by the Clerk of the Court on an indemnity basis in accordance with Order 62, rule 12(2), of the Rules of the Supreme Court of England and Wales.

**ORDER 75**  
**ADMIRALTY PROCEEDINGS**

**Application and interpretation (O.75, r.1)**

1. (1) This Order applies to admiralty actions, and the other provisions of these Rules apply to those actions subject to the provisions of this Order.
- (2) In this Order -
  - "action in rem" means an admiralty action in rem;
  - "caveat against arrest" means a caveat entered in the caveat book under rule 6;
  - "caveat against release and payment" means a caveat entered in the caveat book under rule 14;
  - "caveat book" means the book kept in the Court office in which caveats issued under this Order are entered;
  - "collision regulations" means regulations under the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1983 as modified and applied in the Cayman Islands by the Merchant Shipping (Distress Signal and Prevention of Collisions) (Overseas Territories) Order 1983 (SI 1983/762 as amended by SI 1984/1688);
  - "limitation action" means an action by shipowners or other persons under the Merchant Shipping Act 1979 as modified and applied in the Cayman Islands by the Merchant Shipping Act 1979 (Cayman Islands) Order 1980 (SI 1980/1512 as amended by SI 1981/423) for the limitation of the amount of their liability in connection with a ship or other property;
  - "Merchant Shipping (Oil Pollution) Act 1971" and the "Merchant Shipping Act 1974" are references to those Acts as modified and applied in the Cayman Islands by the Merchant Shipping (Oil Pollution) (Cayman Islands) Order 1975 (SI 1975/2166 as amended by SI 1981/217);
  - "RSC Appendix B" means Appendix B to the Rules of the Supreme Court 1965 (contained in Part 6 of the Supreme Court Practice);
  - "ship" includes any description of vessel used in navigation.

- (3) Admiralty actions include -
- (a) every action to enforce a claim for damage, loss of life or personal injury arising out of
    - (i) a collision between ships; or
    - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
    - (iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations;
  - (b) every limitation action; and
  - (c) every action to enforce a claim under Section 1 of the Merchant Shipping (Oil Pollution) Act 1971.

**Forms (O.75, r.2)**

2. The Forms contained in RSC Appendix B shall be used, with such modifications as may be necessary, for the purposes of all proceedings governed by this Order.

**Proceedings against, or concerning, the International Oil Pollution Compensation Fund (O.75, r.2A)**

- 2A. (1) All proceedings against the International Oil Pollution Compensation Fund (in this rule referred to as "the Fund") under Section 4 of the Merchant Shipping Act 1974 shall be commenced by originating summons.
- (2) For the purposes of Section 6(2) of the Merchant Shipping Act 1974 any party to proceedings brought against an owner or guarantor in respect of liability under Section 1 of the Merchant Shipping (Oil Pollution) Act 1971 may give notice to the Fund of such proceedings by serving a notice in writing on the Fund together with a copy of the writ and copies of the pleadings (if any) served in the action.
- (3) The Court shall, on the application made ex parte by the Fund, grant leave to the Fund to intervene in any proceedings to which the preceding paragraph applies, whether notice of such proceedings has been served on the Fund or not and paragraphs (3) and (4) of rule 17 shall apply to such an application.
- (4) Where judgment is given against the Fund in any proceedings under Section 4 of the Merchant Shipping Act 1974 the Clerk of the Court shall cause an office copy of the judgment to be sent by post to the Fund.

- (5) The Fund shall notify the Clerk of the Court of the matters set out in Section 4(12)(b) of the Merchant Shipping Act 1974 by a notice in writing sent to the Court office.

**Issue of writ and acknowledgment of service (O.75, r.3)**

3. (1) An admiralty action must be begun with writ in Form No. 1 of RSC Appendix B, or in the case of a limitation action in Form No. 2 of RSC Appendix B.
- (2) Subject to the following paragraphs Order 6, rule 8, shall apply in relation to a writ by which an admiralty action is begun, and Order 12 shall apply in relation to such an action.
- (3) An acknowledgment of service in an action in rem or a limitation action shall be in Form No. 2B of RSC Appendix B.
- (4) A defendant to an action in rem in which the writ has not been served, or a defendant to a limitation action who has not been served with a writ, may, if he desires to take part in the proceedings, acknowledge the issue of the writ by handing in at, or sending to the Court office, an acknowledgment of service but with the substitution for the reference therein to service of references to the issue of the writ.
- (5) These Rules shall apply, with the necessary modifications, in relation to an acknowledgment of issue or service in Form No. 2B of RSC Appendix B as they apply in relation to an acknowledgment of service in Form No. 8 of Appendix I which contains a statement to the effect that the defendant intends to contest the proceedings to which the acknowledgment relates.

**Service of writ out of jurisdiction (O.75, r.4)**

4. (1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ, or notice of a writ, containing a claim relative to any admiralty cause or matter is permissible with the leave of the Court if, but only if -
- (a) the defendant has his habitual residence or a place of business within the Islands; or
- (b) the cause of action arose within the territorial waters of the Islands; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court; or
- (d) the defendant has submitted or agreed to submit to the jurisdiction of the Court.

- (1A) Service out of the jurisdiction of a writ in an action to enforce a claim under Section 1 of the Merchant Shipping (Oil Pollution) Act 1971 or Section 4 of the Merchant Shipping Act 1974 is permissible with the leave of the Court.
- (2) Order 11, rule 5 and rule 6(2) and (4) shall apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.
- (3) Paragraphs (1) and (1A) shall not apply to an action in rem.
- (4) Order 11, rule 1(2) shall not apply to a writ by which any admiralty action is begun.

### **Warrant of arrest (O.75, r.5)**

- 5. (1) After a writ has been issued in an action in rem a warrant in Form No. 3 of RSC Appendix B for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.
- (2) A party applying for the issue out of the Court office of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.
- (3) A warrant of arrest shall not be issued until the party applying for it has filed an affidavit made by him or his agent containing the particulars required by paragraph (8); however, the Court may, if it thinks fit, give leave to issue a warrant notwithstanding that the affidavit does not contain all those particulars.
- (4) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in London, being an action for the possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.
- (5) A warrant of arrest may not be issued as of right in the case of property whose beneficial ownership has since the issue of the writ changed as a result of a sale or disposal by any Court exercising admiralty jurisdiction.
- (6) Where by any convention or treaty, the United Kingdom has undertaken on behalf of the Cayman Islands to minimise the possibility of arrest of ships of another State no warrant of arrest shall be issued against a ship owned by that State until notice in Form No. 15 of RSC Appendix B has been served on a consular officer at the consular office of that State in London.
- (7) Issue of a warrant of arrest takes place upon its being sealed by the Clerk of the Court.

- (8) An affidavit required by paragraph (3) must state -
- (a) in every case -
    - (i) the nature of the claim or counterclaim and that it has not been satisfied and, if it arises in connection with a ship, the name of that ship; and
    - (ii) the nature of the property to be arrested and, if the property is a ship, the name of the ship and her port of registry; and
  - (b) in the case of a claim against a ship by virtue of Section 3(4) of the Administration of Justice Act 1956 -
    - (i) the name of the person who would be liable on the claim in an action in personam ("the relevant person"); and
    - (ii) that the relevant person was when the cause of action arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose; and
    - (iii) at the time of the issue of the writ the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise; and
  - (c) in the case of a claim for possession of a ship or for wages, the nationality of the ship in respect of which the warrant is required and that the notice (if any) required by paragraph (4) has been sent; and
  - (d) in the case of a claim in respect of liability incurred under Section 1 of the Merchant Shipping (Oil Pollution) Act 1971, the facts relied on as establishing that the Court is not prevented from entertaining the action by reason of Section 13(2) of that Act.
- (9) Where appropriate, a copy of any notice sent to a consul under paragraph (4) shall be exhibited to an affidavit required by paragraph (3).

**Caveat against arrest (O.75, r.6)**

6. (1) A person who desires to prevent the arrest of any property must file in the Court office a praecipe, in Form No. 5 of RSC Appendix B, signed by him or his attorney undertaking -
- (a) to acknowledge issue of service (as may be appropriate) of the writ in any action that may be begun against the property described in the praecipe; and

- (b) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into Court,

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

- (2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

**Remedy where property protected by caveat is arrested without good and sufficient reason (O.75, r.7)**

- 7. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

**Service of writ in action in rem (O.75, r.8)**

- 8. (1) Subject to paragraph (2), a writ by which an action in rem is begun must be served on the property against which the action is brought except -
  - (a) where the property is freight, in which case it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried; or
  - (b) where that property has been sold and the proceeds of the sale paid into Court, in which case it must be served on the Clerk of the Court.
- (2) A writ need not be served on the property or the Clerk of the Court if the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(2) or (3).
- (3) Where by virtue of this rule a writ is required to be served on any property, the plaintiff may request service of the writ to be effected by the Bailiff if, but only if, a warrant of arrest has been issued for service against the property or the property is under arrest, and in that case the plaintiff must file in the Court office a praecipe in Form No. 6 of RSC Appendix B and -
  - (a) deliver an office copy of the writ to be served; and
  - (b) file an undertaking to pay on demand all expenses incurred by the Bailiff in respect of the service of the writ,



and thereupon the Bailiff shall serve the writ on the property described in the praecipe.

- (3A) Where a writ is served on any property by the Bailiff, the person effecting service must indorse on the writ the following particulars, that is to say, where it was served, the property on which it was served, the day of the week and the date on which it was served, the manner in which it was served and the name and address of the person effecting service, and the indorsement shall be evidence of the facts stated therein.
- (4) Where the plaintiff in an action in rem, or his attorney, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.
- (5) Where a writ by which an action in rem is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2), shall not apply and, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on any intervener and any defendant who has acknowledged issue or service of the writ in the action or, if no defendant has acknowledged issue or service of the writ, it must be served in accordance with paragraph (1) of this rule.

**Committal of attorney failing to comply with undertaking (O.75, r.9)**

- 9. Where the attorney of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his attorney to enter an appearance in the action, give bail or pay money into Court in lieu of bail, he shall be liable to committal.

**Execution, etc., of warrant of arrest (O.75, r.10)**

- 10. (1) A warrant of arrest is valid for 12 months beginning with the date of its issue.
- (2) A warrant of arrest may be executed only by the Bailiff.
- (3) A warrant of arrest shall not be executed until an undertaking in writing, satisfactory to the Clerk of the Court, to pay on demand the fees and expenses of the Bailiff has been filed in the Court office.
- (4) A warrant of arrest shall not be executed if the party at whose instance it was issued files a written request to that effect with the Bailiff.
- (5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.
- (6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.

- (7) Within 7 days after the service of a warrant of arrest, the warrant must be filed in the Court office by the Bailiff.

**Service on ships, etc.: how effected (O.75, r.11)**

- 11.** (1) Subject to paragraph (2), service of a warrant of arrest or writ in an action in rem against a ship, freight or cargo shall be effected by -
- (a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and
  - (b) on removing the warrant or writ, leaving a copy of it affixed (in the case of the writ) on a sheltered, conspicuous part of the ship.
- (2) Service of a warrant of arrest or writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or transshipped be effected -
- (a) by placing the warrant or writ for a short time on the cargo, and, on removing the warrant or writ, leaving a copy of it on the cargo; or
  - (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.
- (3) Order 65, rule 10, shall not apply in relation to a warrant of arrest or writ in rem.

**Directions with respect to property under arrest (O.75, r.12)**

- 12.** (1) The Bailiff may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the parties referred to in paragraph (2).
- (2) The Bailiff shall send a copy of any order made under paragraph (1) to all those persons who, in relation to that property, have -
- (a) entered a caveat which is still in force; or
  - (b) caused a warrant for the arrest of the property to be executed by the Bailiff; or
  - (c) acknowledged issue of service of the writ in any action in which the property is under arrest; or
  - (d) intervened in any action in which the property is under arrest.
- (3) A person other than the Bailiff may make an application under this rule by summons or motion in the action in which the property is under arrest and the summons or notice of motion together with copies of any affidavit in support must

be served upon the Bailiff and all persons referred to in paragraph (2) unless the Court otherwise orders on an application made ex parte.

**Release of property under arrest (O.75, r.13)**

13. (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall be released only under the authority of an instrument of release (in this rule referred to as a "release"), in Form No. 7 of RSC Appendix B, issued out of the Court office.
- (2) A release shall not be issued with respect to property as to which a caveat against a release is in force, unless, either -
- (a) at the time of the issue of the release the property is under arrest in one or more other actions; or
- (b) the Court so orders.
- (3) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (2), if all the other parties, except any defendant who has not acknowledged issue or service of the writ, consent.
- (4) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the Bailiff either -
- (a) pay the fees of the Bailiff already incurred and file in the Court office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release; or
- (b) file in the Court office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.
- (5) The Court, on the application of any party who objects to directions given to him by the Bailiff under paragraph (4), may vary or revoke the directions.

**Caveat against release, etc. (O.75, r.14)**

14. (1) A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of Court of any money in Court representing the proceeds of sale of that property must file in the Court office a praecipe in Form No. 9 of RSC Appendix B, and on the filing of the praecipe a caveat against the issue of a release with respect to that property and the payment out of Court of that money shall be entered in the caveat book.

- (2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

**Duration of caveats (O.75, r.15)**

15. (1) Every caveat entered in the caveat book is valid for 12 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form No. 10 of RSC Appendix B.
- (2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

**Bail (O.75, r.16)**

16. (1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 11 of RSC Appendix B; and the sureties to the bond must enter into the bond before a Justice of the Peace.
- (2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.
- (3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.
- (4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the Justice of the Peace before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

**Interveners (O.75, r.17)**

17. (1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

- (2) An application for the grant of leave under this rule must be made *ex parte* by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in Court.
- (3) A person to whom leave is granted to intervene in an action under this rule shall thereupon become a party to the action.
- (4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

**Preliminary acts (O.75, r.18)**

18. (1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the plaintiff must, within 2 months after issue of the writ, and the defendant must, within 2 months after acknowledging issue or service of the writ in the action, and before any pleading is served, file in the Court office a document (in these Rules referred to as a preliminary act) containing a statement of the following particulars -
- (a) the names of the ships which came into collision and their ports of registry;
  - (b) the date and time of the collision;
  - (c) the place of the collision;
  - (d) the direction and force of the wind;
  - (e) the state of the weather;
  - (f) the state, direction and force of the tidal or other current;
  - (g) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
  - (h) the lights or shapes (if any) carried by the ship;
  - (i) (i) the distance and bearing of the other ship if and when her echo was first observed by radar;
  - (ii) the distance, bearing and approximate heading of the other ship when first seen;
  - (j) what light or combination of lights (if any) of the other ship was first seen;
  - (k) what other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision, and when;

- (l) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in subparagraph (g) up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when;
  - (m) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
  - (n) what sound signals (if any) were given, and when;
  - (o) what sound signals (if any) were heard from the other ship, and when.
- (2) Every preliminary act shall be sealed by the Clerk of the Court and shall be filed in a closed envelope (stamped with an official stamp showing the date of filing) and, unless the Court otherwise orders, no envelope shall be opened until the pleadings are closed and a consent signed by each of the parties or his attorney to the opening of the preliminary acts filed in the Court office.
- (2A) A defendant who has filed a preliminary act must within 7 days thereafter serve notice of filing on all other parties to the action.
- (3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the preliminary acts.
- (4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.
- (5) Order 18, rule 1, shall not apply to an action in which preliminary acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within 14 days after the latest date on which the preliminary act of any party to the action is filed.

**Failure to file preliminary act: proceedings against party in default (O.75, r.19)**

- 19.** (1) Where in such an action as is referred to in rule 18(1) the plaintiff fails to file a preliminary act within the prescribed period, any defendant who has filed such an act may apply to the Court by summons for an order to dismiss the action or make such other order on such terms as it thinks just.

- (2) Where in such an action, being an action in personam, a defendant fails to file a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to file the preliminary act within that period was a failure by him to serve a defence on the plaintiff within the period fixed by order under these Rules for service thereof, and the plaintiff, if he has filed a preliminary act may, subject to Order 77, rule 9, accordingly enter judgment against the defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.
- (3) Where in such an action, being an action in rem, a defendant fails to file a preliminary act within the prescribed period, the plaintiff, if he has filed such an act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.
- (4) On the hearing of a motion under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded.

The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

- (5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Clerk of the Court and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into Court or make such order as it thinks just.
- (6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.
- (7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 18(1) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to file a preliminary act.

**Special provisions as to pleadings in collision, etc., actions (O.75, r.20)**

20. (1) Notwithstanding anything in Order 18, rule 3, the plaintiff in any such action as is referred to in rule 1(3)(a) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.
- (2) If in such an action there is a counterclaim and no defence to counterclaim by the plaintiff, then, notwithstanding Order 18, rule 14(3), but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the

counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

**Judgment by default (O.75, r.21)**

- 21.** (1) Where a writ is served under rule 8(4) on a party at whose instance a caveat against arrest was issued, then if -
- (a) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his attorney to procure the entry of the caveat; and
  - (b) that party or his attorney does not within 14 days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

- (2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.
- (3) Where a defendant to an action in rem fails to acknowledge service of the writ within the time limited for doing so, then, on the expiration of 14 days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(2), or was served by the Bailiff under rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ indorsed as mentioned in the said rule 1(2) or indorsed as mentioned in 8(3A) must be filed with the affidavit verifying the facts on which the action is based.

- (4) Where a defendant to an action in rem fails to serve a defence on the plaintiff, then after the expiration of the period fixed by or under these Rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.
- (5) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these Rules for service of



the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

- (6) No application may be made under paragraph (5) against the plaintiff in any such action as is referred to in rule 1(3)(a).
- (7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without the reference to the Clerk of the Court and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into Court or may make such other order as it thinks just.
- (8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.
- (9) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.
- (10) Order 13 and Order 19 (except rule 1) shall not apply to actions in rem.

**Order for sale of ship: determination of priority of claims (O.75, r.22)**

- 22.** (1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained judgment against the ship or proceeds of sale of the ship may -
- (a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under subparagraph (2)(a); or
  - (b) in any other case, after obtaining judgment,
- apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.
- (2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order -
- (a) that the order of priority of the claims against the proceeds of the sale shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into Court;

- (b) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the order;
  - (c) that within 7 days after the date of payment into Court of the proceeds of sale the Clerk of the Court shall send for publication in the Gazette, Lloyd's List and Shipping Gazette and such other newspaper, if any, as the Court may direct a notice complying with paragraph (3).
- (3) The notice referred to in subparagraph (2)(c) must state -
- (a) that the ship (naming her) has been sold by order of the Court in an action in rem, identifying the action;
  - (b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into Court;
  - (c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and
  - (d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.
- (4) The expenses incurred by the Clerk of the Court in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.
- (5) An application to the Court to extend the period referred to in subparagraph (2)(a) must be made by motion, and a copy of the notice of motion, must, at least 3 days before the day fixed for the hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.

### **Appraisalment and sale of property (O.75, r.23)**

- 23.**
- (1) A commission for the appraisalment and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form No. 12 of RSC Appendix B.
  - (2) Such a commission must, unless the Court otherwise orders, be executed by the Clerk of the Court and must be in Form No. 13 of RSC Appendix B.
  - (3) A commission for appraisalment and sale shall not be executed until an undertaking in writing satisfactory to the Clerk of the Court to pay the fees and expenses of the Bailiff on demand has been filed.

- (4) The Bailiff shall pay into Court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into Court the account relating to the sale (with vouchers in support) for taxation.
- (5) On the taxation of the Bailiff's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision made on the taxation shall be subject to review by the Court.

**Undertakings as to expenses, etc. (O.75, r.23A)**

- 23A.** (1) Every undertaking under rule 8(3), 10(3), 13(4) or 23(3) shall be given in writing to the satisfaction of the Clerk of the Court.
- (2) Where a party is required by rule 8(3), 10(3), 13(4) or 23(3) to give to the Bailiff an undertaking to pay any fees or expenses, the Bailiff or the Clerk of the Court, as the case may be, may accept instead of the undertaking the deposit with him of such sum as he considers reasonable to meet those fees and expenses.
- (3) The Court may on the application of any party who is dissatisfied with a direction or determination under rule 13(5) or this rule, vary or revoke the direction or determination.

**Payment into and out of Court (O.75, r.24)**

- 24.** (1) Order 22 (except rules 3, 4 and 5) shall apply in relation to an admiralty action as it applies to an action for debt or damages.
- (2) Subject to paragraph (3), money paid into Court shall not be paid out except in pursuance of an order of the Court.
- (3) The Clerk of the Court may, with the consent of the parties interested in money paid into Court, order the money to be paid out to the person entitled thereto in the following cases, that is to say -
- (a) where property has been sold and the proceeds of sale thereof paid into Court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons;
  - (b) where in any other case there is no dispute between the parties.

**Summons for directions (O.75, r.25)**

- 25.** (1) Order 25 shall apply to admiralty actions (other than limitation actions) as it applies to other actions, except that -
- (a) the summons for directions shall be returnable in not less than 21 days;

- (b) any notice under Order 25, rule 7(1), must be served within 14 days after service of the summons for directions on the party giving the notice.
- (2) An order made on the summons for directions shall determine whether the trial is to be without assessors or with one or more assessors, whether nautical assessors or other assessors.
- (3) The trial shall be before a Judge without jury unless, on the ground that there are special reasons to the contrary, an order made on the summons for directions otherwise provides.
- (4) Any such order or direction as is referred to in paragraph (2) or (3) (including an order made on appeal) may be varied or revoked by a subsequent order or direction made or given by the Court at or before the trial.

**Fixing date for trial, etc. (O.75, r.26)**

- 26.**
- (1) The date for trial of an admiralty action shall be fixed by the Judge at the hearing of the summons for directions, unless the Court otherwise directs.
  - (2) Order 34 shall apply to admiralty actions subject to the following and any other necessary modifications -
    - (a) the bundles referred to in rule 10(1) shall include any preliminary acts and any notice given under rule 18(3) or filed under 18(4) of this Order, and where trial with one or more assessors has been ordered an additional bundle shall be delivered to the Clerk of the Court for the purpose of each assessor; and
    - (b) in an action which has been ordered to be tried with an assessor or assessors the attorney to the party setting it down must file in the Court office an undertaking to pay the proper fees and expenses of such assessor or assessors.
  - (3) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing to the Clerk of the Court a written consent to the action being withdrawn signed by all the parties.

**Stay of proceedings in collision, etc., actions until security given (O.75, r.27)**

- 27.** Where an action in rem, being an action to enforce any such claim as is referred to in rule 1(3)(a), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then -

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest; but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

**Inspection of ship, etc. (O.75, r.28)**

- 28.** Without prejudice to its powers under Order 29, rules 2 and 3, and Order 35, rule 8, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

**No rule (O.75, r.29)**

**Examination of witnesses and other persons (O.75, r.30)**

- 30.** (1) The power conferred by Order 39, rule 1, shall extend to the making of an order authorising the examination of a witness or person on oath before a Judge sitting in Court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.
- (2) The power conferred by the said Order 39, rule 1, shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.
- (3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect -
- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;
  - (b) any representative, being an attorney, of either of the parties shall have authority to administer the oath to the witness;
  - (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it

to the attorney for the party whose witness was examined, and that attorney shall file it in the Court office;

- (d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the attorney or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.
- (4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under Order 39, rule 1, authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

**Trial without pleadings (O.75, r.31)**

31. Order 18, rule 21, shall apply to admiralty as it applies to other actions except that the summons must be served on every other party not less than 7 clear days before the day specified in the summons for the hearing thereof.

**Further provisions with respect to evidence (O.75, r.32)**

32. (1) Unless the Court otherwise directs, Order 38, rule 21(1), shall not apply in relation to any statement which is admissible in evidence by virtue of Section 32, 34 or 35 of the Evidence Law (1995 Revision) and which an applicant for judgment in default under rule 19 or 21 desires to give in evidence at the hearing of the motion by which the application for judgment is made.
- (2) Unless the Court otherwise directs, an affidavit for the purposes of rule 19(4), 21 or 38(2) may, except insofar as it relates to the service of a writ, contain statements of information or belief with the sources and grounds thereof.

**Proceedings for apportionment of salvage (O.75, r.33)**

33. (1) Proceedings for the apportionment of salvage, the aggregate amount of which has already been ascertained, shall be begun in the Court office by originating motion.
- (2) The notice of such motion, together with the affidavits in support thereof, must be filed in the Court office at least 7 days before the hearing of the motion, unless the Court gives leave to the contrary, and a copy of the notice and of the affidavits must be served on all the other parties to the proceedings before the originals are filed.

**No rule (O.75, r.33A)**

**Notice of motion in actions in rem (O.75, r.34)**

34. (1) The affidavits, if any, in support of a motion in an action in rem must be filed when the notice of motion is issued.
- (2) A notice of motion, except a motion for judgment in default, must be served on all caveators together with copies of the affidavits, if any, in support of the motion at least 4 clear days before the hearing, unless the Court gives leave to the contrary.

**Agreement between attorneys may be made an order of Court (O.75, r.35)**

35. Any agreement in writing between the attorneys of the parties to a cause or matter, dated and signed by those attorneys, may, if the Judge thinks it reasonable, be filed in the Court office, and the agreement shall thereupon become an order of Court.

**No rule (O.75, r.36)****Limitation action: parties (O.75, r.37)**

37. (1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.
- (2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.
- (3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.
- (4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.
- (5) In this rule and rules 38, 39 and 40 "name" includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

**Limitation action: payment into Court (O.75, r.37A)**

- 37A. (1) The Plaintiff may constitute a limitation fund by paying into Court the currency equivalent of the number of special drawing rights to which he claims to be

entitled to limit his liability under the Merchant Shipping Act 1979 together with interest thereon from the date of the occurrence giving rise to his liability to the date of payment into Court.

- (2) A limitation fund may be constituted under paragraph (1) in any designated currency and references in this rule to the "currency equivalent" means the equivalent in the designated currency of the relevant number of special drawing rights.
- (3) Where the plaintiff does not know the currency equivalent of the said number of special drawing rights on the date of payment into Court he may calculate the same on the basis of the latest available published currency equivalent of a special drawing right as fixed by the International Monetary Fund, and in the event of the currency equivalent of a special drawing right on the date of payment into Court under paragraph (1) being different from that used for calculating the amount of that payment into Court, the plaintiff may -
  - (a) make up any deficiency by making a further payment into Court which, if made within 14 days after the payment into Court under paragraph (1), shall be treated, except for the purposes of the rules relating to the accrual of interest on money paid into Court, as if it had been made on the date of that payment into Court; or
  - (b) apply to the Court for payment out of any excess amount (together with any interest accrued thereon) paid into Court under paragraph (1).
- (4) An application under subparagraph (3)(b) may be made ex parte and must be supported by evidence proving the currency equivalent of the appropriate number of special drawing rights on the date of payment into Court.
- (5) On making any payment into Court under this Rule, the plaintiff shall give notice thereof in writing to every defendant, specifying the date of payment in, the amount paid in, the amount of interest included therein, the rate of such interest and the period to which it relates.
 

The plaintiff shall also give notice in writing to every defendant of any excess amount (and any interest thereon) paid out to him under subparagraph (3)(b).
- (6) Order 22, rule 13, shall apply to a limitation action as they apply to an action a debt or damages, and rule 24(2) and (3) of this Order shall apply with the necessary modifications to the payment out of money paid into Court under this rule.

**Limitation action: summons for decree or directions (O.75, r.38)**

38. (1) Within 7 days after the acknowledgment of issue or service of the writ by one of the defendants named therein by their names or, if one of them acknowledges issue



or service, within 7 days after the time limited for acknowledging service the plaintiff, without serving a statement of claim, must take out a summons returnable in Chambers before a Judge asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

- (2) The summons must be supported by an affidavit or affidavits proving -
  - (a) the plaintiff's case in the action; and
  - (b) if none of the defendants named in the writ by their names has entered an appearance, service of the writ on at least one of the defendants so named.
- (3) The affidavit in support of the summons must state -
  - (a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names; and
  - (b) the address of each of those persons, if known to the plaintiff.
- (4) The summons and every affidavit in support thereof must, at least 7 days before the hearing of the summons, be served on any defendant who has acknowledged issue or service of the writ.
- (5) On the hearing of the summons the Judge, if it appears to him that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.
- (6) On the hearing of the summons the Judge, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.
- (7) If on the hearing or resumed hearing of the summons the Judge does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25, and if he gives no such direction, a direction fixing the period within which any notice under Order 38, rule 21, must be served.
- (8) Any defendant who, after the Judge has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the Court office and serve a copy on the plaintiff and on any other defendant who has acknowledged issue or service of the writ.

- (9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8) the plaintiff may take out a summons returnable in Chambers before the Judge asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

**Limitation action: proceedings under decree (O.75, r.39)**

- 39.** (1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or acknowledge the issue thereof, any decree in the action limiting the plaintiff's liability -
- (a) need not be advertised; but
  - (b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.
- (2) In any case not falling within paragraph (1), any decree in the action limiting the plaintiff's liability -
- (a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;
  - (b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may acknowledge issue of the writ (if they have not already done so) and file their claims, and, in cases to which rule 40 applies, take out a summons, if they think fit, to set the order aside.
- (3) The advertisement to be required under subparagraph (2)(a), shall, unless for special reasons the Judge thinks fit otherwise to provide, be a single advertisement in a newspaper specified in the decree, identifying the action, the casualty and the relation to the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amount fixed thereby for the entering of appearances, the filing of claims and the taking out of summonses to set the decree aside.
- The plaintiff must within the time fixed under subparagraph (2)(b) file in the Court office a copy of the newspaper in which the advertisement required under subparagraph (2)(a) appears.
- (4) The time to be allowed under subparagraph (2)(b) shall, unless for special reasons the Judge thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed, no claim may be filed or summons taken out to set aside the decree except with the leave of the Judge.

- (5) Save as aforesaid, on the making of any decree limiting the plaintiff's liability arising out of an occurrence the Court may distribute the limitation fund and may stay any proceedings relating to any claim arising out of that occurrence which are pending against the plaintiff.

**Limitation action: proceedings to set aside decree (O.75, r.40)**

- 40.** (1) Where a decree limiting the plaintiff's liability fixes a time in accordance with rule 39(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who -

- (a) was not named by his name in the writ as a defendant to the action; or  
 (b) if so named, neither was served with the writ nor has acknowledged the issue thereof,

may, within that time, after acknowledging issue of the writ, take out a summons returnable in Chambers before a Judge asking that the decree be set aside.

- (2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.
- (3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has acknowledged issue or service of the writ.
- (4) On hearing the summons the Judge, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25.

**No rules (O.75, rr.41-44)**

**Drawing up and filing judgments and orders (O.75, r.45)**

- 45.** Every judgment given or order made in an admiralty cause or a matter shall be drawn up and filed in accordance with Order 42, rule 5.



**ORDER 76**  
**CONTENTIOUS PROBATE PROCEEDINGS**

**Application and interpretation (O.76, r.1)**

1. (1) This Order applies to probate causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.
- (2) In these Rules "probate action" means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.
- (3) In this Order -
  - (a) "will" includes a codicil;
  - (b) "the Probate Rules" means the Succession Law (1995 Revision);
  - (c) "the Registry" means the Probate Registry created under rule 3 of the Probate Rules.

**Requirements in connection with issue of writ (O.76, r.2)**

2. (1) A probate action must be begun by writ and the requirements of Order 5, rule 1(4) shall apply notwithstanding that a file has already been created in the Registry pursuant to rule 4 of the Probate Rules.
- (2) Before a writ beginning a probate action is issued it must be indorsed with -
  - (a) a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates; and
  - (b) the Probate Registry file number, if any, of the relevant estate.

**Parties to action to revocation of grant (O.76, r.3)**

3. Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his grant shall be made a party to any action for revocation of the grant.

**No rule (O.76, r.4)**

**Affidavit of testamentary scripts (O.76, r.5)**

5. (1) Unless the Court otherwise directs, the plaintiff and every defendant who has acknowledged service of the writ in a probate action must swear an affidavit -
- (a) describing any testamentary script of the deceased person, whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and
  - (b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.
- (2) Any affidavit required by this rule must be filed on the Court file before the action is listed for trial.
- (3) Where any testamentary script required by this rule to be filed or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be filed and the words which appear in pencil in the original must be underlined in red ink in the copy.
- (4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script referred to therein by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.
- (5) In this rule "testamentary script" means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any documents purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

**Failure to acknowledge service (O.76, r.6)**

6. (1) Order 13 shall not apply in relation to a probate action.
- (2) Where any of several defendants to a probate action fails to acknowledge service of the writ, the plaintiff upon filing an affidavit proving due service of the writ on that defendant may, after the time limited for appearing, proceed with the action as if that defendant had acknowledged service.
- (3) Where the defendant, or all the defendants, to the probate action, fails or fail to acknowledge service of the writ then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for acknowledging service by the defendant apply to the Court for an order for trial of the action.

- (4) Before applying for an order under paragraph (3) the plaintiff must file an affidavit proving due service of the writ on the defendant and, if no statement of claim is indorsed on the writ, he must file a statement of claim.
- (5) Where the Court grants an order under paragraph (3), it may direct the action to be tried on affidavit evidence.

#### **Service of statement of claim (O.76, r.7)**

- 7. The plaintiff in a probate action must, unless the Court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who acknowledges service of the writ in the action and must do so before the expiration of 6 weeks after acknowledgment of service by that defendant or of 14 days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

#### **Counterclaim (O.76, r.8)**

- 8. (1) Notwithstanding anything in Order 25, rule 2(1), a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action, must add to his defence a counterclaim in respect of that matter.
- (2) If the plaintiff fails to serve a statement of claim, any such defendant may, with the leave of the Court, serve a counterclaim and the actions shall then proceed as if the counterclaim were the statement of claim.

#### **Contents of pleadings (O.76, r.9)**

- 9. (1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.
- (2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.
- (3) Without prejudice to Order 18, rule 7, any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say -
  - (a) that the will was not duly executed;
  - (b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; and

- (c) that the execution of the will was obtained by undue influence or fraud,  
shall be made by that party unless that other plea is also pleaded.

**Default of pleadings (O.76, r.10)**

10. (1) Order 19 shall not apply in relation to a probate action.
- (2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these Rules to serve on that other party, then, unless the Court orders the action to be discontinued or dismissed, that other party may after the expiration of the period fixed by or under these Rules for service of the pleading in question, apply to the Court for an order for trial of the action; and if an order is made the Court may direct the action to be tried on affidavit evidence.

**Discontinuance and dismissal (O.76, r.11)**

11. (1) Order 21 shall not apply in relation to a probate action.
- (2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has acknowledged service of the writ therein, order the action to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action, be made to the person entitled thereto.
- (3) An application for an order under this rule may be made by motion or summons or by notice under Order 25, rule 7.

**Compromise of action: trial on affidavit evidence (O.76, r.12)**

12. Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial of the action on affidavit evidence.

**Application for order to bring will, etc. (O.76, r.13)**

13. (1) Any application in a probate action for an order requiring a person to bring a will or other testamentary paper into the Registry or to attend in Court for examination shall be made by summons which must be served on the person against whom the order is sought.
- (2) Any application in a probate action for the issue of a subpoena requiring a person to bring into the Registry a will or other testamentary paper may be made ex parte and must be supported by an affidavit setting out the grounds of the application.



- (3) Any person against whom a subpoena is issued pursuant to paragraph (3) and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

**Administration pending suit (O.76, r.14)**

14. (1) An application for an order for the grant of administration pending suit may be made by summons issued by any party to the suit.
- (2) Where an order for a grant of administration is made Order 30, rules 2, 3, 4, 5 and 6, shall apply as if the administrator were a receiver appointed by the Court.
- (3) The order appointing an administrator pending suit shall -
  - (a) operate as a grant of letters of administration to the person so appointed; and
  - (b) contain all such directions as may be necessary.

**Probate counterclaim in other proceedings (O.76, r.15)**

15. (1) In this rule "probate counterclaim" means a counterclaim in any action other than a probate action by which the defendant claims any such relief as is mentioned in rule 1(2).
- (2) Subject to paragraph (3), this Order shall apply with the necessary modifications to a probate counterclaim as it applies to a probate action.
- (3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.

**No Rule (O.76, r.16)**



**ORDER 77****PROCEEDINGS BY AND AGAINST THE CROWN****Application and interpretation (O.77, r.1)**

1. (1) These Rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Order.

(2) In this Order "the Law" means the Crown Proceedings Law (1997 Revision);

"civil proceedings by the Crown", "civil proceedings against the Crown" and "civil proceedings by or against the Crown" have the same respective meanings as in Part III of the Law, and do not include any proceedings brought by the Attorney General upon the relation of some other person;

"civil proceedings to which the Crown is a party" shall be construed as including a reference to civil proceedings to which the Attorney General as such is a party, not being proceedings brought by the Attorney General upon the relation of some other person;

"order against the Crown" means any order (including an order for costs) made in any civil proceedings by or against the Crown or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a Government Department or against an officer of the Crown as such;

"order" includes a judgment, decree, rule, award or declaration.

**No rule (O.77, r.2)****Particulars to be included in indorsement of claim (O.77, r.3)**

3. (1) In the case of a writ which begins civil proceedings against the Crown the indorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the Crown's liability is alleged to have arisen and as to the Minister and officers of the Crown concerned.

(2) If in civil proceedings against the Crown the Attorney General considers that the writ does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for acknowledging service of the writ, apply to the plaintiff by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where the Attorney General gives a notice under this rule, the time limited for acknowledging service of the writ shall not expire until 4 days after the Attorney

General has notified the plaintiff in writing that the Attorney General is satisfied with the statement supplied in compliance with the notice or 4 days after the Court has, on the application of the plaintiff by summons served on the Attorney General not less than 7 days before the return day, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

**Service on the Crown (O.77, r.4)**

4. (1) Order 10, Order 11 and any other provision of these Rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.
- (2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected by leaving the document at the office of the Attorney General or at the office of an officer prescribed by the Attorney General for the purpose of accepting service.
- (3) In relation to the service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown, Order 65, rules 5 and 9, shall not apply, and Order 65, rule 7, shall apply as if the reference therein to rules 2 and 5(1)(a) of that Order were a reference to paragraph (2) of this rule.

**No rule (O.77, r.5)**

**Counterclaim and set-off (O.77, r.6)**

6. (1) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, no counterclaim may be made, or set-off pleaded against the Crown if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.
- (2) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown.
- (3) Any application for leave under this rule must be made by summons.

**Summary judgment (O.77, r.7)**

7. (1) No application against the Crown shall be made under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Crown nor under Order 14, rule 5, in any proceedings by the Crown.

- (2) Where an application is made by the Crown under Order 14, rule 1, Order 14, rule 5, or Order 86, rule 1, the affidavit required in support of the application must be made by -
- (a) the Attorney General or crown counsel having conduct of the matter; or
  - (b) an officer duly authorised by the Attorney General or by the Minister concerned,

and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

**No rules (O.77, rr.8-8A)**

**Judgment in default (O.77, r.9)**

- 9.** (1) Except with the leave of the Court, no judgment in default of notice of intention to defend or of pleading shall be entered against the Crown in civil proceedings against the Crown or in third party proceedings against the Crown.
- (2) Except with the leave of the Court, Order 16, rule 5(1)(a), shall not apply in the case of third party proceedings against the Crown.
- (3) An application for leave under this rule may be made by summons or except in the case of an application relating to Order 16, rule 5, by motion; and the summons or, as the case may be, notice of the motion must be served not less than 7 days before the return day.

**Third party notices (O.77, r.10)**

- 10.** (1) Notwithstanding anything in Order 16, a third party notice (including a notice issuable by virtue of Order 16, rule 9) for service on the Crown shall not be issued without the leave of the Court, and the application for the grant of such leave must be made by summons, and the summons must be served on the plaintiff and the Crown.
- (2) Leave to issue such a notice for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the Ministers and officers of the Crown concerned.

**Interpleader: application for order against Crown (O.77, r.11)**

11. No order shall be made against the Crown under Order 17, rule 5(3), except upon an application by summons served not less than 7 days before the return day.

**Discovery and interrogatories (O.77, r.12)**

12. (1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the Crown is a party.
- (2) In any civil proceedings to which the Crown is a party any order of the Court made under the powers conferred by Section 19(1) of the Law, shall be construed as not requiring the disclosure of the existence of any document, the existence of which it would, in the opinion of the Governor, be injurious to the public interest to disclose.
- (3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to any order for discovery against the Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the Court may direct.
- (4) Where in any such proceedings an order is made under the said Section 19 for interrogatories to be answered by the Crown, the Court shall direct by what officer of the Crown the interrogatories are to be answered.

**No rule (O.77, r.13)****Evidence (O.77, r.14)**

14. (1) Civil proceedings against the Crown may be instituted under Order 39, rule 15, in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.
- (2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

**Execution and satisfaction of orders (O.77, r.15)**

15. (1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown.
- (2) An application under subSection (1) of Section 16 of the Law for a direction that a separate certificate shall be issued under that subSection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court ex parte without summons.

**Attachment of debts (O.77, r.16)****16. (1) No order -**

- (a) for the attachment of debts under Order 49;
- (b) for the appointment of a sequestrator under Order 45; or
- (c) for the appointment of a receiver under Order 30 or 51,

shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.

- (2) No application shall be made under paragraph (3) unless the order of the Court to be enforced is for a sum of money amounting in value to at least \$500.
- (3) Every application for an order under Section 18 of the Law restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by summons and, unless the Court otherwise directs, served -
  - (a) on the Crown at least 15 days before the return day; and
  - (b) on the person to be restrained or his attorney at least 7 days after the summons has been served on the Crown and at least 7 days before the return day.
- (4) An application under paragraph (3) must be supported by an affidavit -
  - (a) setting out the facts giving rise to the application;
  - (b) stating the name and last known address of the person to be restrained;
  - (c) identifying the order to be enforced and stating the amount of such order and the amount remaining unpaid under it at the time of application; and
  - (d) identifying the particular debt from the Crown in respect of which the application is made.
- (5) Order 49, rules 5 and 6, shall apply in relation to such an application as is mentioned in paragraph (3) for an order restraining a person from receiving money payable to him by the Crown as those rules apply to an application under Order 49, rule 1, for an order for the attachment of a debt owing to any person from a guarantee except that the Court shall not have the power to order execution to issue against the Crown.

**No rule (O.77, r.17)**

**Application under Section 20 of the Crown Proceedings Law (O.77, r.18)**

- 18.** An application such as is referred to in Section 20(2) of the Law may be made to the Court at any time before trial by motion or summons, or may be made at the trial of the proceedings.



**ORDERS 78-79**

**NO ORDERS**



**ORDER 80****DISABILITY****I. CONDUCT OF LITIGATION****Interpretation (O.80, r.1)****1. In this Order -**

- (a) "the Law" means the Mental Health Law 1979 (1997 Revision);
- (b) "patient" means -
  - (i) a person who is a patient within the meaning of Section 2 of the Law; or
  - (ii) a person in respect of whom a guardian has been appointed under Section 14 of the Grand Court Law (1995 Revision);
- (c) "person under disability" means a person who is a child or a patient.

**Person under disability must sue, etc., by next friend or guardian ad litem (O.80, r.2)**

- 2. (1)** A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order, notice of which has been served on him, except by his guardian ad litem.
- (2)** Subject to the provisions of these Rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these Rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian ad litem.
- (3)** A next friend or guardian ad litem of a person under disability must act by an attorney.

**Appointment of next friend or guardian ad litem (O.80, r.3)**

- 3. (1)** Except as provided by paragraph (3) or (4) or by rule 6, an order appointing a person next friend or guardian ad litem of a person under disability is not necessary.
- (2)** Where a person is authorised under Section 14(a)(vi) of the Law to conduct legal proceedings in the name of a patient or on his behalf, that person shall be entitled to be next friend or guardian ad litem, as the case may be, of the patient in any proceedings to which his authority extends unless, in a case to which paragraph (3)

or (4) or rule 6 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian ad litem, as the case may be, of the patient in those proceedings.

- (3) Where a person has been or is next friend or guardian ad litem of a person under disability in any proceedings no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.
- (4) Where, after any proceedings have been begun, a party to the proceedings becomes a patient, an application must be made to the Court for the appointment of a person to be next friend or guardian ad litem, as the case may be, of that party.
- (5) Except where the next friend or guardian ad litem, as the case may be, of a person under disability has been appointed by the Court -
  - (a) the name of any person shall not be used in a cause or matter as next friend or guardian ad litem of a person under disability;
  - (b) service shall not be acknowledged in a cause or matter for a person under disability; and
  - (c) a person under disability shall not be entitled to appear by his guardian ad litem on the hearing of a petition, summons or motion which, or notice of which, has been served on him,

unless and until the documents listed in paragraph (6) have been filed in the Court office.

- (6) The documents referred to in paragraph (5) are the following -
  - (a) a written consent to be next friend or guardian ad litem, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian;
  - (b) where the person proposing to be next friend or guardian ad litem of the person under disability, being a patient, has been appointed guardian under Section 14 of the Grand Court Law (1995 Revision), an office copy of the order appointing him;
  - (c) where the person proposing to be next friend or guardian ad litem of the person under disability, being a child, has been appointed guardian under The Guardianship and Custody of Children Law (Revised), an office copy of the order appointing him;

- (d) where the person under disability, being a child, is the subject of an order for care and control or custody made under Sections 20(a) or 22(a) of the Matrimonial Causes Law, as amended, an office copy of such order; and
- (e) a certificate made by the attorney for the person under disability certifying -
  - (i) that he knows or believes, as the case may be, that the person to whom the certificate relates is a child or a patient, giving (in the case of a patient) the grounds of his knowledge or belief; and
  - (ii) where the person under disability is a patient, that there is no person authorised as aforesaid; and
  - (iii) that the person so named has no interest in the cause or matter in question adverse to that of the person under disability.
- (3) If it appears to the Court that there is no fit and proper person who is willing and able to act as next friend or guardian ad litem for a person under disability, it shall appoint the Solicitor General.

**No rules (O.80, rr.4-5)**

**Appointment of guardian where person under disability does not acknowledge service (O.80, r.6)**

- 6.** (1) Where -
- (a) in an action against a person under disability begun by writ, or by originating summons, no acknowledgment of service is given in the action for that person; or
  - (b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no acknowledgment of service is given for that person,

an application for the appointment by the Court of a guardian ad litem of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for appearing and before proceeding further with the action or counterclaim.

- (2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no acknowledgment of service is given for that person to the notice, an application for the appointment by the Court of a guardian ad litem of that person must be made by that party after the time limited (as respects that person) for

acknowledging service and before proceeding further with the third party proceedings.

- (3) Where in any proceedings against a person under disability begun by petition or motion, that person does not appear by a guardian ad litem at the hearing of the petition or motion, as the case may be, the Court hearing it may appoint a guardian ad litem of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.
- (4) At any stage in the proceedings under any judgment or order, notice of which has been served on a person under disability, the Court may, if no acknowledgment of service is given for that person, appoint a guardian ad litem of that person in the proceedings or direct that an application be made for the appointment of such a guardian.
- (5) An application under paragraph (1) or (2) must be supported by evidence proving -
  - (a) that the person to whom the application relates is a person under disability;
  - (b) that the person proposed as guardian ad litem is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability;
  - (c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability; and
  - (d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for appearing and at least 7 days before the day named in the notice for hearing of the application, so served on him.
- (6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.
- (7) An application for the appointment of a guardian ad litem made in compliance with a direction of the Court given under paragraph (3) or (4) must be supported by evidence proving the matters referred to in subparagraph (5)(b).

**Application to discharge or vary certain orders (O.80, r.7)**

7. An application to the Court on behalf of a person under disability served with an order made ex parte under Order 15, rule 7, for the discharge or variation of the order must be made -

- (a) if a next friend or guardian ad litem is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;
- (b) if there is no next friend or guardian ad litem acting for that person in that cause or matter, within 14 days after the appointment of such a friend or guardian to act for him.

**Admission not to be implied from pleading of person under disability (O.80, r.8)**

8. Notwithstanding anything in Order 18, rule 13(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

**Discovery and interrogatories (O.80, r.9)**

9. Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian ad litem.

**Compromise, etc. by person under disability (O. 80, r.10)**

10. Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into Court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

**Approval of settlement (O.80, r.11)**

11. (1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then notwithstanding anything in Order 5, rule 2, the claim may be made in proceedings begun by originating summons and in the summons an application may also be made for -
- (a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under rule 12; or
  - (b) alternatively, directions as to the further prosecution of the claim.
- (2) Where in proceedings under this rule a claim is made under the Torts (Reform) Law (1996 Revision), the originating summons must include the particulars mentioned in Section 5 of that Law.
- (3) An originating summons under this rule shall be in Form No. 3 of Appendix I.

- (4) In this rule "settlement" includes a compromise.

**Control of money recovered by person under disability (O.80, r.12)**

12. (1) Where in any proceedings -

- (a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability; or
- (b) money paid into Court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, and not otherwise.

- (2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the Court and invested or otherwise dealt with there.
- (3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into Court to the plaintiff, or to the next friend in respect of monies paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's attorney in respect of costs.
- (4) Where in pursuance of directions given under this rule money is paid into Court to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of Court, except in accordance with an order of the Court.
- (5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under a disability, and a claim made by or on behalf of such person in an action by any other person for relief under Section 504 of the Merchant Shipping Act 1894, as if for the references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian ad litem respectively.

**Appointment of guardian of child's estate (O.80, r.13)**

13. (1) In any of the circumstances described in paragraph (2) the Court may appoint a licensed trust corporation to be a guardian of the estate of a child provided that -
- (a) the appointment is to subsist only until the child reaches the age of 18; and



- (b) the consent of the child's parents has been signified to the Court or, in the opinion of the Court, cannot be obtained or may be dispensed with.
- (2) The circumstances referred to in paragraph (1) are -
- (a) where money is paid into Court on behalf of the child in accordance with directions given under rule 12(2);
  - (b) where a court or tribunal outside the Islands notifies the Court that it has ordered or intends to order that money be paid to the child;
  - (c) where the child is absolutely entitled to proceeds of a pension fund;
  - (d) where the child is absolutely entitled to a trust fund; or
  - (e) where such an appointment seems desirable to the Court.
- (3) Rules 23 and 24 of this Order shall apply, mutatis mutandis, to a licensed trust corporation appointed under this rule as they apply to a receiver appointed under Part II of this Order, provided that an application for its removal may only be made by -
- (a) the child's parent;
  - (b) if the child has no parents, by any guardian appointed under The Guardianship and Custody of Children Law (Revised); or
  - (c) the Solicitor General.

**No rule (O.80, r.14)**

**Proceedings under the Torts (Reform) Law - apportionment by Court (O.80, r.15)**

- 15.** (1) Where a single sum of money is paid into Court under Order 22, rule 1, in satisfaction of causes of action arising under the Torts (Reform) Law (1996 Revision) and the Estate Proceedings Law (1995 Revision), and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it under rule 10 (if that rule applies) or when authorising its payment out of Court.
- (2) Where, in an action in which a claim under the Torts (Reform) Law (1996 Revision) is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or a sum of money paid into Court under Order 22, rule 1, is accepted in satisfaction of the cause of action under the said Law, then it shall be apportioned between those persons by the Court.

The reference in this paragraph to a sum of money paid into Court shall be construed as including a reference to part of a sum so paid being the part apportioned by the Court under paragraph (1) to the cause of action under the said Law.

**Service of certain documents on person under disability (O.80, r.16)**

- 16.** (1) Where in any proceedings a document is required to be served personally on any person and that person is a person under disability this rule shall apply.
- (2) Subject to the following provisions of this rule and to Order 24, rule 20(3), and Order 26, rule 6(3), the document must be served -
- (a) in the case of a child who is not also a patient, on his parent or guardian or, if he has no parent or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of a patient, on the person (if any) who is authorised under Section 14 of the Law to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is,

and must be served in the manner required by these Rules with respect to the document in question.

- (3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.
- (4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a writ of subpoena against any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders.

This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

**II. ADMINISTRATION OF PATIENT'S PROPERTY**

**Application to appoint receiver, etc. (O.80, r.17)**

- 17.** (1) Subject to rule 18, an application to appoint a receiver or other person under Section 13 of the Law may be made by -

- (a) the patient himself;
  - (b) the patient's spouse;
  - (c) any guardian of the patient appointed under Section 14 of the Grand Court Law (1995 Revision);
  - (d) any near relative of the patient as defined in Section 2 of the Law; or
  - (e) the Solicitor General.
- (2) Subject to paragraph (3), an application under this rule shall be made by originating summons.
  - (3) The Court may dispense with the need for issuing an originating summons whenever the Court considers that it is necessary for an application to be made urgently.
  - (4) An application under this rule may be combined with an application under rule 27.

**Power to direct application by officer of Court or Solicitor General (O.80, r.18)**

- 18.** Where in the opinion of the Court an application ought to be made for the appointment or discharge of a receiver or other person appointed under Section 14 of the Law or for the exercise of any other power conferred on the Court with respect to the property and affairs of a patient, and there appears to the Court to be no other suitable person able and willing to make the application, or the Court for any other reason thinks fit, the Court may direct that the application be made by the Solicitor General.

**Representation of patient by Solicitor General (O.80, r.19)**

- 19.** Where in any proceeding the Court considers that the interests of a patient are not adequately represented the Court may direct that the Solicitor General shall act as attorney for the patient either generally or in the proceedings or for any particular purpose connected with the proceedings, so, however, that it shall not be necessary to appoint the Solicitor General to be receiver or guardian ad litem for the patient.

**Evidence to be filed on application under rule 17 (O.80, r.20)**

- 20.** (1) An application under rule 17 shall be supported by -
- (a) a report by a medical practitioner that the patient is incapable of managing and administering his property and affairs; and
  - (b) an affidavit giving particulars of the patient's relatives, property and affairs and of the circumstances giving rise to the application.

- (2) Whenever the Court thinks it expedient to do so, it may request the Chief Medical Officer to examine a patient and provide the Court with a further report for the purpose of -
  - (a) certifying whether or not the patient is capable of managing his property and affairs; or
  - (b) answering such specific questions as may be put to him by the Court.
- (3) Whenever the Court proceeds in accordance with rule 17(3), the Court may dispense with the requirements of paragraphs (1) and (2).

**Service on patient (O.80, r.21)**

21. (1) An originating summons under rule 17 shall be served on -
  - (a) the patient unless the Court is satisfied that service on the patient would be injurious to his health;
  - (b) in the case of a child who is also a patient, on his parent or guardian or, if he has no parent or guardian, on the person with whom he resides or in whose care he is;
  - (c) any guardian appointed in respect of the patient under Section 14 of the Grand Court Law (1995 Revision);
  - (d) any person with whom the patient resides; or
  - (e) such other person as the Court may direct.
- (2) Notwithstanding paragraph (1), the Court may dispense with service altogether if it is satisfied that service on the patient or upon any person mentioned in paragraph (1) would be injurious to the patient's health.
- (3) Where service has been dispensed with under paragraph (2) the Court may request the Chief Medical Officer to visit the patient and report to the Court as to his condition and welfare.
- (4) An affidavit of service showing where, when, how and by whom service was effected shall be filed as soon as practicable after service of a document has been effected in accordance with this rule.

**Appointment of receiver (O.80, r.22)**

22. (1) Order 30, rules 2, 3 and 4, shall apply to the appointment of a receiver under this Part of this Order.

- (2) Where a receiver is appointed for a patient, the Court may allow the receiver remuneration for his services at such amount or at such rate as the Court considers reasonable and proper and any remuneration so allowed shall constitute a debt due to the receiver from the patient and his estate.
- (3) An order for the appointment of a receiver shall contain such directions as the Court thinks fit including -
  - (a) directions in respect of the investment and management of the patient's property;
  - (b) directions in respect of the maintenance of the patient, his dependents and the application of his income; and
  - (c) directions for the payment of the patient's debts.
- (4) The receiver may apply by summons in the proceedings for such further or other directions as he considers necessary.

**Receiver's accounts (O.80, r.23)**

23. (1) Every receiver shall annually, or at such intervals as the Court may direct, deliver his accounts to the Court and attend at or within such time as the Court may appoint to have the accounts taken and passed.
- (2) On the passing of any accounts the Court shall make all proper allowances out of the patient's estate, including an allowance in respect of the reasonable and proper costs of the receiver of passing the accounts and of any other person allowed to attend.
- (3) The Court may, if it thinks fit, direct that a receiver need not account under this rule or may dispense with the passing of any accounts at any time at which they would otherwise require to be passed.
- (4) The balance found due from a receiver on the passing of his accounts or so much thereof as the Court may direct shall -
  - (a) be paid by the receiver into Court to the credit of the proceedings and invested in such manner as the Court may direct; or
  - (b) be invested or otherwise dealt with by the receiver in such manner as the Court may direct.
- (5) Unless otherwise directed, any money ordered to be paid by a receiver for maintenance shall be paid out of income and any costs ordered to be paid by a receiver may, when determined, be paid out of any monies coming into his hands, after providing for any maintenance and fees payable under these Rules.

**Default by receiver (O.80, r.24)**

24. (1) Where a receiver fails to comply with rule 23 or fails to pay into Court or invest or to otherwise deal with any money in accordance with any direction of the Court, the Court may disallow any remuneration which would otherwise be due to the receiver and, if he has made default in paying into Court or investing in or otherwise dealing with any money, may charge him with interest thereon at such rate as the Court may fix for the period of his default.
- (2) Any person who would be entitled to apply for the appointment of a receiver under rule 17 may apply for an order under paragraph (1) or for an order removing the receiver on the ground that -
- (a) he is in default; or
  - (b) he is no longer willing, able or fit to perform the duties required of him with respect to the patient.

**Discharge of receiver (O.80. r.25)**

25. (1) A receiver may apply to the Court for his discharge on the ground that -
- (a) he desires to resign;
  - (b) the patient has recovered and is capable of managing his own affairs; or
  - (c) that patient has no significant property or income such that the services of a receiver are no longer required,
- provided that an order shall not be made under subparagraph (a) of this rule unless or until the Court is able to appoint a successor.
- (2) A patient may apply to the Court for the discharge of his receiver on the grounds mentioned in subparagraph (1)(b) or (c).
- (3) Subject to applying for his final accounts to be passed, a receiver shall be discharged upon the death of the patient in respect of whom he was appointed.
- (4) An order for the discharge of a receiver shall take effect from the date upon which his final accounts are passed by the Court.
- (5) A receiver who is removed pursuant to rule 24 shall not be discharged until any liability to the patient or his estate has been satisfied and his final accounts have been passed by the Court.

**Application for settlement or gift of patient's property or for execution of will of patient (O.80, r.26)**

26. An application for an order for the settlement or gift of any property of a patient or an application for execution for a patient of a will, may be made only by -
- (a) the receiver or other person appointed for the patient under Section 14 of the Law; or
  - (b) any person who has made an application for the appointment of a receiver or other person under Section 14 of the Law which has not yet been determined; or
  - (c) any person who, under any known will of the patient or his intestacy, may become entitled to any property of the patient or any interest therein; or
  - (d) any person for whom the patient might be expected to provide if he were not mentally disordered.

**Application to be heard in Chambers (O.80, r.27)**

27. Every application under this Part of this Order shall be heard in Chambers unless the Court directs pursuant to Order 32, rule 13, that an application should be adjourned into open court.

**III. APPOINTMENT OF GUARDIAN**

**Application for appointment of guardian (O.80, r.28)**

28. (1) An application for the appointment of a guardian under Section 14 of the Grand Court Law (1995 Revision) may be made by any of the persons mentioned in rule 17(1)(a),(b),(d) or (e).
- (2) Subject to paragraph (3), an application under this rule shall be made by originating summons.
- (3) The Court may dispense with the need for issuing an originating summons whenever the Court considers that it is necessary for an application to be made urgently.
- (4) Rules 18 and 19 shall apply, mutatis mutandis, to this Part of this Order.
- (5) An application under this rule may be combined with an application under rule 17.

**Evidence in support of an application under rule 28 (O.80, r.29)**

29. (1) An application under rule 28 shall be supported by -

- (a) a report by a medical practitioner certifying that the person is of unsound mind or suffering from mental illness; and
  - (b) an affidavit giving particulars of the patient's relatives and of the circumstances giving rise to the application.
- (2) Whenever the Court thinks it expedient to do so, it may request the Chief Medical Officer to examine a person and provide the Court with a further report for the purpose of -
- (a) certifying whether or not the person is of unsound mind or suffering from mental illness; or
  - (b) answering such specific questions as may be put to him by the Court.
- (3) Whenever the Court proceeds in accordance with rule 28(3), the Court may dispense with the requirements of paragraphs (1) and (2).

**Service (O.80, r.30)**

**30.** Rule 21 shall apply to an application made under this Part of this Order.

**Order appointing guardian (O.80, r.31)**

- 31.** (1) An order for the appointment of a guardian in respect of any person shall specify the duties to be performed by the guardian, provided that the guardian shall not have any duty in respect of the administration of a person's property generally unless he is also appointed receiver.
- (2) The guardian may apply by summons in the proceedings for such further or other directions as he considers necessary, including an application under rule 17 that he be appointed receiver.

**Removal of guardian (O.80, r.32)**

- 32.** (1) A guardian may apply to the Court for his own removal on the ground that -
- (a) he desires to resign; or
  - (b) the patient has recovered, is of sound mind and no longer suffering from mental illness,
- provided that an order shall not be made under subparagraph (a) of this rule unless and until the Court is able to appoint a successor.
- (2) A patient or any person who would have been able to apply under rule 28(1) for the appointment of the guardian may apply to the Court for the guardian's removal on the ground -



- (a) mentioned in subparagraph (1)(b) of this rule;
- (b) that the guardian has failed to discharge his duty; or
- (c) that the guardian is no longer willing, able or fit to perform the duties required of him with respect to the patient.



**ORDER 81****PARTNERS****I. GENERAL PARTNERSHIPS****Actions by and against firms within jurisdiction (O.81, r.1)**

1. Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

**Disclosure of partners' names (O.81, r.2)**

2. (1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their attorneys a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their attorneys to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the action be stayed on such terms as the Court may direct.
- (2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiffs in the writ.
- (3) Paragraph (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively, and with the omission of the words "or may order" to the end.

**Service of writ (O.81, r.3)**

3. (1) Where by virtue of rule 1 partners are sued in the name of a firm, the writ may, except in the case mentioned in paragraph (2), be served -
  - (a) on any one or more of the partners; or

- (b) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there,

and where service of the writ is effected in accordance with this paragraph, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of the jurisdiction.

- (2) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun must be served on every person within the jurisdiction sought to be made liable in the action.
- (3) Every person on whom a writ is served under paragraph (1) must at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as partner and as such a person; and any person on whom a writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

#### **Acknowledgment of service in action against firm (O.81, r.4)**

- 4. (1) Where persons are sued as partners in the name of their firm, service may not be acknowledged in the name of the firm but only by the partners thereof in their own names but the action shall nevertheless continue in the name of the firm.
- (2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may acknowledge service of the writ in the action and state in his acknowledgment that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An acknowledgment of service given in accordance with this paragraph shall, unless and until it is set aside, be treated as an acknowledgment by the defendant firm.

- (3) Where an acknowledgment of service has been given for a defendant in accordance with paragraph (2), then -
  - (a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;
  - (b) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the plaintiff

denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

- (4) The Court may at any stage of the proceedings in an action in which a defendant has acknowledged service in accordance with paragraph (2), on the application of the plaintiff or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.
- (5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not acknowledge service in the action unless he is a member of the firm sued.

**Enforcing judgment or order against firm (O.81, r.5)**

- 5. (1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.
- (2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6 and to the next following paragraphs, issue against any person who -
  - (a) acknowledged service of the writ in the action as a partner; or
  - (b) having been served as a partner with the writ failed to acknowledge service of the writ in the action; or
  - (c) admitted in his pleading that he is a partner; or
  - (d) was adjudged to be a partner.
- (3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ was issued unless he -
  - (a) acknowledged service of the writ in the action as a partner; or
  - (b) was served within the jurisdiction with the writ as a partner; or
  - (c) was, with the leave of the Court given under Order 11, served out of the jurisdiction with the writ as a partner,

and, except as provided by paragraph (1) and by the foregoing provisions to this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

- (4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person, the application to be made by summons which must be served personally on that person.
- (5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3), give leave to issue execution against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

**Enforcing judgment or order in actions between partners, etc. (O.81, r.6)**

- 6. (1) Execution to enforce a judgment or order given or made in -
  - (a) an action by or against a firm in the name of the firm against or by a member of the firm; or
  - (b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,
 shall not issue except with the leave of the Court.
- (2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

**Attachment of debts owed by firm (O.81, r.7)**

- 7. (1) An order may be made under Order 49, rule 1, in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.
- (2) An order to show cause under the said rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.
- (3) Where an order made under the said rule requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

**Actions begun by originating summons (O.81, r.8)**

8. Rules 2 to 7 shall, with the necessary modifications, apply in relation to an action by or against partners in the name of their firm begun by originating summons as they apply in relation to such an action begun by writ.

**Application to person carrying on business in another name (O.81, r.9)**

9. An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and rules 2 to 8 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

**Applications for orders charging partner's interest in partnership property, etc. (O.81, r.10)**

10. (1) Every application to the Court by a judgment creditor of a partner for an order under Section 23 of the Partnership Law (2002 Revision) (which authorises the Court to make certain orders on the application of a judgment creditor of a partner, including an order charging the partner's interest in the partnership property), and every application to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application must be made by summons.
- (2) Every summons issued by a judgment creditor under this rule, and every order made on such a summons, must be served on the judgment debtor and on such of his partners as are within the jurisdiction.
- (3) Every summons issued by a partner of a judgment debtor under this rule, and every order made on such a summons, must be served -
- (a) on the judgment creditor; and
  - (b) on the judgment debtor; and
  - (c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction.
- (4) A summons or order served in accordance with this rule, on some only of the partners of a partnership, shall be deemed to have been served on all the partners of that partnership.

**II. LIMITED PARTNERSHIPS****Definitions (O.81, r.11)**

11. In Part II of this Order -

- (a) "ordinary limited partnership" means a limited partnership registered in accordance with Section 49 of the Partnership Law (2002 Revision);
- (b) "exempted limited partnership" means a limited partnership registered in accordance with Section 9 of the Exempted Limited Partnership Law (2001 Revision);
- (c) "general partner" when used in relation to an ordinary limited partnership means a partner who is not a limited partner as defined by Section 46(2)(a) of the Partnership Law (2002 Revision), and when used in relation to an exempted limited partnership means a person who is named as such in the statement filed pursuant to Section 9 of the Exempted Limited Partnership Law (2001 Revision);
- (d) "firm" means an ordinary limited partnership or an exempted limited partnership.

**Actions by and against firms within jurisdiction (O.81, r.12)**

12. Any actions by or against an ordinary limited partnership or exempted limited partnership may be commenced in the name of the firm.

**Service of writ (O.81, r.13)**

13. Where an action is commenced against a firm, whether sued in the firm name or in the name of the general partner, the writ shall be served –
- (a) in the case of an ordinary limited partnership, by delivering the writ to its registered principal place of business; and
  - (b) in the case of an exempted limited partnership, by delivering the writ to its registered office.

**Acknowledgment of service in action against firm (O.81, r.14)**

14. Where an ordinary limited partnership or exempted limited partnership is sued in its firm name, service may not be acknowledged in the name of the firm but only by the general partner thereof in his own name, but the action shall nevertheless continue in the name of the firm.

**Enforcing judgment or order against firm (O.81, r.15)**

15. (1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may be issued against any property of the firm within the jurisdiction.
- (2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may be issued against any person who -



- (a) acknowledged service of the writ in the action as a general partner; or
  - (b) is registered as a general partner of the firm; or
  - (c) was admitted in any pleading to be a general partner of the firm; or
  - (d) was adjudged to be a general partner of the firm pursuant to Section 52(2) of the Partnership Law (2002 Revision), or Section 7(2) of the Exempted Partnership Law (2001 Revision), as the case may be.
- (3) Except as provided by paragraph (2), where a judgment is given or order made against a firm, execution to enforce the judgment or order shall not be issued against any person who is registered as a limited partner.



**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 (1996 Revision) 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 (1995 Revision) 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 (1995 Revision) 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.

**ORDERS 83-84**

**NO ORDERS**





**ORDER 85****ADMINISTRATION AND SIMILAR ACTIONS****Interpretation (O.85, r.1)****1. In this Order -**

"administration action" means an action for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

"enforcer" has the meaning ascribed to it by the Special Trusts (Alternative Regime) Law 1997 (Part VIII of the Trusts Law (2001 Revision)).

"special trust" has the meaning ascribed to it by the Special Trusts (Alternative Regime) Law 1997 (Part VIII of the Trusts Law (2001 Revision)).

"trust" and "trustee" have the meanings ascribed to them in Section 2 of the Trusts Law (2001 Revision), and includes a special trust except where the context otherwise requires.

**Determination of questions, etc., without administration (O.85, r.2)**

- 2.** (1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.
- (2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions -
- (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
  - (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
  - (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust; or
  - (d) any question as to the rights or duties of an enforcer.

- (3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs -
- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
  - (b) an order requiring the payment into Court of money held by a person in his capacity as executor, administrator or trustee;
  - (c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator, trustee or enforcer;
  - (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;
  - (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court; or
  - (f) the advice or opinion of the Court on any question respecting the management of the estate or trust or the enforcement of a special trust.
- (4) An action may be brought under this rule by -
- (a) any executor or administrator of an estate;
  - (b) any trustee of a trust;
  - (c) any beneficiary of an estate or trust, not being a special trust; or
  - (d) any enforcer of a special trust.

**Parties (O.85, r.3)**

3. (1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.
- (2) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust and all enforcers of a special trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the action; but the plaintiff may make such of those persons, whether all or any one or more of them,

parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.

- (3) For the purposes of this rule, a beneficiary of a special trust who is not also an enforcer, shall not be treated as having a beneficial interest under the trust.
- (4) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

#### **Grant of relief in action begun by originating summons (O.85, r.4)**

4. In an administration action or such an action as is referred to in rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun by originating summons, but the foregoing provision is without prejudice to the power of the Court to make an order under Order 28, rule 8, in relation to the action.

#### **Judgments and orders in administration actions (O.85, r.5)**

5. (1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.
- (2) Where an administration action is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may –
  - (a) order that proceedings in the action be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;
  - (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the action relates and include therein an order that no proceedings are to be taken under the

judgment or order, or under any particular account or inquiry directed without the leave of the Judge.

**Conduct of sale of trust property (O.85, r.6)**

6. Where in an administration action an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have the conduct of the sale unless the Court otherwise directs.

**Ordinary application under Section 48 of the Trusts Law (2001 Revision) (O.85, r.7)**

7. (1) Unless made by written submission under rule 8, an application by an executor, administrator, trustee or enforcer under Section 48 of the Trusts Law (2001 Revision) for the opinion, advice or direction of the Court upon any question respecting the management or administration of the estate or trust fund shall be made in accordance with this rule.
- (2) An application under this rule shall be made by originating summons in Form No. 3 of Appendix I or an ex parte originating summons in Form No. 4 of Appendix I.
- (3) Every application under this rule shall be supported by an affidavit which shall -
- (a) have exhibited to it -
    - (i) the will and order of probate;
    - (ii) the letters of administration;
    - (iii) the deed of settlement; or
    - (iv) the declaration of trust,
 as the case may be;
  - (b) contain full particulars of the beneficiaries or classes of beneficiaries and their respective interests;
  - (c) define the question in respect of which the Court's opinion, advice or direction is sought; and
  - (d) give a full and frank disclosure of all facts material to the application.

**Written application under Section 48 of the Trusts Law (2001 Revision) (O.85, r.8)**

8. (1) An application by an executor, administrator, trustee or enforcer under Section 48 of the Trusts Law (2001 Revision) for the opinion, advice or direction of the Court upon any question respecting the management or administration of the estate or trust fund may be made by written submission without any oral hearing.

- (2) An application under this rule shall be made by ex parte originating application in Form No. 57 of Appendix I.
- (3) An application under this rule shall be supported by a written submission signed by the applicant's attorney which shall -
  - (a) explain why the application is not made under rule 2 and served in accordance with rule 3;
  - (b) define the question in respect of which the Court's opinion, advice or direction is sought;
  - (c) identify and discuss all matters of law which are material to the application; and
  - (d) give a full and frank disclosure of all facts material to the application.
- (4) An application under this rule may be supported by a statement of agreed facts signed by -
  - (a) the executor, administrator or trustee, as the case may be;
  - (b) by all the adult beneficiaries of the estate or trust; or
  - (c) by all the adult enforcers of a special trust.
- (5) Unless supported by a statement of agreed facts signed in accordance with paragraph (4), an application under this rule shall be supported by an affidavit which shall -
  - (a) contain full particulars of the beneficiaries or classes of beneficiaries and their respective interests; and
  - (b) verify the statement of material facts contained in the written submission.
- (6) A statement of agreed facts or affidavit shall have exhibited to it a true copy of the will and grant of probate or the letters of administration or the deed of settlement or the declaration of trust, as the case may be.
- (7) Upon an application under this rule the Court may -
  - (a) give its written opinion, advice or direction; or
  - (b) give directions for the application to proceed in accordance with rule 2 or rule 7.
- (8) An application may not be made under this rule by an executor, administrator, trustee or enforcer acting in person.

- (9) Order 28 shall not apply to a written application under this rule unless the Court gives directions for the application to proceed in accordance with rule 2 or rule 7.
- (10) Order 42, rule 5, shall not apply to a written opinion, advice or direction given on an application under this rule, which shall be drawn up by the Judge and sent by the Clerk of the Court to the applicant's attorney.

**Application for reformation of a special trust (O.85, r.9)**

- 9.**
- (1) An application under Section 103(4) or Section 104(1) of the Trusts Law (2001 Revision) to reform a special trust or settle a plan for its administration shall be made by originating summons in Form No. 3 of Appendix I.
  - (2) An application under this rule may be made by a trustee or an enforcer of a special trust.
  - (3) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, all the enforcers of a special trust in respect of which an application under this rule is made need not be parties to the application, but the applicant may make such of the enforcers parties as, having regard to the circumstances of the case, he thinks fit.
  - (4) Every application under this rule shall be supported by an affidavit.

**ORDER 86****ACTIONS FOR SPECIFIC PERFORMANCE, ETC.:****SUMMARY JUDGMENT****Application by plaintiff for summary judgment (O.86, r.1)**

1. (1) In any action begun by writ indorsed with a claim -
  - (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase or exchange of any property or for the grant or assignment of a lease of any property with or without an alternative claim for damages; or
  - (b) for rescission of such an agreement; or
  - (c) for the forfeiture or return of any deposit made under such an agreement,the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.
- (2) An application may be made against a defendant under this rule whether or not he has acknowledged service of the writ in the action.

**Manner in which application under rule 1 must be made (O.86, r.2)**

2. (1) An application under rule 1 must be made by summons supported by an affidavit made by some person who can swear positively to the facts verifying the cause of action and stating that in his belief there is no defence to the action. Unless the Court otherwise directs an affidavit for the purposes of this paragraph may contain statements of information or belief with the sources and grounds thereof.
- (2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.
- (3) The summons, a copy of the affidavit in support and of any exhibit referred to therein, must be served on the defendant not less than 4 clear days before the return day.

**Judgment for plaintiff (O.86, r.3)**

3. Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.

**Leave to defend (O.86, 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) The Court may give a defendant against whom such an application is made leave to defend the action either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.
- (3) 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.

**Directions (O.86, r.5)**

5. Where the Court orders that a defendant have leave to defend the action, 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 were a summons for directions.

**Costs (O.86, r.6)**

6. 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 the 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.

**Setting aside judgment (O.86, r.7)**

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



**ORDERS 87-91**

**NO ORDERS**



**ORDER 92****LODGMET, INVESTMENT, ETC., OF FUNDS IN COURT****Interpretation (O.92, r.1)**

1. In this Order, the following expressions shall have the following meanings -

"the Bank" means such bank or banks as may be designated by the Governor under the First Schedule, paragraph 1(2) of The Judicature Law (2002 Revision);

"the Court" includes the Court of Appeal and the Summary Court;

"General Account" means the non-interest bearing bank account established in accordance with rule 7(1);

"designated mutual fund" means a mutual fund designated under the First Schedule, paragraph 3(1) of The Judicature Law (2002 Revision);

"funds" or "funds in Court" means any money, securities, investments or other property standing or to be placed to the account of the Accountant General by virtue of the First Schedule, paragraph 1(1) of The Judicature Law (2002 Revision), or of any other person by virtue of rules made under subsection (6) of that Section;

"lodge in Court" means to pay or transfer into Court or deposit in Court;

"lodgment schedule" means a schedule to an order directing funds to be lodged to the account of the Accountant General;

"Nominated Account" means an interest bearing nominated bank account established in accordance with rule 7(3);

"payment schedule" means a schedule to an order directing the payment of funds from the account of the Accountant General;

**Payment into Court under the Trusts Law (Revised) (O.92, r.2)**

2. (1) Any trustee wishing to pay a trust fund into Court under Section 69 of The Trusts Law (2001 Revision), must make an affidavit setting out -
- (a) a short description of the trust and the instrument creating it or, as the case may be, of the circumstances in which the trust arose;
  - (b) the names of the persons interested in or entitled to the money or securities to be paid into Court with their addresses so far as known to him;

- (c) his submission to answer all such inquires relating to the application of such money or securities as the Court may make or direct; and
  - (d) an address where he may be served with any summons or order, or notice of any proceedings, relating to the money or securities paid into Court.
- (2) In the case of a trust fund which is the subject of a proceeding pending in Court, the affidavit required to be made under paragraph (1) shall be filed in Court and a copy of it shall be served on the Accountant General.
  - (3) In the case of a trust fund which is not the subject of any proceeding pending in the Court, the affidavit required to be made under paragraph (1) shall be filed with the Accountant General.
  - (4) An application under this rule shall be in Form No. 105 of Appendix II.

**Notice of lodgment (O.92, r.3)**

- 3. Any person who has lodged money or securities in Court in accordance with rule 2 must forthwith send notice of the lodgment to every person appearing from the affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

**Applications with respect to funds in Court (O.92, r.4)**

- 4. (1) Where an application is made to the Court -
  - (a) for the payment or transfer to any person of any funds in Court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for payment to any person of any dividend of or interest on any securities or money comprised in such funds;
  - (b) for the investment or change of investment, of any funds in Court;
  - (c) for payment of the dividends of or interest on any funds in Court representing or comprising money or securities lodged in Court under any enactment; or
  - (d) for the payment or transfer out of Court of any such funds as are mentioned in subparagraph (c),

the application may be disposed of in Chambers.
- (2) Subject to paragraph (3), any such application must be made by summons, and unless the application is made in a pending cause or matter or an application for the same purpose has previously been made by petition or originating summons, the summons must be an originating summons.

- (3) Where an application under subparagraph (1)(d) is required to be made by originating summons, then, if the funds to which the application relates do not exceed CI\$10,000.00 in value, and subject to any enactment, the application may be made ex parte and the Judge hearing it may either dispose of the application or may direct it to be served.
- (4) This rule does not apply to any application for an order under Order 22.

#### **Court Funds Office (O.92, r.5)**

5. The office of the Accountant General or of any officer appointed by him shall be known as the Courts Funds Office.

#### **Discharge of the Accountant General's functions (O.92, r.6)**

6. The functions of the Accountant General under these Rules may be discharged, to such extent as he may direct, by any officer appointed by him.

#### **Bank accounts (O.92, r.7)**

7. (1) The Accountant General shall establish accounts with the Bank (referred to as "the General Account") denominated in Cayman Islands Dollars, United States Dollars and such other currencies as may be required.
- (2) Any interest earned on money credited to the General Account shall be treated as Government revenue.
- (3) The Accountant General may from time to time establish with the Bank nominated interest bearing accounts (referred to as "Nominated Accounts") denominated in such currencies as may be appropriate.
- (4) All money lodged with the Court Funds Office shall be paid into the General Account unless the lodgment schedule requires that it be paid into a Nominated Account.
- (5) All Nominated Accounts shall be established in the name of "The Accountant General of the Grand Court" followed by such designation as may be appropriate to identify the trust, cause or matter to which it relates.
- (6) Interest shall accrue on Nominated Accounts from the date upon which they are established with the Bank and the rate of interest applicable shall be that which may be agreed from time to time between the Bank and the Accountant General.

#### **Lodgment schedule (O.92, r.8)**

8. (1) Where a lodgment of funds in Court is directed by an order of any court, other than an attachment of earnings order, the Accountant General shall not make any

such lodgment until he has received a lodgment schedule in Form No. 101 or Form No. 102 of Appendix II, as may be appropriate.

- (2) Money payable by an employer pursuant to an attachment of earnings order shall be lodged in such manner as may be directed by the Accountant General.

**Payment schedule (O.92, r.9)**

9. (1) Where an order, other than an attachment of earnings order, directs the manner in which any fund in Court is to be dealt with by the Accountant General, a payment schedule in Form No. 201 or Form No. 202 of Appendix II signed by an authorised officer and bearing the seal of the Court shall be sufficient authority to the Accountant General to deal with a fund in accordance with the schedule.
- (2) An attachment of earnings order shall be sufficient authority for the Accountant General to pay to the judgment creditor sums of money received from the judgment debtor's employer.
- (3) For the purposes of giving effect to this rule the Chief Justice shall from time to time make practice directions specifying the authorised officers and the scope of their respective authority.
- (4) Every authorised officer shall sign a signature card in such form as shall be acceptable to the Accountant General.

**Preparation of schedules (O.92, r.10)**

10. (1) In any proceedings in Court where an order is made for the lodgment of or dealing with funds in Court, the party having carriage of the order shall also be responsible for drawing up the necessary lodgment or payment schedule which shall be presented to the Clerk of the Court at the same time as the order to which it relates.
- (2) Where all the parties to a cause or matter are agreed upon the terms of a judgment or order to which Order 42, rule 5A applies and such judgment or order provides for the lodgment of or dealing with funds in Court, the necessary lodgment or payment schedule shall be presented to the Clerk of the Court at the same time as the consent order to which it relates.
- (3) Where funds have been paid into Court as security for costs and the amount of costs payable has been agreed without the need for a taxation, the parties may apply for payment out of Court by presenting the Clerk of the Court with a payment schedule together with written evidence of the parties' agreement thereto.

**Lodgment of money in Court (O.92, r.11)**

11. (1) Money to be lodged in Court shall be paid into the Court Funds Office and all cheques or other instruments shall be made payable to "The Accountant General of the Grand Court".
- (2) Money shall not be paid directly to the Bank save on the direction of the Accountant General.

**Securities transferable by delivery and deposit of property (O.92, r.12)**

12. (1) The lodgment in the Court of securities transferable by delivery and the deposit of property shall be made by delivery to the Court Funds Office.
- (2) Any person who deposits property in Court in accordance with paragraph (1) above shall provide the Accountant General with an inventory of that property signed and certified by that person as a true and accurate record.

**Securities not transferable by delivery (O.92, r.13)**

13. (1) Where any securities (other than securities transferable by delivery) are paid into Court, they shall be transferred into the name of the Accountant General together with such designation as may be appropriate.
- (2) Where securities have been transferred into the Accountant General's name in the books of a bank or other company, the bank or other company, as the case may be, shall certify to the Accountant General that the securities have been transferred to his name.

**Appropriation (O.92, r.14)**

14. (1) Where a defendant has lodged money in Court in accordance with Order 14 as a condition of liberty to defend and desires to appropriate the whole or any part of such money in satisfaction of the whole or any part of the plaintiff's claim pursuant to Order 22, rule 8, he shall lodge with the Accountant General a notice of appropriation in Form No. 104 of Appendix II.
- (2) On receipt of a notice of appropriation the Accountant General shall note the relevant account accordingly.
- (3) If the plaintiff does not give notice of acceptance within 21 days after receiving notice of appropriation the Accountant General shall transfer the money to a Nominated Account designated in accordance with rule 7(5).

**Withdrawal of money from Nominated Accounts (O.92, r.15)**

15. Money shall only be withdrawn from a Nominated Account where the money, including any interest which has accrued at the time of withdrawal, is required to be withdrawn for the purpose of giving effect to a direction or order of the Court.

**Range of investments (O.92, r.16)**

16. Money under the control of, or subject to an order of the Court, may be invested or reinvested by the Accountant General, in the following ways -
- (a) it may be credited to a Nominated Account;
  - (b) it may be invested in any designated mutual fund.

**Time for investment (O.92, r.17)**

17. Subject to any directions of the Court, money required to be invested in an interest bearing account shall be credited to a Nominated Account as soon as it becomes available.

**Designated mutual funds (O.92, r.18)**

18. Where funds in Court are required to be invested in designated mutual funds or where funds so invested are required to be realised, the purchases or sales are to be effected on the first available valuation day.

**Payment, transfer and delivery of funds out of Court (O.92, r.19)**

19. (1) In this Rule the person entitled to the payment out of money is referred to as the "payee".
- (2) Subject to paragraphs (3) and (4) below, the payment out of money lodged in Court shall be made by crossed cheque which may be sent to the payee by post to the address specified in the payment schedule.
- (3) On receipt of a written request from the payee or a donee under a power of attorney given by the payee, the Accountant General may make payment to a bank in the Islands for the credit of the account of the payee at that bank or at a bank in the country in which he resides.
- (4) The Accountant General may, if he thinks fit, refuse to make a payment until he is satisfied as to the identity and entitlement of any person claiming to be the payee and the Accountant General may refuse to make a remittance by post in any individual case and may require the personal attendance of the payee at the Court Funds Office as a condition payment.



**Payment to representatives of deceased persons (O.92, r.20)**

20. (1) Where a person entitled to a fund in Court either in his own right or as sole, or sole surviving executor dies, the Accountant General may, where the fund exceeds CI\$5,000.00, pay it to the personal representative of the deceased on production of an office copy of the grant of probate or letters of administration in respect of the deceased's estate.
- (2) Where a person entitled to a fund in Court in his own right dies intestate and no grant of administration has been issued, the Accountant General may, where the assets of the deceased (including the fund in Court and after the deduction of debts and funeral expenses) do not exceed CI\$5,000.00, pay the fund to the person who appears to him to have the prior right to the grant of administration of the estate, on lodgment in the Court Funds Office of a written declaration of kinship.
- (3) Where two or more persons were entitled to payment of a fund in Court as personal representatives and any of them dies before the fund is dealt with, the Accountant General may pay the fund to the surviving personal representative(s) on proof of the death of the deceased personal representative; and where the fund does not exceed CI\$5,000.00 the Accountant General may, unless a Court otherwise directs, pay the fund to any one of them.

**Payment out without order of money lodged in satisfaction (O.92, r.21)**

21. (1) In this rule and rule 22 a person in respect of whose cause of action a sum has been paid into Court in satisfaction, whether by way of claim or counterclaim, is referred to as a plaintiff and a person against whom such cause of action lies is referred to as a defendant.
- (2) A defendant wishing to pay a sum into Court pursuant to Order 22, rule 1, in satisfaction of a plaintiff's claim shall file with the Accountant General a request for lodgment in Form No. 103 of Appendix II.
- (3) The Accountant General shall, on receipt of a request for payment in Form No. 203 of Appendix II, pay by cheque to the plaintiff money lodged in Court in satisfaction of a claim, or appropriated in accordance with rule 14, and accepted by him in accordance with these Rules; provided that where an attorney is acting for the plaintiff in the proceedings in which the money was lodged or appropriated by virtue of a legal aid certificate issued in accordance with the Legal Aid Law (1999 Revision), the Accountant General shall pay the money to that attorney, provided he is still so acting.

**Payment out of interest on securities (O.92, r.22)**

22. Where securities are lodged in Court under rule 12 or 13, any interest or dividends which accrue shall be credited by the Accountant General to a Nominated Account designated in the same manner as the designation of the securities.

**Charges on purchase or sale of securities (O.92, r.23)**

**23.** Subject to any directions of the Court -

- (a) where money in Court is invested in securities, the payment for the purchase shall include all applicable charges; and
- (b) where securities in Court are sold, all applicable charges shall be deducted from the proceeds of sale;

provided that, if the schedule directing a purchase or sale also directs that charges are not to be deducted from the fund in Court, the transaction shall not be completed until such charges have been paid either to the stockbroker or to the Accountant General, as the case may be.

**Certificates of funds in Court, copies of accounts, etc. (O.92, r.24)**

- 24.** (1) The Accountant General may, on receipt of a written request from a person appearing to him to be interested in a fund in Court, issue to him a certificate as to lodgment in court, non-payment into Court under an order or any other dealing with the fund.
- (2) On receipt of a written request, the Accountant General may issue to a person appearing to him to be interested in a Nominated Account a copy of the statements of account and any advice notes issued by the Bank in relation to it.
- (3) The Accountant General shall supply an annual statement of any fund in Court for the benefit of a child to his parent or guardian.

**Transitional provisions (O.92, r.25)**

- 25.** (1) On the commencement date the Accountant General shall:
- (a) transfer to the General Account all funds then standing to the credit of the Government's "Courts Office deposits subsidiary ledger";
  - (b) establish a sub-account of the General Account to correspond with each entry in the "Courts Office deposits subsidiary ledger"; and
  - (c) send to the Clerk of the Court details of all the sub-accounts established pursuant to this rule.
- (2) Within 14 days of the commencement date the Accountant General shall -
- (a) transfer to Nominated Accounts designated in accordance with rule 7(3) all funds then in Court and credited to interest bearing accounts;

- (b) send to the Clerk of the Court a list of all the Nominated Accounts established pursuant to this rule;
  - (c) send to each of the persons appearing to be interested in the funds credited to the Nominated Accounts established pursuant to this rule, particulars of the account together with a statement of account issued by the Bank.
- (3) In the event of any uncertainty or dispute concerning funds paid into Court prior to the commencement date, the Accountant General shall apply to the Court for directions.



**ORDER 93****THE ELECTIONS LAW (2000 REVISION)****Interpretation and application (O.93, r.1)****1. (1) In this Order -**

"the Law" means the Elections Law (2000 Revision), as amended, and any expressions used in this Order and in the Law have the same meanings in this Order as they have in the Law.

"election petition" means a petition complaining of the undue election or undue return of a member of the Assembly, under the Law;

"electoral district" means the area to which the election petition relates;

"respondent" in relation to an election petition, means the member whose election or return is complained of, or the returning officer, in a case in which the conduct of such returning officer is complained of; and

"returning officer" means the returning officer of the electoral district to which the election petition relates.

**(2) Order 24 shall apply to proceedings under an election petition as if it were an action begun by writ.****Form, presentation and service of election petitions (O.93, r.2)****2. (1) An election petition shall be in Form No. 58 of Appendix I and shall state -**

(a) the capacity in which the petitioner or each of the petitioners presents the petition;

(b) the date and result of the election to which the petition relates showing the date on which the return was made of the member declared to have been elected;

(c) the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved; and

shall conclude with a prayer setting out particulars of the relief claimed.

**(2) Subject to rule 3, an election petition shall be presented by filing it in accordance with Order 5, rule 1.**

- (3) Every election petition shall be served on -
  - (a) the respondent;
  - (b) the Attorney General; and
  - (c) the returning officer in any case in which he is not the respondent.
- (4) An affidavit of service shall be filed as soon as practicable after service has been effected.

**Security for costs (O.93, r.3)**

3. When presenting a petition under rule 2, the petitioner must at the same time pay the sum of \$3,000 into Court as security for costs and the petition may not be served unless it is accompanied by a notice of payment into Court.

**Publication of election petition (O.93, r.4)**

4. A list of election petitions at issue shall be conspicuously displayed in the foyer of the Court office by the Clerk of the Court and shall be available for inspection by the public during office hours.

**Fixing time for hearing election petition (O.93, r.5)**

5. (1) Order 9, rule 4, shall not apply to election petitions.
- (2) Within 28 days after the date on which it was served, the petitioner shall apply by summons to a Judge for a date and time to be fixed for the trial of the petition and if the petitioner fails to do so, any respondent may within a further period of 28 days apply in the same manner as the petitioner could have done.
- (3) If no application to fix a date and time for the trial of an election petition is made in accordance with paragraph (2), the Clerk of the Court shall refer the matter to a Judge, who shall thereupon fix such a date and time.
- (4) The Clerk of the Court, not less than 7 days before the day so fixed for the trial, shall cause notice of the date and time of the trial to be displayed in a conspicuous place in the foyer of the Court office and shall serve a copy of such notice on -
  - (a) the petitioner; and
  - (b) the persons on whom the petition was served in accordance with rule 2(3).

**Evidence to be filed (O.93, r.6)**

6. (1) Where the election petition claims the seat for an unsuccessful candidate on the ground that he had a majority of lawful votes, every party shall, not less than 7

days before the day fixed for the trial, file a list of the votes which he contends were wrongly admitted or rejected, stating in respect of each such vote the grounds for his contention and serve a copy of the list on every other party and the Attorney General.

- (2) Where the respondent to an election petition complaining of an undue election and claiming the seat for some other person intends to give evidence to prove that the person was not duly elected, the respondent shall, not less than 7 days before the date fixed for the trial of the election petition, file a list of his objections to the election of that person on which he intends to rely and serve a copy of the list on the petitioner and the Attorney General.
- (3) Any party to the election petition may inspect and obtain an office copy of any list filed pursuant to this rule.
- (4) Except by leave of the Court -
  - (a) no evidence shall be given by a party against the admission or rejection of any vote, or as to any ground of contention which is not specified in a list filed by him pursuant to paragraph (1) of this rule; and
  - (b) no evidence shall be given by a respondent of any objection to a person's election which is not specified in a list filed by him pursuant to paragraph (2) of this rule.

**Withdrawal of election petition (O.93, r.7)**

7. (1) An application for leave to withdraw an election petition shall be made by motion to the Court on such date and time as the Court may appoint.
- (2) Not less than 7 days before the day so appointed the petitioner shall -
  - (a) serve notice of the motion on the respondent, the returning officer and the Attorney General;
  - (b) publish notice of the intended motion in a newspaper.
- (3) The notice of motion shall state the grounds on which the application to withdraw is made and contain a statement to the effect that on the hearing of the application any person who might have been a petitioner in respect of the election may apply to the Court to be substituted as a petitioner.
- (4) The returning officer shall upon receipt of notice forthwith publish it in his electoral district.

- (5) Where on the hearing of the application a person is substituted as a petitioner, any security required to be given by him shall be given within 3 days after the order of substitution.

**Summary dismissal and stay of election petition (O.93, r.8)**

8. (1) An application by a respondent to stay or dismiss a petition before the day fixed for the trial shall be made by motion to the Court on such date and time as the Court may appoint.
- (2) Not less than 7 days before the date so appointed the respondent shall serve notice of the motion stating the grounds thereof, on the petitioner, any other respondent, the returning officer and the Attorney General.

**Death of petitioner (O.93, r.9)**

9. (1) Where a petition is abated by the death of a sole petitioner or the survivor of several petitioners, the attorney acting for him in the proceedings at the date of his death or, if he had no such attorney, any respondent learning of his death shall -
- (a) lodge notice hereof with the Clerk of the Court;
  - (b) serve notice thereof on the returning officer who shall forthwith publish it in his electoral district; and
  - (c) publish notice thereof in a newspaper circulating in the electoral district to which the petition relates.
- (2) Each such notice shall contain a statement that within 28 days after the publication of any notice referred to in this rule any person who might have been a petitioner in respect of the election may apply by motion to the Court on such date and time as the Court may appoint to be substituted as a petitioner.

**Respondent's nature of non-opposition (O.93, r.10)**

10. A respondent who does not intend to oppose the petition shall, not less than 7 days before the day fixed for trial serve notice to that effect on the petitioner and the Attorney General.



**ORDER 94****APPLICATIONS TO THE GRAND COURT UNDER VARIOUS STATUTES****Applications under the Bills of Sale Law (Revised) (O.94, r.1)**

1. (1) An application under Section 5 of the Bills of Sale Law (Revised) for an order that a memorandum of satisfaction be entered by the Public Recorder upon the margin of the record of a bill of sale shall be made by an originating summons in Form No. 3 of Appendix I.
- (2) Every originating summons under this rule shall be entitled in the matter of the bill of sale in question and in the matter of the Bills of Sale Law (Revised).
- (3) Every person whose interest under the bill of sale is alleged to have been satisfied or discharged shall be joined as a defendant.
- (4) The application shall be supported by an affidavit containing full particulars of the manner in which the debt arose and the manner in which it is alleged to have been satisfied or discharged.

**Applications under the Building Society's Law (Revised) (O. 94, r.2)**

2. (1) Every application under Section 34 of the Building Society's Law (Revised) for the appointment of an actuary or accountant and every application under Section 36 or Section 42 of the Building Society's Law (Revised) for the appointment of an inspector shall be commenced by originating motion, notice of which shall be served upon the Building Society in question and upon the Inspector of Financial Services.
- (2) Every originating motion under this rule shall be entitled in the matter of the Building Society's Law (Revised) and in the matter of the Building Society in question and shall specify the full name and address of each applicant.
- (3) Every application under this rule shall be supported by the following affidavits -
  - (a) separate affidavits sworn by or on behalf of each individual applicant containing full particulars of his interest in the Building Society and the period during which he has had such interest;
  - (b) a composite affidavit sworn by or on behalf of all the applicants containing full particulars of the grounds upon which they claim that the Court should order the appointment of an accountant, actuary or inspector, as the case may be; and

- (c) an affidavit of fitness containing the full name, business address and professional qualifications of the person or persons whom the applicants seek to have appointed as accountant, actuary or inspector, as the case may be.
- (4) Order 30, rules 2, 3, 4 and 5 shall apply to an accountant, actuary or inspector as if he were a receiver appointed under that Order.
- (5) In addition to the requirements of Order 30, rule 4, every order made under this rule shall be served upon the Inspector of Financial Services.

**Application under Section 96 of the Registered Land Law (O.94, r.3)**

- 3. (1) An application under Section 96 of the Registered Land Law (Revised) to extinguish or modify any easement, restrictive agreement or profit shall be made by petition entitled in the matter of the servient land concerned.
- (2) A petition under this rule shall be served on -
  - (a) every person having a registered interest in the dominant lands concerned whether registered in the appurtenances, proprietorship or incumbrances sections of the Land Register;
  - (b) any person, other than the petitioner, having a registered interest in the servient land whether registered in the appurtenances, proprietorship or incumbrances section of the Land Register; and
  - (c) any person who has registered a caution or restriction over any of the dominant lands.
- (3) A petition under this rule may be served by posting it to the persons concerned at their addresses appearing in the Land Register and shall be deemed to have been received -
  - (a) in the case of a person whose address is within the Islands, 7 days after the date of posting; and
  - (b) in the case of a person whose address is outside the Islands, 21 days after the date of posting.
- (4) A petition under this rule shall be advertised.
- (5) A petition under this rule shall be supported by an affidavit giving full particulars of the facts and arguments relied upon by the petitioner.

**Application under Section 9 of the Strata Titles Registration Law (Revised) (O.94, r.4)**

4. An application for the appointment of an administrator pursuant to Section 9 of the Strata Titles Registration Law 1973 may be made by originating summons or motion and the provisions of Order 30 shall apply as if the administrator was a receiver appointed pursuant to that Order.

**Application under Section 17 of the Strata Titles Registration Law (Revised) (O.94, r.5)**

5. (1) In this rule "the Law" means the Strata Titles Registration Law 1973, as amended, and any expressions used in this rule and in the Law have the same meanings in this rule as they have in the Law.
- (2) An application for a declaration under Section 17(2)(b) of the Law and any consequential directions under Section 17(3) or winding up order under Section 17(6) shall be made by petition entitled in the matter of the strata plan concerned.
- (3) A petition under this rule shall be served on -
- (a) the strata corporation;
  - (b) the registered proprietor of every strata lot comprised in the strata plan;
  - (c) every insurer of the common property and every strata lot;
  - (d) the registered proprietor of any charge or other incumbrance over the common property and every strata lot;
  - (e) any administrator appointed pursuant to Section 9 of the Law; and
  - (f) the Registrar.
- (4) A petition under this rule may be served in the following manner -
- (a) in the case of the strata corporation, by posting it to the address shown on the strata plan or placing it in the receptacle maintained in accordance with Section 7(1) of the Law;
  - (b) in the case of the proprietor of a strata lot, by posting it to his address appearing in the proprietorship section of the Land Register, or delivering it to his unit;
  - (c) in the case of an insurer, in any manner allowed by Order 65, rule 5;
  - (d) in the case of the registered proprietor of any charge or incumbrance, by posting it to their address appearing in the Land Register;

- (e) in the case of an administrator, in any manner allowed by Order 65, rule 5; and
  - (f) in the case of the Registrar, in any manner allowed by Order 65, rule 5.
- (5) A petition under this rule shall be advertised.
  - (6) Where a petition under this rule seeks a winding up order, it must nominate a fit and proper person to be appointed as liquidator and must be supported by an affidavit of fitness.
  - (7) Every order made pursuant to this rule shall be served on the Registrar and advertised.
  - (8) The provisions of Order 30, rules 2 to 8 shall apply to a liquidator appointed pursuant to this rule as if the liquidator was a receiver appointed pursuant to that Order.

**Applications under the Married Women's Property Law Cap. 94 (Revised) (O.94, r.6)**

- 6. (1) An application under Section 16 of the Married Women's Property Law Cap. 94 (Revised) for the determination of any question between husband and wife as to the title to or possession of the property of either or both of them shall be made by originating summons in Form No. 2 of Appendix I.
- (2) The action shall be entitled in the matter of the property in question and in the matter of the Married Women's Property Law Cap. 94 (Revised).
- (3) The application shall be supported by an affidavit containing full particulars of the property in issue and the facts and matters relied upon by the applicant in support of his application.

**ORDER 95****THE BANKS AND TRUST COMPANIES LAW****Definitions (O.95, r.1)**

1. In this Order -
  - (a) "the Law" means The Banks and Trust Companies Law (2003 Revision);
  - (b) "the Monetary Authority Law" means the Monetary Law (2002 Revision);
  - (c) "the Authority" means the Cayman Islands Monetary Authority established under Section 3 of the Monetary Authority Law;
  - (d) "licensee" has the meaning ascribed to it by Section 2 of the Law.

**Application by the Authority (O.95, r.2)**

2.
  - (1) An application by the Authority under Section 12(5) of the Law shall be made by ex parte originating summons in Form No. 4 entitled in the matter of the licensee concerned and in the matter of the Law.
  - (2) An application under this rule shall be supported by an affidavit which shall -
    - (a) identify the offence suspected of having been committed and specify the Authority's grounds for suspecting that such offence has been or is being committed;
    - (b) identify the person or persons who are suspected of committing or to have committed the offence;
    - (c) specify the Authority's reasons for believing that the interests of the depositors of any licensee or the beneficiaries of any trust administered by any licensee or the other creditors of any licensee are being or are likely to be prejudiced; and
    - (d) stating what assets are held or are believed to be held by the person against whom relief is sought and stating precisely what action the Authority seeks to take in order to preserve such assets,except that subparagraph (c) shall not apply if the suspected offence is that of carrying on banking or trust business without a licence.
  - (3) Upon an application under this rule the Court may -
    - (a) grant the relief sought by the Authority in whole or in part either permanently or for such interim period as the Court may specify;

- (b) grant such other relief as the Court thinks fit; or
  - (c) adjourn the application and direct that it be served upon the licensee and the person against whom relief is sought.
- (4) An order under subparagraph 3(a) or (b) shall provide that the licensee or the person against whom it is directed may apply, on not less than 3 clear days' prior notice to the Authority, by summons to discharge or vary the order.

**Application by the Authority for a winding up order (O.95, r.3)**

- 3.
- (1) An application by the Authority for an order to wind up any licensee under Section 14(4)(d) of the Law shall be made by petition entitled in the matter of the licensee concerned and in the matter of the Companies Law.
  - (2) A petition under this rule shall be supported by an affidavit verifying that the licensee's licence has been revoked, but need not give reasons for its revocation.
  - (3) A petition under this rule shall be served upon the licensee and any controller appointed under Section 14(1)(v) of the Law.
  - (4) Any shareholder, director or creditor of the licensee may be heard on a petition under this rule provided that he shall have given to the Authority 7 clear days' prior notice of his intention to appear.
  - (5) If the licensee intends to oppose the petition, its affidavit in opposition shall be filed in Court and served on the Authority not less than 7 clear days' prior to the date fixed for the hearing.
  - (6) If the licensee has instituted an appeal against the revocation of its licence under Section 21 of the Law, the Court may adjourn the petition and may appoint a provisional liquidator pending the outcome of the appeal.
  - (7) A winding up order or an order for the appointment of a provisional liquidator made under this rule shall be gazetted by the liquidator.

**Application by the Authority for other relief (O.95, r.4)**

- 4.
- (1) An application for a compulsory winding up order under Section 16(2) or an application for other relief under Section 15 of the Law shall be made by petition entitled in the matter of the licensee concerned and in the matter of the Companies Law.
  - (2) A petition under this rule shall be supported by a verifying affidavit sworn on behalf of the Authority which shall have exhibited to it any relevant report made by the Authority or any person appointed by Section 14(1)(iv) or (v) of the Law.

- (3) A petition under this rule shall be served on the licensee's voluntary liquidator.
- (4) Any shareholder or creditor of the licensee may be heard on a petition under this rule provided that he shall have given to the Authority 7 clear days' prior notice of his intention to appear.
- (5) If the voluntary liquidator of the licensee intends to oppose the petition, his affidavit in opposition shall be filed and served on the Authority not less than 7 clear days prior to the date fixed for the hearing.
- (6) An order made upon an application under this rule shall be gazetted by the Authority.

**Application for an order requiring a person to provide information, documents or assistance to the Authority (O.95, r.5)**

- 5. (1) An application for an order requiring a person to provide information, documents or assistance under Section 31(3) of the Monetary Authority Law shall be made by originating notice of motion.
- (2) A notice of motion under this rule shall be served on the person or persons against whom an order is sought.
- (3) The Court may direct that a notice of motion under this rule shall also be served on any client of the person against whom the order is sought and to whom the person owes a duty of confidentiality.
- (4) An application under this rule shall be supported by an affidavit sworn on behalf the Authority;
- (5) In this rule "person" has the meaning ascribed by Section 30(4) (a) to (d) of the Monetary Authority Law.





**ORDERS 96-98**

**NO ORDERS**



**ORDER 99**

**PRIZE**

Whenever the Court is constituted as a prize court by commission issued pursuant to Section 2 of the Prize Courts Act 1894 its proceedings shall be governed by the Prize Court Rules 1939.



**ORDERS 100-101**

**NO ORDERS**



**ORDER 102****APPLICATIONS PURSUANT TO THE COMPANIES LAW****Definitions (O.102, r.1)**

1. In this order "the Law" means the Companies Law (2003 Revision) and expressions used in this Order have the same meaning as in the Law.

**Applications to be made by originating summons (O.102, r.2)**

2. (1) The following applications under the Law must be made by originating summons, namely -
  - (a) under Section 44 of the Law, for an order to inspect the register of members of a company;
  - (b) under Section 46 of the Law, for an order for rectification of the register of members of a company;
  - (c) under Section 54 of the Law, for an order for inspection of a company's register of mortgages and charges;
  - (d) under Section 223 of the Law, for an order approving changes to the charter documents of a registrant;
  - (e) under Section 249(4) of the Law, for an order that rights attaching to a bearer share be restored;
  - (f) any other application under the Law not specifically provided for in this rule or rules 3 and 4.
- (2) An originating summons under this rule shall be in Form No. 3 of Appendix I except for applications referred to in subparagraphs (1)(a), (c) and (d) which may be made ex parte in Form No. 4 of Appendix I.
- (3) All applications of the kind referred to in subparagraph (1)(e) shall be served upon the Registrar of Companies.

**Applications to be made by originating motion (O.102, r.3)**

3. The following applications under the Law must be made by originating motion, namely -
  - (a) under Section 64 of the Law, for an order for the appointment of inspectors in respect of a company;
  - (b) under Section 88 of the Law, for a declaration that a bidder is neither entitled nor bound to acquire compulsorily the shares of dissentient members of a company.

**Applications to be made by petition (O.102, r.4)**

4. The following applications under the Law must be made by petition, namely -
- (a) under Section 15 of the Law, for an order confirming a resolution for reducing the share capital of a company;
  - (b) under Section 35 of the Law, for an order sanctioning the issue by a company of shares at a discount;
  - (c) under Section 86 of the Law for an order sanctioning a compromise or arrangement between a company and its creditors or members or any class of them;
  - (d) under Section 94 of the Law, for an order that a company be wound up;
  - (e) under Section 237 of the Law, for an Order relieving a director of a segregated portfolio company from personal liability; and
  - (f) under Section 243 of the Law, for a receivership order in respect of a segregated portfolio of a segregated portfolio company.

**Entitlement of proceedings (O.102, r.5)**

5. Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in the matter of the Companies Law (2001 Second Revision).

**Summons for directions (O.102, r.6)**

6. (1) Upon the issue of a petition by which any such application as is mentioned in rule 4(a),(b), (c), (e) or (f) is made, the petitioner must at the same time take out a summons for directions under this rule.
- (2) A summons for directions under this rule and the petition to which it relates must be served on the company at the same time.
- (3) On the hearing of the summons, the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.
- (4) Where the application made by the petition is to confirm a reduction of the share capital of a company, then, without prejudice to the generality of paragraph (2) the Court may give directions under Section 15 of the Law -



- (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;
  - (b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made; and
  - (c) the power of the Court under Section 15(3) of the Law to direct that Section 15(2) thereof shall not apply as regards any class of creditors may be exercised on any hearing of the summons.
- (5) Rules 6 to 11 shall have effect subject to any directions given by the Court under this rule.

**Summons for directions: contributory's winding up petition (O.102, r.6A)**

- 6A.** (1) Upon the issue of a petition by a contributory seeking an order that a company be wound up on the grounds contained in Section 94(d) of the Law, the petitioner must at the same time take out a summons for directions in respect of the matters contained in Rule 4.23(a) to (e) of the Insolvency Rules 1986 (S.I. 1986/1925).
- (2) A summons for directions under this rule and the petition to which it relates must be served on the company at the same time.

**Inquiry as to debts: company to make list of creditors (O.102, r.7)**

- 7.** (1) Where under rule 6 the Court orders such an inquiry as is mentioned in paragraph (3) thereof, the company in question must, within 7 days after the making of the order, file in Court an affidavit made by an officer of the company competent to make it, verifying a list containing -
- (a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends;
  - (b) the amount due to each creditor in respect of such debt or claim or, in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof; and
  - (c) the total of those amounts and values.
- (2) The deponent must state in the affidavit his belief that at the date fixed by the Court as the date by reference to which the list is to be made there is no debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, other than the debts or claims set out in the list and any debts or claims to which the inquiry does not extend, and must also state his means of knowledge of the matters deposed to.

**Inspection of list of creditors (O.102, r.8)**

8. (1) Copies of the list made under rule 7 with the omission, unless the Court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered office of the company and at the office of that company's attorneys, if any.
- (2) Any person shall be entitled during ordinary business hours to inspect the said list at any such office and to take extracts therefrom or copies thereof.

**Notice to creditors (O.102, r.9)**

9. Within 7 days after filing the affidavit required by rule 7 the company must send by post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating -
  - (a) the amount of the reduction sought to be confirmed;
  - (b) the effect of the order directing an inquiry as to debts and claims;
  - (c) the amount or value specified in the list as due or estimated to be due to that creditor; and
  - (d) the time fixed by the Court within which, if he claims to be entitled to a larger amount, he must send particulars of his debt or claim and the name and address of his attorney, if any, to the company's attorney.

**Advertisement of petition and list of creditors (O.102, r.10)**

10. After filing the affidavit required by rule 7 the company must insert in such newspapers and at such times as the Court directs, a notice stating -
  - (a) the date of issue of the petition and the amount of reduction thereby sought to be confirmed;
  - (b) the inquiry ordered by the Court under rule 6;
  - (c) the places where the list of creditors may be inspected in accordance with rule 9; and
  - (d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends must send his name and address, the name and address of his attorney, if any, and particulars of his debt or claim to the company's attorney.

**Affidavit as to claims made by creditors (O.102, r.11)**

- 11.** Within such time as the Court directs the company must file in Court an affidavit made by an officer of the company or other person competent to make it -
- (a) proving service of the notices mentioned in rule 9 and advertisement of the notice mentioned in rule 10;
  - (b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notice sent in particulars of debts or claims, specifying the amount of each debt or claim;
  - (c) distinguishing in such list those debts or claims which are wholly, or as to any and what part thereof, admitted by the company, disputed by the company or alleged by the company to be outside the scope of the inquiry; and
  - (d) stating which of the persons named in the list made under rule 7 and which of the persons in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

**Adjudication of disputed claims (O.102, r.12)**

- 12.** If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim, the company must, if the Court so directs, send to that person by post at his last known address a notice requiring him -
- (a) within such time as may be specified in the notice being not less than 4 clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company; and
  - (b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the Court for the adjudication of debts and claims.

**Certifying lists of creditors entitled to object to reduction (O.102, r.13)**

- 13.** The list of creditors entitled to object to such reduction as is mentioned in rule 6(3) as settled by the Court under Section 15(2) of the Law, shall be certified and filed and the Court's certificate shall -
- (a) specify the debts or claims (if any) disallowed by the Court;
  - (b) distinguish the debts or claims (if any), the full amount of which is admitted by the company, the debts or claims (if any), the full amount of which, though not admitted by the company, the company is willing to appropriate, the debts or

claims (if any), the amount of which has been fixed by adjudication of the Court under Section 15(2) of the Act and other debts or claims;

- (c) specify the amount of debts or claims, payment of which has been secured by appropriation under the said Section 15(2);
- (d) show which creditors consent to the reduction and the total amount of their debts or claims;
- (e) specify the creditors who sought to prove their debts or claims under rule 11 and state which of such debts or claims were allowed.

**Evidence of consent of creditor (O.102, r.14)**

14. The consent of a creditor to such reduction as is mentioned in rule 6(3) may be proved in such manner as the Court thinks sufficient.

**Time, etc., of hearing of petition for confirmation of reduction (O.102, r.15)**

15. (1) A petition for the confirmation of any such reduction as is mentioned in rule 6(3) shall not, where the Court has directed an inquiry pursuant to that rule, be heard before the expiration of at least 8 clear days after the filing of the certificate mentioned in rule 13.
- (2) Before the hearing of such a petition, a notice specifying the day appointed for the hearing must be published at such times and in such newspapers as the Court may direct.

**Service out of the jurisdiction without leave (O.102, r.16)**

16. Any originating summons, originating motion or petition issued pursuant to rule 2, 3 or 4 may be served out of the jurisdiction upon any shareholder, director or creditor of the company concerned without the leave of the Court.

**Winding-Up Rules (O.102, r.17)**

17. Unless and until any rules are made under Section 174 of the Law, all applications to the Court made pursuant to Sections 49, 79 and Part V of the Law and all proceedings concerning or arising out of the liquidation of any company shall, so far as practicable, be made in accordance with The Insolvency Rules 1986 (SI 1986/1925), insofar as such rules are not inconsistent with the Law or such other rules as may be applied to the proceeding in question.

**Restoration of companies to the register: Application by a company or a member thereof (O.102, r.18)**

- 18.** (1) An application by a company or any member thereof under Section 178 of the Law shall be made by originating application in Form No. 66 of Appendix I.
- (2) The originating application shall be supported by an affidavit proving the following facts and matters -
- (a) the company's registration number and the date of its registration;
  - (b) the date upon which the company was struck off the register of companies;
  - (c) if the company was struck off the register more than two years prior to the date of the originating application, the Governor in Council has no objection to its restoration to the register of companies;
  - (d) the Registrar of Companies has no objection to the company's restoration to the register of companies;
  - (e) the amount of the reinstatement fee payable and the amount of any outstanding annual return fees, the payment of which is sought by the Registrar of Companies;
  - (f) the address of the premises which will become the company's registered office in the event that it is restored to the register of companies;
  - (g) if the proposed registered office is the premises of a professional service provider, such person has agreed to provide registered office services to the company.
- (3) Every originating application under this rule shall be accompanied by a draft order (in triplicate) in Form No. 67 of Appendix I.
- (4) Every originating application under this rule shall be determined by the Clerk of the Court without hearing the applicant.
- (5) If the Clerk of the Court is satisfied that the requirements of this rule and of Section 178 of the Law have been met, he shall make an order in Form No. 67 of Appendix I.
- (6) If the Clerk of the Court is not satisfied that the requirements of this rule or Section 178 of the Law have been met, he may -
- (a) require the applicant to file further evidence;
  - (b) direct that the application be served on the Registrar of Companies;

- (c) refer the application for an oral hearing before a judge; or
- (d) dismiss the application.

**Restoration of companies to the register - Application by a creditor (O.102, r.19)**

- 19.** (1) An application by a creditor under Section 178 may be combined with an application under Section 94 of the Companies Law and may be made by petition in Form No. 68 of Appendix I.
- (2) A petition under this rule shall be served on -
- (a) the last known registered office of the company; and
  - (b) the Registrar of Companies.
- (3) Unless the Court otherwise directs, a petition under this rule shall be advertised not less than seven days after service of the petition on the company's last known registered office nor less than seven days before the date fixed for the hearing of the petition.
- (4) The petition shall be verified by an affidavit that the statements in the petition are true, or are true to the best of the deponent's knowledge, information and belief.

**Application to restore rights attaching to bearer shares (O.102, r.20)**

- 20.** (1) An application under Section 249(4) of the Law by the holder of a bearer share certificate for an order that the rights attaching to such share be restored, shall be made by originating summons in Form No. 2.
- (2) Where the shares which are the subject of the application represented the whole of the company's issued share capital, the Financial Secretary shall be made party to the application.
- (3) Where the shares which are the subject of the application represented part only of the company's issued share capital, the originating summons shall be served on -
- (a) the company; and
  - (b) subject to any direction given under paragraph (4), each shareholder of the company.
- (4) If the Court is satisfied that service upon each shareholder of the company is impractical, it shall consider making representation orders pursuant to Order 15, Rule 12 and shall give directions for the application to be advertised in such manner as it thinks fit.

- (5) The originating summons shall be supported by an affidavit sworn by or on behalf of the applicant which -
- (a) explains why the share certificates were not deposited with a custodian;
  - (b) states the address which is or will be the registered office of the company in the event that the rights attaching to the shares are restored;
  - (c) states the names and addresses of the directors or the persons intended to be appointed as directors of the company in the event that the rights attaching to the shares are restored;
  - (d) sets out full particulars of the company's assets and liabilities and the nature of its business;
  - (e) sets out full particulars of all special resolutions passed by the company since 26<sup>th</sup> April, 2002; and
  - (f) states the amount of the company's issued share capital and particulars of any changes which have occurred since 26<sup>th</sup> April, 2002.
- (6) The Court may direct the company's directors to swear and serve upon the applicant an affidavit complying with the requirements of sub-paragraphs (c) to (f) of paragraph (5).
- (7) The originating summons shall also be supported by an affidavit sworn by an authorised or recognised custodian stating that it has custody of the share certificates which are the subject of the application and that it has agreed with the applicant to hold the shares on his behalf in the event that the Court makes an order that the rights attaching to such shares be restored.
- (8) An order that the rights attaching to a bearer share be restored shall be in Form 70.

### **Schemes of Arrangement (O.102, r.21)**

- 21.** (1) An application under Section 86 of the Law for an order sanctioning a proposed compromise or arrangement between a company and its creditors or members or any class of them shall be commenced by petition.
- (2) Upon the presenting of a petition under paragraph (1), the petitioner must at the same time take out a summons for a direction convening the Court meeting(s).
- (3) The summons under paragraph (2) shall be supported by an affidavit which shall -
- (a) describe the purpose and effect of the proposed scheme;

- (b) contain such information as may be necessary to enable the Court to determine whether it should convene class meetings and, if so, the composition of the classes;
  - (c) contain such information as may be necessary to enable the Court to determine whether the proposed time and place of the Court meeting(s) and the method of giving notice is appropriate in all the circumstances.
- (4) The following documents shall be exhibited to the supporting affidavit referred to in paragraph 3 -
- (a) the proposed scheme together with any supplementary documents to which it refers;
  - (b) draft notice of the meeting(s);
  - (c) draft proxy forms;
  - (d) draft voting instructions for use by custodians; and
  - (e) a draft explanatory memorandum or proxy statement which provides the shareholders or creditors with all the information reasonably necessary to enable them to make an informed decision about the merits of the proposed scheme.
- (5) If the proposed scheme relates to shares or debt instruments which are listed on a stock exchange, the summons under paragraph (2) shall be supported by an affidavit or expert report which sets out the relevant listing rules and practice and explains the steps which have been or will be taken to comply with such listing rules or practice.
- (6) The Court shall give such directions as may be necessary for the purpose of enabling it to determine whether or not the statutory majorities will have been achieved. If all or substantially all of the shares or debt instruments to which the proposed scheme relates are registered in the name of one or more custodians or clearing houses, the Court may direct that -
- (a) such custodian or clearing house may cast votes both for and against the proposed scheme in accordance with the instructions of its clients;
  - (b) such custodian or clearing house shall specify the number of votes cast in favour of the scheme and the number of clients or members on whose instructions they are cast and the number of votes cast against the proposed scheme and the number of clients or members on whose instructions they are cast.



- (7) The explanatory memorandum or proxy statement referred to in sub-paragraph (4)(e) above shall contain a timetable of principal events including -
- (a) the latest time for transmission to custodians or clearing houses of voting instructions for the Court meeting;
  - (b) the latest time for lodging forms of proxy for the Court meeting;
  - (c) the date of the Court meeting;
  - (d) the date of the hearing of the petition to sanction the scheme; and
  - (e) the anticipated date upon which the scheme, if sanctioned, will become effective.
- (8) Within seven days after the date fixed for the Court meeting the petitioner shall file an affidavit sworn by the chairman of the meeting verifying that -
- (a) notice of the meeting was duly sent in accordance with the order for directions;
  - (b) the meeting was duly held in accordance with the order for directions; and
  - (c) full particulars of the voting.
- (9) The hearing of the summons taken out in accordance with paragraph (2) shall be in chambers.
- (10) The final hearing of the petition shall be heard in open court and any person who -
- (a) voted at the court meeting(s); or
  - (b) gave voting instructions to a custodian or clearing house who voted at the Court meeting(s),

shall be entitled to appear and be heard.



**ORDER 103****THE CONFIDENTIAL RELATIONSHIPS (PRESERVATION) LAW (1995 REVISION)****Definitions (O.103, r.1)**

1. In this Order "the Law" means The Confidential Relationships (Preservation) Law (1995 Revision), and words and expressions used in the Law which are used in this Order shall have the same meaning as in the Law.

**Applications under Section 4 (O.103, r.2)**

2. (1) An application required to be made pursuant to Section 4 of the Law, including one required to be made pursuant to Order 24, rule 5(4), or Order 26, rule 5(4), shall be made by ex parte originating summons in Form No. 59 of Appendix I.
- (2) An originating summons issued pursuant to paragraph (1) shall be entitled in the matter of the proceeding to which it relates and in the matter of the Law.

**Service of summons (O.103, r.3)**

3. (1) Every originating summons issued pursuant to rule 1 shall be served on the Attorney General.
- (2) Upon the first hearing of every originating summons issued pursuant to rule 1 the Court shall direct whether, and if so upon whom, it shall be served in addition to the Attorney General.

**Affidavit evidence (O.103, r.4)**

4. (1) Every application to which this Order applies shall be supported by an affidavit sworn by or on behalf of the applicant.
- (2) The supporting affidavit shall -
  - (a) state the circumstances in which the applicant intends or is required to give evidence;
  - (b) identify the relevant principals having an interest in the confidential information intended or required to be given in evidence by the applicant and explain the circumstances giving rise to the confidential relationship;
  - (c) describe in general terms the nature of the evidence intended or required to be given and the reason why it constitutes confidential information; and

- (d) state the reasons why or to what extent the relevant principal objects to disclosure by the applicant of the confidential information intended or required to be given in evidence.

**Filing and service of affidavits (O.103, r.5)**

- 5. (1) Every affidavit required to be sworn by rule 4 shall be filed and served on the Attorney General.
- (2) The Court shall direct on the first hearing of an originating summons issued in accordance with rule 2 whether, and if so, upon whom, the supporting affidavit shall be served.

**Hearing of Section 4 applications (O.103, r.6)**

- 6. Every application to which this Order applies shall be heard in Chambers.

**ORDERS 104-112**

**NO ORDERS**



**ORDER 113****SUMMARY PROCEEDINGS FOR POSSESSION OF LAND****Proceedings to be brought by originating summons (O.113, r.1)**

1. Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provision of this Order.

**No rule (O.113, r.1A)****Forms of originating summons (O.113, r.2)**

2. The originating summons shall be in Form No. 60 of Appendix I and no acknowledgment of service shall be required.

**Affidavit in support (O.113, r.3)**

3. The plaintiff shall file in support of the originating summons an affidavit stating -
  - (a) his interest in the land;
  - (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
  - (c) that he does not know the name of any person occupying the land who is not named in the summons,

and, unless the Court otherwise directs, any such affidavit may contain statements of information and belief with the sources and grounds thereof.

**Service of originating summons (O.113, r.4)**

4. (1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him -
  - (a) personally; or
  - (b) by leaving a copy of the summons and of the affidavit, or sending them to him, at the premises; or
  - (c) in such other manner as the Court may direct.

- (2) Where any person not named as a defendant is in occupation of the land, the summons shall be served (whether or not it is also required to be served in accordance with paragraph (1)), unless the Court otherwise directs, by -
- (a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; or
  - (b) placing stakes in the ground at conspicuous parts of the occupied land, to each of which shall be affixed a sealed transparent envelope addressed to "the occupiers" and containing a copy of the summons and a copy of the affidavit.
- (3) Every copy of an originating summons for service under paragraph (1) or (2) shall be sealed with the seal of the Court.
- (4) Order 28, rule 3, shall not apply to proceedings under this Order.

**Application by occupier to be made a party (O.113, r.5)**

5. Without prejudice to Order 15, rules 6 and 10, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

**Order for possession (O.113, r.6)**

6. (1) A final order for possession in proceedings under this Order shall, except in case of emergency and by leave of the Court, not be made -
- (a) in the case of residential premises, less than 5 clear days after the date of the service; and
  - (b) in the case of other land, less than 2 clear days after the date of service.
- (2) Nothing in this Order shall prevent the Court from ordering possession to be given on a specified date, in the exercise of any power which could have been exercised if possession had been claimed in an action begun by writ.

**Writ of possession (O.113, r.7)**

7. (1) Order 45, rule 3(2), shall not apply in relation to an order for possession under this Order but no writ of possession to enforce such an order shall be issued after the expiry of 3 months from the date of the order without leave of the Court.

An application for leave may be made ex parte unless the Court otherwise directs.

- (2) The writ of possession shall be in Form No. 28 of Appendix I.



**Setting aside order (O.113, r.8)**

- 8.** The Court may, on such terms as it thinks just, set aside or vary any order made in proceedings under this Order.

MADE by the Rules Committee and, in the case of Orders 38 and 95, by the Chief Justice of the Grand Court, the 1st day of May, 1995.

The Hon. George Harre, Chief Justice

The Hon. Richard Coles, Attorney General

Andrew J. Jones, Esq., Legal Practitioner

Alden M. McLaughlin, Esq., Legal Practitioner

REVISED AND AMENDED by the Rules Committee and, in the case of Orders 38 and 95, by the Chief Justice of the Grand Court, the 8<sup>th</sup> day of September, 2003.

The Hon. Anthony Smellie, QC, Chief Justice

The Hon. Sam Bulgin, Acting Attorney General

Andrew J. Jones, QC, Legal Practitioner

Alden M. McLaughlin, MLA., Legal Practitioner