

**SUPREME COURT
(CHAPTER 5)**

RULES OF THE SUPREME COURT

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RULES OF THE SUPREME COURT

ARRANGEMENTS OF ORDERS, RULES AND LIST OF FORMS

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No. 87	—	NOTICE OF CERTAIN JUDGMENTS
No. 88	—	WRIT OF SEIZURE AND SALE
No. 89	—	WRIT OF DELIVERY
No. 90	—	WRIT OF POSSESSION
No. 91	—	SUMMONS FOR LEAVE TO ISSUE EXECUTION
No. 92	—	PRAECIPE FOR WRIT OF EXECUTION
No. 93	—	CONSENT TO ENTRY OF SATISFACTION
No. 94	—	NOTICE OF SEIZURE AND INVENTORY
No. 95	—	NOTICE OF SALE
No. 96	—	AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER FOR EXAMINATION OF JUDGMENT DEBTOR
No. 97	—	ORDER FOR EXAMINATION OF JUDGMENT DEBTOR
No. 98	—	GARNISHEE ORDER TO SHOW CAUSE
No. 99	—	AFFIDAVIT IN SUPPORT OF GARNISHEE ORDER
No. 100	—	GARNISHEE ORDERS
No. 101	—	ORDER FOR ISSUE BETWEEN JUDGMENT CREDITOR AND GARNISHEE

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No. 102	—	<i>NO NUMBER</i>
No. 103	—	<i>NO NUMBER</i>
No. 104	—	ORDER ABSOLUTE IMPOSING CHARGE ON SECURITIES
No. 105	—	ORDER IMPOSING CHARGE ON SECURITIES: ORDER TO SHOW CAUSE
No. 106	—	AFFIDAVIT AND NOTICE UNDER O. 50, r. 10
No. 107	—	ORDER ON ORIGINATING MOTION RESTRAINING TRANSFER OF STOCK ETC.
No. 108	—	SUMMONS FOR APPOINTMENT OF RECEIVER
No. 109	—	ORDERS FOR APPOINTMENT OF RECEIVER ETC.
No. 110	—	ORDER OF COMMITTAL
No. 111	—	WARRANT FOR COMMITTAL
No. 112	—	NOTICE TO BE SERVED WITH WRIT OF <i>HABEAS CORPUS AD SUBJICIENDUM</i>
No. 113	—	WRIT OF <i>HABEAS CORPUS AD SUBJICIENDUM</i>
No. 113A	—	MEMORANDUM OF APPEAL
No. 113B	—	NOTICE OF CROSS APPEAL
No. 114	—	NOTICE OF APPEAL TO JUDGE IN CHAMBERS
No. 115	—	NOTICE OF APPEAL TO COURT OF APPEAL
No. 116	—	CERTIFICATE FOR SECURITY FOR COSTS
No. 117	—	PETITION OF APPEAL
No. 118	—	RESPONDENT'S NOTICE
No. 119	—	CAUSE BOOK
No. 120	—	ORIGINATING SUMMONS BOOK
No. 121	—	ORIGINATING MOTION BOOK
No. 122	—	INTERPLEADER SUMMONS BOOK
No. 123	—	SUMMONS IN CHAMBERS BOOK

APPENDIX A — *(continued)*

No. 124	—	JUDGMENT BOOK
No. 125	—	WRITS OF EXECUTION BOOK
No. 126	—	DISTRESS BOOK
No. 127	—	PROBATE BOOK
No. 128	—	CAVEAT BOOK
No. 129	—	SERVICE BOOK
No. 130	—	ADOPTION BOOK
No. 131	—	DIRECTIONS TO TREASURY
No. 132	—	INDEX OF WILLS
No. 133	—	REGISTER OF APPEALS TO THE COURT OF APPEAL
No. 134	—	REGISTER OF APPEALS FROM SUBORDINATE COURT
No. 135	—	ORDER FOR SUBSTITUED SERVICE
No. 136	—	AFFIDAVIT ON APPLICATION FOR SUBSTITUTED SERVICE
No. 137	—	AFFIDAVITS OF SERVICE
No. 138	—	NOTICE OF CHANGE OF SOLICITOR
No. 139	—	NOTICE OF INTENTION OF PARTY TO ACT IN PERSON, IN PLACE OF SOLICITOR
No. 140	—	SUMMONS TO REMOVE SOLICITOR FROM RECORD
No. 141	—	ORDER REMOVING SOLICITOR FROM RECORD
No. 142	—	SUMMONS FOR WITHDRAWAL OF SOLICITOR
No. 143	—	ORDER FOR WITHDRAWAL OF SOLICITOR
No. 144	—	CERTIFICATE OF SERVICE OF FOREIGN PROCESS
No. 145	—	ORDER FOR REGISTRATION OF FOREIGN JUDGMENT
No. 146	—	CERTIFICATE UNDER RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS ACT
No. 147	—	CERTIFICATE UNDER RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS ACT

APPENDIX A — (continued)

No. 148	—	NO NUMBER
No. 149	—	NO NUMBER
No. 150	—	NO NUMBER
No. 151	—	NO NUMBER
No. 152	—	NO NUMBER
No. 153	—	NO NUMBER
No. 154	—	NO NUMBER
No. 155	—	WRIT OF SUMMONS IN ACTION <i>IN REM</i>
No. 156	—	WARRANT OF ARREST
No. 157	—	PRAECIPE FOR WARRANT OF ARREST
No. 158	—	PRAECIPE FOR CAVEAT AGAINST ARREST
No. 159	—	PRAECIPE FOR SERVICE OF WRIT <i>IN REM</i> BY SHERIFF
No. 160	—	RELEASE
No. 161	—	PRAECIPE FOR ISSUE OF RELEASE
No. 162	—	PRAECIPE FOR CAVEAT AGAINST RELEASE AND PAYMENT
No. 163	—	PRAECIPE FOR WITHDRAWAL OF CAVEAT
No. 164	—	BAIL BOND
No. 165	—	PRAECIPE FOR COMMISSION FOR APPRAISEMENT AND SALE
No. 166	—	COMMISSION FOR APPRAISEMENT AND SALE
No. 167	—	NO NUMBER
No. 168	—	NO NUMBER
No. 169	—	NO NUMBER
No. 170	—	NO NUMBER
No. 171	—	NO NUMBER
No. 172	—	NO NUMBER

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No. 173	—	NO NUMBER
No. 174	—	NO NUMBER
No. 175	—	NO NUMBER
No. 176	—	NO NUMBER
No. 177	—	NO NUMBER
No. 178	—	NO NUMBER
No. 179	—	NO NUMBER
No. 180	—	NO NUMBER
No. 181	—	NO NUMBER
No. 182	—	NO NUMBER
No. 183	—	NO NUMBER
No. 184	—	NO NUMBER
No. 185	—	NO NUMBER
No. 186	—	NO NUMBER
No. 187	—	NO NUMBER
No. 188	—	NO NUMBER
No. 189	—	CONSENT OF NEXT FRIEND OR GUARDIAN <i>AD LITEM</i> OF PERSON UNDER DISABILITY
No. 190	—	CERTIFICATE BY SOLICITOR FOR PERSON UNDER DISABILITY
No. 191	—	ORDER FOR PARTICULARS (PARTNERSHIP)
No. 192	—	NOTICE OF SERVICE ON MANAGER OF PARTNERSHIP
No. 193	—	AUTHORITY TO COMPANY TO REGISTER TRANSFER
No. 194	—	STATUTORY DECLARATION
No. 195	—	ACCOUNT BOOK

APPENDIX B

COURT FEES

COMMENCEMENT OF A CAUSE OR MATTER

APPEARANCE

INTERLOCUTORY APPLICATIONS

ENTERING OR SETTING DOWN FOR TRIAL OR HEARING IN COURT

WRITS

JUDGMENT AND ORDERS

MISCELLANEOUS

PROBATE

ADMIRALTY

APPEAL FROM HIGH COURT

APPEAL FROM SUBORDINATE COURTS AND STATUTORY BODIES

FILING

COPIES OF DOCUMENTS

TRANSLATIONS

TREASURY

TAXATION OF COSTS

COMPANIES

COMMISSIONS

SHERIFF'S OFFICE

SUBSIDIARY LEGISLATION

RULES OF THE SUPREME COURT

Commencement: 1st July 1990
[S 5/1990]

ORDER 1

CITATION, APPLICATION, INTERPRETATION AND FORMS

Citation (O. 1, r. 1)

1. These Rules may be cited as the Rules of the Supreme Court.

Application (O. 1, r. 2)

2. (1) Subject to the following provisions of this rule, these Rules shall have effect in relation to all proceedings in the High Court, including any pending proceedings therein.

(2) These Rules shall not have effect in relation to proceedings in respect of which rules have been or may be made under any written law for the specific purpose of such proceedings or in relation to any criminal proceedings.

(3) In the case of the proceedings for which rules have been made, nothing in paragraph (2) shall be taken as affecting any provision of any rules (whether made under the Act or any other written law) by virtue of which these Rules or any provisions thereof are applied in relation to any of those proceedings.

(4) For the avoidance of doubt, these Rules shall be read subject to Article 84C of the Constitution of Brunei Darussalam and sections 20A to 20E of the Act.

[S 53/2005]

Application of Chapter 4 (O. 1, r. 3)

3. The Interpretation and General Clauses Act (Chapter 4) shall apply for the interpretation of these Rules as it applies for the interpretation of an enactment.

Definitions (O. 1, r. 4)

4. (1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely —

“Act” means the Supreme Court Act (Chapter 5);

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“bailiff” includes the Registrar and any clerk or other officer charged with the duties of a bailiff and appointed as such by the Registrar;

“cause book” means the book kept in the Registry in which the number of, and other details relating to, a cause or matter are entered;

“counsel” includes an advocate and solicitor admitted as such under the Legal Profession Act (Chapter 132);

“folio” means 100 words, each figure being counted as one word;

“Form” means a form set out in Appendix A to these Rules, and a form referred to by a number means the form so numbered in the Appendix;

“officer” means an officer of the High Court;

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

“Permanent Secretary” means the Permanent Secretary to the Office of the Prime Minister;

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

“practice direction” means a practice direction issued by the Chief Justice under Order 86, rule 5;

[S 63/2015]

“probate action” has the meaning assigned to it by Order 72;

“receiver” includes a manager or consignee;

“Registrar” means the Chief Registrar, the Deputy Chief Registrar, Senior Registrar and a Registrar of the High Court;

“Registry” means the Registry of the High Court;

(deleted by S 34/2008);

“sheriff” includes a bailiff and any clerk or other officer charged with the duties of a Sheriff and appointed as such by the Registrar;

[S 34/2008]

“sign”, in relation to the signing of documents by a Judge, Registrar or other officer of the Supreme Court, includes the affixing of a facsimile signature of the Judge, Registrar or other officer, as the case may be;

[S 34/2008; S 63/2015]

“solicitor” includes an advocate and solicitor admitted as such under the Legal Profession Act (Chapter 132);

“writ” means a writ of summons.

(2) In these Rules, unless the context otherwise requires, “Court” means the High Court or any one or more Judges thereof, whether sitting in Court or in Chambers, or the Registrar; but the foregoing provision shall not be taken as affecting any provision of these Rules and, in particular, Order 32, rule 9, by virtue of which the authority and jurisdiction of the Registrar is defined and regulated.

(3) The Registrar may appoint any person to be, and carry out the duties of, a Sheriff or a bailiff.

(4) In these Rules, unless there is provision to the contrary, a Judge shall have and may exercise any authority or jurisdiction vested by these Rules in the Registrar.

[S 34/2008]

Construction of references to Orders, Rules etc. (O. 1, r. 5)

5. (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 that appendix to these Rules and any reference to a specified rule, paragraph or sub-paragraph is a reference to that rule of the Order, that paragraph of the rule, or that sub-paragraph 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 of that rule under any corresponding rule of the court ceasing to have effect on the commencement of that rule.

(3) Except where the context otherwise requires, any reference in these Rules to any written law shall be construed as a reference to that written law as amended, extended or applied by or under any other written law.

Forms (O. 1, r. 6)

6. Subject to Order 63A, rule 7(5), the Forms set out in Appendix A to these Rules shall be used where applicable with such variations as the circumstances of the particular case require.

[S 63/2015]

Business by post, fax or electronic mail (O. 1, r. 7)

7. Nothing in these Rules shall prejudice any power to regulate the practice of the Court by giving directions enabling any business or class of business to be conducted by post, fax or electronic mail.

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 any thing 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 the Interpretation and General Clauses Act (Chapter 4), in its application to these Rules, the word “month”, where it occurs in any judgment order, direction or other document forming part of any proceeding in the High 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 the day before the weekly holiday, the weekly holiday or public holiday, that day shall be excluded.

Time expires on weekly holiday etc. (O. 3, r. 3)

3. Where the time prescribed by these Rules, or by any judgment, order or direction, for doing any act at the Registry expires on a weekly holiday or other day on which the Registry 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 Registry is open.

Extension etc. of time (O. 3, r. 4)

4. (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.

(4) In this rule references to the Court shall be construed as including references to the Court of Appeal.

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Notice of intention to proceed after year's delay (O. 3, r. 5)

5. Where a year 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 one month's notice of his intention to proceed.

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

ORDER 4

CONSOLIDATION OF PROCEEDINGS

Consolidation etc. of causes or matters (O. 4, r. 1)

1. (1) Where two or more causes or matters are pending, 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) An order for consolidation must be in Form 1 and shall direct that the cause or matter in which the application is made shall thence forward be carried on in such other cause or matter and that the title of such other cause or matter be amended by adding thereto the title of the cause or matter in which the application is made.

(3) Upon such order being made, the file of the cause or matter in which the application is made shall be transferred to and added to the file of such other cause or matter, and the copy of the order shall be left in place of the file so transferred, and a memorandum of the transfer shall be entered in the cause book against the cause or matter so consolidated.

ORDER 5

MODE OF BEGINNING CIVIL PROCEEDINGS IN HIGH COURT

Mode of beginning civil proceedings (O. 5, r. 1)

1. Subject to the provisions of any written law and of these Rules, civil proceedings in the High Court may be begun by writ, originating summons, originating motion or petition.

Proceedings in respect of action etc. discontinued (O. 5, r. 1A) [S 14/2017]

1A. No new proceeding shall be begun under this Order, in respect of an action, cause or matter which is deemed to have been discontinued under Order 21, rule 2(5) or (6).

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

2. Subject to any provision of any written 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 a claim made by the plaintiff is based on 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 written law or independently of any contract of any such provision), where the damages claimed consist of or include damages in respect of 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 for damages for breach of promise of marriage;

(e) in which a claim is made by the plaintiff in respect of the infringement of a patent.

In this rule “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.

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

3. Proceedings by which an application is to be made to the High Court or a Judge thereof under any written law must be begun by originating summons except where by

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these Rules or by or under any written 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 written law are required to be begun by writ or originating summons or are required or authorised to be begun by originating motion or petition, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.

[S 53/2005]

(2) Proceedings —

(a) in which the sole or principal question at issue is or is likely to be, one of the construction of any written law or of any instrument made under any written 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 81 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 written 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 76, 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 High Court by a solicitor or in person.

(2) Except as expressly provided by or under any written law or as the Court may permit in any proceedings, a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.

ORDER 6

WRIT OF SUMMONS: GENERAL PROVISIONS

Form of writ (O. 6, r. 1)

1. Every writ must be in Form 2 or Form 3, whichever is appropriate.

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

2. (1) 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 appearing, the defendant —

- (i) except in either of the cases mentioned in paragraph (2), pays the amount so claimed to the plaintiff or his solicitor; or
- (ii) in either of the said cases, pays that amount into Court.

- (2) The cases referred to in paragraph (1)(b) are —

(a) a case where the plaintiff (or, if there are more plaintiffs than one, any of them) is resident outside the scheduled territories or is acting by order or on behalf of a person so resident;

(b) a case where the defendant is making the payment by order or on behalf of a person so resident.

- (3) A defendant who pays money into Court under this rule must give notice in Form 4 to the plaintiff or his solicitor.

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

3. (1) 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.

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(2) Before a writ is issued in an action brought by a plaintiff who in bringing it is acting by order or on behalf of a person resident outside the scheduled territories it must be indorsed with a statement of that fact and with the address of the person so resident.

Indorsement as to solicitor and address (O. 6, r. 4)

4. (1) Before a writ is issued it must be indorsed —

(a) where the plaintiff sues by a solicitor, with the plaintiff's address and the solicitor's name or firm and a business address of his within the jurisdiction;

(b) where the plaintiff sues in person, with —

(i) 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

(ii) his occupation.

(2) The address for service of a plaintiff shall be —

(a) where he sues by a solicitor, the business address of the solicitor indorsed on the writ;

(b) where he sues in person, the address within the jurisdiction indorsed on the writ.

(3) Where a solicitor's name is indorsed on a writ, he must, if any defendant who has been served with or who has entered an appearance to the writ requests him in writing to do so, declare in writing whether the writ was issued by him or with his authority or privity.

(4) If a solicitor 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 entered an appearance to the writ, stay all proceedings in the action begun by the writ.

Concurrent writ (O. 6, r. 5)

5. (1) One or more concurrent writs 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 a concurrent writ with one, notice of which is to be served out of the jurisdiction and a writ notice of which is to be served out of the

jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.

(3) A concurrent 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.

(4) A concurrent writ must be marked by the Registrar with the word “Concurrent” and he shall sign and date the day of issue of the concurrent writ.

Issue of writ (O. 6, r. 6)

6. (1) No writ notice of which is to be served out of the jurisdiction shall be issued without the leave of the Court.

(2) A plaintiff or his solicitor must, on presenting a writ for sealing, leave with the Registrar the original and a copy together with as many copies thereof as there are defendants to be served.

(3) The Registrar shall assign a serial number to the writ and shall sign, seal and date the writ whereupon the writ is deemed to be issued.

(4) The original writ must be filed in the Registry and an entry thereof made in the cause book.

Duration and renewal of writ (O. 6, r. 7)

7. (1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for 12 months, beginning with the date of its issue and a concurrent 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 concurrent writ.

(2) 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 12 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) Before a writ, the validity of which has been extended under this rule, is served, it must be marked with an official stamp in Form 5 showing the period for which the validity of the writ has been so extended.

(4) 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 concurrent) 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.

(5) A note of the renewal must be entered in the cause book.

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 written law.

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

2. (1) Every originating summons must be in Form 6, 7 or 8 whichever is appropriate.

(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 High 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 4, shall apply in relation to an originating summons as they apply in relation to a writ.

Concurrent summons (O. 7, r. 4)

4. Order 6, rule 5, shall apply in relation to an originating summons as it applies in relation to a writ.

Issue of summons (O. 7, r. 5)

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

Duration and renewal of summons (O. 7, r. 6)

6. Order 6, rule 7, shall apply in relation to an originating summons as it applies in relation to a writ.

***Ex parte* originating summons (O. 7, r. 7)**

7. (1) Rules 2(1), 3(1) and 5 shall, so far as applicable, apply to *ex parte* originating summonses; but save as aforesaid, the foregoing rules of this Order shall not apply to *ex parte* originating summonses.

(2) Order 6, rule 6(3) shall, with the necessary modifications, apply in relation to an *ex parte* 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 written 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 proceeding 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 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

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

3. (1) The notice of an originating motion must be in Form 9 and the notice of any other motion in Form 10.

Where leave has been given under rule 2(2) to serve short notice of motion, that fact must be stated in the notice.

(2) The notice of a motion must include a concise statement of the nature of the claim made or the relief or remedy required.

(3) Order 6, rule 4, shall, with the necessary modifications, apply in relation to a notice of an originating motion as it applies in relation to a writ.

[Subsidiary]

(4) Issue of the notice takes place upon its being sealed by an officer of the Registry.

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

4. Notice of a 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 entered an appearance 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.

[S 53/2005]

ORDER 9

PETITIONS: GENERAL PROVISIONS

Application (O. 9, r. 1)

1. Rules 2 and 3 apply to petitions by which civil proceedings in the High 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 other written law.

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

2. (1) Every petition must include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby.

(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 4, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

Fixing time for hearing petition (O. 9, r. 3)

3. (1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.

(2) Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than 7 days before the day fixed for the hearing of the petition.

Certain applications not to be made by petition (O. 9, r. 4)

4. 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) Subject to the provisions of any written law and these Rules, a writ must be served personally on each defendant.

(2) Where a defendant's solicitor indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ is deemed to have been duly served on that defendant and to have been served on the date on which the indorsement was made.

(3) Where a writ is not duly served on a defendant but he enters an unconditional appearance in the action begun by the writ, the writ is deemed to have been duly served on him and to have been so served on the date on which he entered the appearance.

(4) Where a writ is duly served on a defendant otherwise than by virtue of paragraph (2) or (3), then, subject to Order 11, rule 5, unless within 8 days after service the plaintiff files a memorandum of service in Form 10A containing the following particulars, that is to say, the day of the week and date on which it was served, where it was served, the person on whom it was served, and, where he is not the defendant, the capacity in which he was served, the plaintiff in the action begun by the writ shall not be entitled to enter final or interlocutory judgment against that defendant in default of appearance or in default of defence, unless the Court otherwise orders.

[S 14/2017]

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 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

[Subsidiary]

(c) at the time of the application either the agent's authority has not been determined or he is still in business relations 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 enter an appearance.

(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 High Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the High 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 High 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 notice of a writ which is served out of the jurisdiction in accordance with a contract is not deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve such notice out of the jurisdiction has been granted under Order 11, rule 1 or 2.

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

4. Where a writ is indorsed with a claim for the possession of immovable property the Court may —

(a) if satisfied on an *ex parte* application that no person appears to be in possession of the immovable property 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 immovable property;

(b) if satisfied on such an application that no person appears to be in possession of the immovable property 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 immovable property shall be treated as good service on that defendant.

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

5. The foregoing rules of this Order (except rule 1(4)) shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ, and rule 1(1) and (2) shall, with any necessary modifications, apply in relation to an originating summons to which no appearance need be entered, 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 JURISDICTION

Principal cases in which service of notice of writ out of jurisdiction is permissible (O. 11, r. 1)

1. Where the writ does not contain any 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 any collision regulations in force,

service of a notice of a writ out of the jurisdiction is permissible with the leave of the Court in the following cases, —

(a) if the whole subject matter of the action begun by the writ is immovable property situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to immovable property so situate;

(b) if an act, deed, will, contract, obligation or liability affecting immovable property situate within the jurisdiction is sought to be construed, rectified, set aside or enforced in the action begun by the writ;

(c) if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident or carrying on business within the jurisdiction;

[Subsidiary]

(d) if the action begun by the writ is for the administration of the estate of a person who died domiciled within the jurisdiction or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;

(e) if the action begun by the writ is for the execution, as to property situate within the jurisdiction, of the trusts of a written instrument, being trusts that ought to be executed according to law and of which the person to be served with the writ is a trustee or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;

(f) if the action begun by the writ is brought against a defendant 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 Brunei Darussalam;

(g) if the action begun by the writ is brought against a defendant 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;

(h) if the action begun by the writ is founded on a tort committed within the jurisdiction;

(i) if in the action begun by the writ 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);

(j) if the action begun by the writ being properly brought against a person duly served within or out of the jurisdiction, a person out of the jurisdiction is a necessary or proper party thereto;

(k) if the action begun by the writ is either by a charge of property situate within the jurisdiction (other than immovable property) and seeks the sale of the property, the foreclosure of the charge or delivery by the chargor of possession of the property but not an order for payment of any moneys due under the charge or

by a chargor of property so situate (other than immovable property) and seeks redemption of the charge, reconveyance of the property or delivery by the chargee of possession of the property but not a personal judgment;

(l) if the action begun by the writ is brought under the provisions of any written law relating to carriage by air.

In this paragraph ‘mortgage’ includes a charge or *lien*, ‘mortgagee’ means a person entitled to, or interested in, a mortgage and ‘mortgagor’ means a person entitled to, or interested in property subject to a mortgage.

Service out of jurisdiction in certain actions of contract (O. 11, r. 2)

2. Where it appears to the Court that a contract contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract, the Court may grant leave for service out of the jurisdiction of the notice of the writ by which an action in respect of the contract is begun.

Leave for service of notice of writ (O. 11, r. 3)

3. Notice of a writ for service out of the jurisdiction must be in Form 11.

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

4. (1) An application for the grant of leave under rule 1 or 2 must be supported by an affidavit in Form 12 stating the grounds on which the application is made and that in the deponent’s belief, the plaintiff has a good cause of action, and showing in what place or country the defendant is, or probably may be found.

(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 in Form 13 granting under rule 1 or 2 leave to serve a notice of a writ out of the jurisdiction must limit a time within which the defendant to be served must enter an appearance.

Service of notice of writ abroad: General (O. 11, r. 5)

5. (1) Subject to the following provisions of this rule, Order 10, rule 1, and Order 62, rule 5, shall apply in relation to the service of a notice of a writ notwithstanding that the notice is to be served out of the jurisdiction.

(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.

[Subsidiary]

(3) A notice of a writ which is to be served out of jurisdiction 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.

(4) Where a certificate under the following provisions of this rule is produced in relation to the service of notice of a writ in accordance with rule 6 or 7, Order 10, rule 1(4), shall not apply in relation to that service.

(5) An official certificate stating that a notice of 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 consular authority in that country; or

(b) by the Government or judicial authorities of that country; or

(c) by any other authority designed in respect of that country, under the Hague Convention,

shall be evidence of the facts so stated.

(6) An official certificate by the Minister of Foreign Affairs and Trade stating that notice of 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.

[S 34/2008]

(7) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.

(8) Where the defendant is in Singapore or Malaysia, the notice of a writ may be sent by post or otherwise by the Registrar to the Magistrate, Registrar, or other appropriate officer of any Court exercising civil jurisdiction in the area in which the person to be served is said to be or to be carrying on business for service on the defendant and if it is returned with an indorsement of service and with an affidavit of such service, it is deemed to have been duly served.

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

[S 53/2005]

6. (1) Where in accordance with these Rules notice of a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention providing for service in that country of process of the High Court, the notice may be served —

(a) through the judicial authorities of that country; or

(b) through a Brunei Darussalam consular authority in that country (subject to any provision of the Convention as to the nationality of persons who may be so served).

(2) Where in accordance with these Rules notice of 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 High Court, the notice may be served —

(a) through the Government of that country, where that Government is willing to effect service; or

(b) through a Brunei Darussalam consular authority in that country, except where service through such an authority is contrary to the law of that country.

(3) Where a person wishes to serve notice of a writ in any country —

(a) through the judicial authorities of that country under paragraph (1); or
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(b) through a Brunei Darussalam consular authority under paragraph (1) or (2); or

(c) through the Government of that country under paragraph (2),

that person must lodge in the Registry a request in Form 14 for service of notice of the writ by that method, together with a copy of the notice and an additional copy thereof for each person to be served.

(4) Every copy of a notice lodged under paragraph (3) must be accompanied by a translation of the notice 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 notice 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 Brunei Darussalam consular authority on a Brunei Darussalam citizen, unless the service is to be effected under paragraph (1) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

[S 53/2005]

(5) Every translation lodged 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.

[Subsidiary]

(6) Documents duly lodged under paragraph (3) shall be sent by the Registrar to the Permanent Secretary to the Ministry of Foreign Affairs and Trade with a request that he arranges for the writ to be served by the method indicated in the request lodged under paragraph (3) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

[S 53/2005]

Service of notice of writ in certain actions under written law (O. 11, r. 7)

7. (1) Where a person to whom leave has been granted under rule 1 to serve notice of a writ on a High Contracting Party to the Warsaw Convention being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, wishes to have the notice served on that Party, he must lodge in the Registry —

(a) a request for service to be arranged by the Minister of Foreign Affairs and Trade; and

[S 34/2008]

(b) a copy of the notice; and

(c) except where the official language of the High Contracting Party is, or the official languages of that Party include, English, a translation of the notice in the official language or one of the official languages of the High Contracting Party.

(2) Rule 6(5) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (4) of that rule.

(3) Documents duly lodged under this rule shall be sent by the Registrar to the Permanent Secretary to the Ministry of Foreign Affairs and Trade with a request that he arranges for the notice to be served on the High Contracting Party or the Government in question, as the case may be.

[S 34/2008]

Undertaking to pay expenses of service incurred by Minister (O. 11, r. 8)

8. Every request lodged under rule 6(3) or 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Minister of Foreign Affairs and Trade in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the office of the said Minister and to produce a receipt for the payment to the proper officer in the Registry.

[S 34/2008]

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

9. (1) Subject to paragraph (2), service out of the jurisdiction of an originating summons is permissible with the leave of the Court.

(2) Where the proceedings begun by an originating summons might have been begun by writ, service out of the jurisdiction of the originating summons is permissible as aforesaid if, but only if, service of the notice of the writ out of the jurisdiction would be permissible had the proceedings been begun by writ.

(3) Where any proceedings are authorised by these Rules or (apart from these Rules) by or under any written law to be begun by originating motion or petition, service out of the jurisdiction of the notice of motion or of the petition is permissible with the leave of the Court.

(4) 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.

(5) 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 or 2.

(6) An order granting under this rule leave to serve out of the jurisdiction an originating summons to which an appearance is required to be entered must limit a time within which the defendant to be served with the summons must enter an appearance.

(7) Rules 5, 6 and 8 shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to a writ.

ORDER 12

ENTRY OF APPEARANCE TO WRIT OR ORIGINATING SUMMONS

Mode of entering appearance (O. 12, r. 1)

1. (1) Subject to paragraph (2) and to Order 76, 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) enter an appearance in the action and defend it by a solicitor or in person.

(2) Except as expressly provided by these Rules or by any written law, a defendant to such an action who is a body corporate may not enter an appearance in the action or defend it otherwise than by a solicitor.

(3) An appearance is entered by properly completing the requisite documents, that is to say, a memorandum of appearance, as defined by rule 2, and a copy thereof, and handing them in at, or sending them by post to, the Registry.

[Subsidiary]

(4) If two or more defendants to an action enter an appearance by the same solicitor and at the same time, only one set of the requisite documents need be completed and delivered for those defendants.

Memorandum of appearance (O. 12, r. 2)

2. (1) A memorandum of appearance is a request to the Registry to enter an appearance for the defendant or defendants specified in the memorandum.

(2) A memorandum of appearance must be in Form 15 and both the memorandum of appearance and the copy thereof required for entering an appearance must be signed by the solicitor by whom the defendant appears or, if the defendant appears in person, by the defendant.

(3) A memorandum of appearance must specify —

(a) in the case of a defendant appearing 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 appearing by a solicitor a business address of his solicitor's within the jurisdiction,

and where the defendant enters an appearance in person, the address within the jurisdiction specified under sub-paragraph (a) shall be his address for service but otherwise his solicitor's business address shall be his address for service.

(4) If the Court is satisfied on application by the plaintiff that any address specified in the memorandum of appearance is not genuine, the Court may set aside the appearance.

Procedure on receipt of requisite documents (O. 12, r. 3)

3. (1) On receiving the requisite documents an officer of the Registry must in all cases affix to the copy of the memorandum of appearance an official stamp showing the date on which he received those documents and enter the appearance in the cause book, and —

(a) if the requisite documents were handed in at the Registry, hand back that copy of the memorandum; and

(b) if they were sent by post, send that copy by post to the plaintiff or, as the case may be, his solicitor at the plaintiff's address for service and also send by post to the defendant or, as the case may be, his solicitor at the defendant's address for service a notice of appearance (stamped with an official stamp showing that date) stating that the defendant specified therein entered an appearance on that date.

(2) Where the defendant enters an appearance by handing in the requisite documents at the Registry, he must on the date on which he enters the appearance send by post to the plaintiff, if the plaintiff sues in person, but otherwise to the plaintiff's solicitor, at the plaintiff's address for service, the copy of the memorandum of appearance handed back to him under paragraph (1).

Time limited for appearing (O. 12, r. 4)

4. References in these Rules to the time limited for appearing are references —

(a) in the case of a writ served within the jurisdiction of the High Court to 8 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 notice of a writ served out of the jurisdiction, to the time limited under Order 10, rule 2(2), or Order 11, rule 4(3), or, where that time has been extended as aforesaid, to that time as so extended.

Late appearance (O. 12, r. 5)

5. (1) A defendant may not enter an appearance in an action after judgment has been entered therein except with the leave of the Court.

(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 entering an appearance in an action after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

Conditional appearance (O. 12, r. 6)

6. (1) A defendant to an action may with the leave of the Court enter a conditional appearance in Form 16 in the action.

(2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as an unconditional appearance unless the Court otherwise orders or the defendant applies to the Court, within the time limited for the purpose, for an order under rule 7 and the Court makes an order thereunder.

Application to set aside writ etc. (O. 12, r. 7)

7. (1) A defendant to an action may at any time before entering an appearance therein, or, if he has entered a conditional appearance, within 14 days after entering the appearance, apply to the Court for an order setting aside the writ or service of the writ, or notice of the writ, on him, or declaring that the writ or notice has not been duly served on him or discharging any order giving leave to serve the notice on him out of the jurisdiction.

[Subsidiary]

- (2) An application under this rule must be made by summons.

Appearance to originating summons (O. 12, r. 8)

8. (1) Subject to paragraph (2) an appearance must be entered to every originating summons (other than an *ex parte* originating summons) by each defendant named in and served with the summons.

(2) No appearance need be entered to an originating summons in any case or class of case in relation to which special provision to that effect is made by these Rules or by or under any written law.

(3) Subject to the foregoing provisions of this rule, the foregoing rules of this Order shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ except that for the reference in rule 4(b) to Order 11, rule 4(3), there shall be substituted a reference to Order 11, rule 9(6).

ORDER 13

DEFAULT OF APPEARANCE TO WRIT

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 enter an appearance, the plaintiff may, after the time limited for appearing, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any

(2) A claim shall not be prevented from being treated for the purpose of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest accruing after the date of the writ at an unspecified rate, but any such interest shall be computed from the date of the writ to the date of entering judgment at the rate of 6 *per cent* or such other rate as the Chief Justice may from time to time direct.

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 enter an appearance, the plaintiff may, after the time limited for appearing, 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 movable property only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, at his option enter either —

(a) interlocutory judgment against the defendant for the delivery of the property or its value to be assessed and costs; or

(b) interlocutory judgment for the value of the property to be assessed and costs,

and proceed with the action against the other defendants, if any.

Claim for possession of immovable property (O. 13, r. 4)

4. (1) Where a writ is indorsed with a claim against a defendant for possession of immovable property only, then, if that defendant fails to enter an appearance the plaintiff may, after the time limited for appearing, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 79, rule 1, enter judgment for possession of the immovable property 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 immovable property 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 enter an appearance, the plaintiff may, after the time limited for appearing, enter against the defendant such judgment in respect of any such claim as he would be entitled to enter under these 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 enter an appearance, the plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ on that defendant 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 entered an appearance.

(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

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other like reason it has become unnecessary for the plaintiff to proceed with the action, then if the defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, 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 62, rule 10, be served on the defendant against whom it is sought to enter judgment.

Proof of service of writ (O. 13, r. 7)

7. (1) Judgment shall not be entered against a defendant under this Order unless —

(a) the plaintiff produces a certificate of non-appearance in Form 17; and

(b) either an affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the defendant, or the plaintiff produces the writ indorsed by the defendant's solicitor 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 enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

Setting aside judgment (O. 13, r. 8)

8. 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

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 entered an appearance in the action, the plaintiff may, on the ground that that 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 that defendant.

(2) Subject to paragraph (3), 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, false imprisonment, seduction or breach of promise of marriage; or

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

(3) This Order shall not apply to an action to which Order 77 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 in Form 18 verifying the facts on which the claim, or the part of a 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 purposes 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 4 clear days before the return day.

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

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

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

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

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

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

[Subsidiary]

(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 —

(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 references 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. (1) Where the Court —

(a) orders that a defendant or a plaintiff has 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 may 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.

(2) In particular, and if the parties consent, the Court may direct that the claim in question and any other claim in the action be tried by the Registrar under the provisions of these Rules relating to the trial of causes or matters or questions or issues by the Registrar.

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, without prejudice to Order 59, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may 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 movable property (O. 14, r. 9)

9. Where the claim to which an application under rule 1 or 5 relates is for the delivery up of specific movable property 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 property without giving him an option to retain it on paying the assessed value thereof as if the judgment had been given after trial.

[Subsidiary]

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

10. A tenant shall have the same right to apply for relief after judgment for possession of immovable property 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 5 may be set aside or varied by the Court on such terms as it thinks just.

ORDER 14A

DETERMINATION OF LAW OR CONSTRUCTION

Question of law (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 had an opportunity of being heard on the question.

(4) Nothing in this Order shall limit the powers of the Court under Order 18, rule 18, or any other provision of these Rules.

Application (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 any 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 the leave of the Court.

(2) An application for leave under this rule must be made *ex parte* by summons supported 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 this provision shall not be taken as affecting the Court's discretion with respect to costs.

[Subsidiary]

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

3. (1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject matter of the action, then, subject to rule 5(2) he may join that other person as a party against whom the counterclaim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

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

(4) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these Rules, namely, Order 10 (except rule 1(4)), Orders 11 to 13 and Order 70, rule 3, 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.

(5) 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 19, addressed to that person —

(a) stating the effect of Order 12, rule 1, as applied by paragraph (4); and

(b) stating that he may enter an appearance in Form 20 and explaining how he may do so.

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 or 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 written law and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as 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.

(3) Where relief is claimed in an action against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the action, by order stay proceedings in the action until the other persons so liable are added as defendants.

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 cause may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

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

Misjoinder and non-joinder of parties (O. 15, r. 6)

6. (1) No cause or matter shall be defeated by reason of the misjoinder or non-joinder 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 interests of the persons who are parties to the cause or matter.

(2) 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 —

[Subsidiary]

(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,

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised.

(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.

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 purposes of that paragraph, as having been brought against his estate.

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

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

(a) the plaintiff shall, during the period of validity for service of the writ or originating summons, apply to the Court for an order appointing a person to represent the deceased’s estate for the purpose of the proceedings or, if a grant of probate or administration has been made, for an order that the personal representative of the deceased be made a party to the proceedings, and in either

case for an order that the proceedings be carried on against the person appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

(b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in sub-paragraph (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.

(5A) Where an order is made under paragraph (4) appointing the Probate Officer to represent the deceased's estate, the appointment shall be limited to his accepting service of the writ or originating summons by which the action was begun unless, either on making such an order or on a subsequent application, the court, with the consent of the Probate Officer, directs that the appointment shall extend to taking further steps in the proceedings.

(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 deaths etc. (O. 15, r. 7)

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

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

An application for an order under this paragraph may be made *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 a different capacity; but —

[Subsidiary]

(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 noted in the cause book, and after the order has been so noted 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.

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

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

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

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

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

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

(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons 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 noted in the cause book.

(3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance 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 appearing 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 noted in the cause book. The entry of appearance must be in Form 21.

(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 noted in the cause book,

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 entry of appearance by the old party shall not dispense with entry of appearance by the new in Form 21.

(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 or action survives, but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or 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, shall 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.

Action for possession of immovable property (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 immovable property order any person not a party to the action who is in possession of the immovable property (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 by summons *ex parte*, supported by an affidavit showing that he is in possession of the immovable property in question and if by a tenant, naming him.

[Subsidiary]

(3) A person added as a defendant by an order under this rule must serve a copy of the order on the plaintiff and must enter an appearance in the action within such period, if any, as may be specified in the order or, if no period is so specified, within 7 days after the making of the order, and the rules as to entry of appearance shall apply accordingly to entry of appearance by him.

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 solicitor and the authorisation must be filed in the Registry.

Representative proceedings (O. 15, r. 12)

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

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

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

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

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

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

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

13. (1) In any proceeding concerning —

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

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

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

(a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;

(b) that the person, class or some member of the class, though ascertained, cannot be found;

(c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

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

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

(a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise; or

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(b) the absent persons are represented by a person appointed under paragraph (1) who so assent,

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

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 interest 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 personal 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 person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

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

Declaratory judgment (O. 15, r. 16)

16. No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby and the Court may make binding declarations of right whether or not 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 proceeding 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 entered an appearance —

(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 22 or Form 23, 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 of 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 by *ex parte* summons in Form 24 but the Court may direct the summons to be served.

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(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 and service of, and entry of appearance to 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 copy of the writ or originating summons by which the action was begun and of the pleadings (if any) served in the action.

(3) Subject to the foregoing provisions of this rule, the following provisions of these Rules, namely, Order 6, rule 6(3), Order 10 (except rule 1(4)), Orders 11, 12 and Order 70, rule 3, 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 proceedings 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.

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

4. (1) If the third party enters an appearance in Form 25, the defendant who issued third party notice must, by summons in Form 26 to be served on all the other parties to the action, apply to the Court for directions.

(2) If no summons is served on the third party under paragraph (1), the third party may, not earlier than 7 days after entering an appearance, by summons in Form 26 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.

(3) 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.

(4) 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.

(5) Any order made or direction given under this rule must be in Form 27 and 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 enter an appearance or, having been ordered to serve a defence, fails to do so —

(a) he is 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 in so far 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 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

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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 order 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 paragraph (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 the 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 in an action judgment is given against a defendant and judgment is given for the defendant against a third party, execution shall not be issued against the third party without the leave of the Court until the judgment against the defendant has been satisfied.

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

8. (1) Where in any action a defendant who has entered an appearance —

(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 appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance 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 entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.

(4) Rule 4(2) shall have effect in relation to proceedings on a notice issued under this rule as if for the words “7 days after entering an appearance” 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 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 appearing to the notice issued against him.

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

10. If, before the trial of an action, a party to the action who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, 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, 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.

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

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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.

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ORDER 17

INTERPLEADER

Entitlement to relief by way of interpleader (O. 17, r. 1)**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 a sheriff 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 sub-paragraph (a) or (subject to rule 2) the sheriff, may apply to the Court for relief by way of interpleader.

(2) References in this Order to a sheriff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the High Court.

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 other movable property taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such goods or property, must give notice of his claim in Form 28 to the sheriff 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 sheriff must forthwith give notice thereof in Form 29 to the execution creditor and the execution creditor must, within 4 days after receiving the notice, give notice in Form 30 to the sheriff informing him whether he admits or disputes the claim.

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

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(3) Where —

(a) the sheriff 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 under this rule is not withdrawn,

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

(4) A sheriff who receives a notice from an execution creditor under paragraph (2) admitting a claim under this rule shall withdraw from possession of the money, goods or other movable property claimed.

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 in Form 31 or 32 whichever is appropriate.

(2) No appearance need be entered to an originating summons under this rule.

(3) Subject to paragraph (4), 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.

(4) Where the applicant is a sheriff, he shall not provide such evidence as is referred to in paragraph (3) unless directed by the Court to do so.

Service of summons (O. 17, r. 4)

4. (1) Unless the Court otherwise orders, the originating summons or an interpleader summons ordered under rule 3 must be served personally at least 7 days before the return day.

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- (2) An interpleader summons must be in one of the forms in Form 33.

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 his 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 a sheriff; or

(b) all the claimants consent or any of them so requests; 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 a sheriff who has taken possession of any goods or other movable property in execution under any process, and a claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or property by way of security for debt, the Court may order those goods or property 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, the Court may make such an order; and the order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

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.

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(3) The judgment must be in one of the forms in Form 34.

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, or notice of the writ, is served on that defendant or at any time after service of the writ or notice but before the expiration of 14 days after that defendant enters an appearance.

[Subsidiary]**Service of defence (O. 18, r. 2)**

2. (1) Subject to paragraph (2), a defendant who enters an appearance in, and intends 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 appearing or after the statement of claim is served on him, whichever is the later.

(2) If a summons under Order 14, 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.

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.

Pleadings: Formal requirements (O. 18, r. 5)

5. (1) Every pleading in an action must bear on its face —

(a) the year in which the writ in the action was issued and the number of the action;

(b) the title of the action; and

(c) the description of the pleading.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being in 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 solicitor by whom it was served.

(5) Every pleading of a party must be signed by the party's solicitor or by the party, if he sues or defends in person.

Facts, not evidence, to be pleaded (O. 18, r. 6)

6. (1) Subject to the provisions of this rule and rules 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 in so far 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.

Matters which must be specifically pleaded (O. 18, r. 7)

7. (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

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(b) which, if not specifically pleaded, might 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 immovable property must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the immovable property by himself or his tenant is not sufficient.

Conviction (O. 18, r. 7A)

7A. (1) If in any action which is to be tried with pleadings any party intends to adduce evidence that a person was convicted of an offence by or before a Court in Brunei Darussalam or by a Court-Martial there or elsewhere, he must include in his pleading a statement of his intention with particulars of —

(a) the conviction and the date thereof;

(b) the Court or Court-Martial 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 to adduce evidence that a person was found guilty of adultery in matrimonial proceedings or has been found to be the father of a child in relevant proceedings before any Court in Brunei Darussalam or has been adjudged to be the father of a child in affiliation proceedings before a Court in Brunei Darussalam, 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, finding of adultery or adjudication of paternity to which the statement relates; or

(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.

Matter may be pleaded whenever arising (O. 18, r. 8)

8. Subject to rules 7(1), 10 and 15, 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. 9)

9. (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. 10)

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

Particulars of pleading (O. 18, r. 11)

11. (1) Subject to paragraph (2), 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.

(1A) Subject to paragraph (1B), a plaintiff in action for personal injuries shall serve with his statement of claim —

(a) a medical report; and

(b) a statement of the special damages claimed.

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(1B) Where the documents to which paragraph (1A) applies are not served with the statement of claim, the Court may —

- (a) specify the period of time within which they are to be provided; or
- (b) make such other order as it thinks fit (including an order dispensing with the requirements of paragraph (1A) or staying the proceedings).

(1C) For the purposes of this rule —

“medical report” means a report substantiating all the personal injuries alleged in the statement of claim which the plaintiff proposes to adduce in evidence as part of his case at the trial;

“a statement of the special damages claimed” means a statement giving full particulars of the special damages claimed for expenses and losses already incurred and an estimate of any future expenses and losses (including loss of earnings and of pension rights).

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed three folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(3) 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.

(4) 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 (3), 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.

(5) 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.

(6) 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.

(7) The particulars requested or ordered and supplied must be served in accordance with Form 35.

Admissions and denials (O. 18, r. 12)

12. (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. 13)

13. (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 material 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. 14)

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

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(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.

Defence of tender (O. 18, r. 15)

15. 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. 16)

16. 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. 17)

17. 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) rules 11(1A), (1B), (1C) and 14(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff.

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(b) rules 7(2), 15 and 16 shall, with the necessary modifications, apply to a defence to counterclaim as they apply to a defence.

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

18. (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 paragraph (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. 19)

19. (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.

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

20. Every pleading must be filed in the Registry.

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 other 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) or 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

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directions 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, false imprisonment, seduction or breach of promise of marriage; or

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

Saving for defence under Merchant Shipping Order, 2002 (S 27/2002) (O. 18, r. 22)
[S 34/2008]

22. Nothing in Order 70, rules 35 to 38, shall be taken as limiting the right of any shipowner or other person to rely by way of defence on any provision of the Merchant Shipping Order, 2002 (S 27/2002) which limits the amount of the liability in connection with a ship or other property.

[S 34/2008]

ORDER 19

DEFAULT OF PLEADINGS

Default in 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 that claimed by the writ in respect of the demand and for 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 movable property 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 either —

(a) interlocutory judgment against that defendant for the delivery of the property or its value to be assessed and costs; or

(b) interlocutory judgment for the value of the property to be assessed and costs,

and proceed with the action against the other defendants, if any.

Default of defence: Claim for possession of immovable property (O. 19, r. 5)

5. (1) Where the plaintiff's claim against a defendant is for possession of immovable property 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, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 79, rule 1, enter judgment for possession of the immovable property 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 immovable property has been entered against all the defendants.

Default of defence: Mixed claim (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 the 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.

[Subsidiary]**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 appearance (O. 20, r. 2)

2. A defendant may not amend his memorandum of appearance without the leave of the Court.

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;

(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.

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(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 13(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.

[S 53/2005]

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(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 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 was 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 (whether as plaintiff or as defendant by counterclaim) may be allowed under paragraph (2) if the capacity in which, if the amendment is made, the party will sue is one in which at the date of issue of the writ or the making of the counterclaim, as the case may be, he might have sued.

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(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 statement.

Amendment of other originating process (O. 20, r. 6)

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

Amendment of certain other documents (O. 20, r. 7)

7. (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. 8)

8. 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

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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. 9)

9. (1) Where the amendments authorised under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorised, must be prepared and, in the case of a writ or originating summons, reissued, but, except as aforesaid and subject to any direction given under rule 5 or 8, the amendments so authorised may be effected by making in writing the necessary alterations of the document and, in the case of a writ or originating summons, causing it to be re-sealed and filing a copy thereof.

(2) 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 and 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. 10)

10. 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 by summons without an appeal.

Amendment by agreement (O. 20, r. 11)

[S 34/2008]

11. (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.

ORDER 21

WITHDRAWAL AND DISCONTINUANCE

Withdrawal of appearance (O. 21, r. 1)

1. A party who has entered an appearance in an action may withdraw the appearance at any time with the leave of the Court.

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

2. (1) 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 in Form 36 to that effect on the defendant concerned.

(2) A defendant may, without the leave of the Court —

(a) withdraw his defence or any part of it at any time;

(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 in Form 36 to that effect on the plaintiff or other party concerned.

(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.

(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 Registrar a written consent to the action being withdrawn signed by all the parties.

(5) An action begun by writ is deemed to have been discontinued against a defendant if the memorandum of service referred to in Order 10, rule 1(4) is not filed in respect of the service of the writ on that defendant within 6 months after the validity of the writ for the purpose of service has expired, and within that time —

(a) a memorandum of appearance has not been filed in the action by the defendant; and

(b) judgment has not been obtained in the action against that defendant in respect of the whole or any part of the relief claimed against that defendant in the action.

[S 14/2017]

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(6) Subject to paragraph (7), if no party to an action or cause or matter has, for more than one year (or such extended period as the Court may allow under paragraph (8)), taken any step or proceeding in the action, cause or matter that appears from records maintained by the Court, the action, cause or matter is deemed to have been discontinued.

[S 14/2017]

(7) Paragraph (6) does not apply where the action, cause or matter has been stayed pursuant to an order of court.

[S 14/2017]

(8) The Court may, on an application by any party made before the one year referred to in paragraph (6) has elapsed, extend the time to such extent it may think fit.

[S 14/2017]

(9) Paragraph (6) applies to an action, cause or matter, whether it commenced before, on or after the date of commencement of the Rules of the Supreme Court (Amendment) Rules, 2017 (S 14/2017), but where the last proceeding in the action, cause or matter took place before 1st January 2017, the period of one year shall only begin on 1st January 2017.

[S 14/2017]

(10) Where an action, cause or matter has been discontinued under paragraph (5) or (6), the Court may, on application, reinstate the action, cause or matter and allow it to proceed on such terms as it thinks just.

[S 14/2017]

(11) For the avoidance of doubt, no new proceedings shall be begun under Order 5, in respect of an action, cause or matter which is deemed to have been discontinued under paragraph (5) or (6).

[S 14/2017]

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.

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 or is deemed to have discontinued an action or counterclaim or withdrawn a particular claim made by him therein shall not be a defence to a subsequent action for the same, or substantially the same, cause of action.
[S 14/2017]

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

5. (1) Where a party has discontinued or is deemed to have 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.
[S 14/2017]

(2) An application for an order under this rule may be made by summons 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 after he has entered an appearance in the action 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 37 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 acknowledgement 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

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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.

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

[S 53/2005]

2. Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum 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 14 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 14 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 38 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.

(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 so 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 rules 4 and 10 and Order 73, 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,

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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 paragraph (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, at 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. 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, 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 to the debt or damages until all questions of liability and of the amount of debt or damages have been decided.

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

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

(2) 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 is 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.

9. *(Repealed by S 34/2008).*

Person to whom payment to be made (O. 22, r. 10)

10. (1) Payment shall be made to the party entitled or, on his written authority to his solicitor or, if the Court so orders, to his solicitor without such authority.

(2) This rule applies whether the money in Court has been paid into Court under the order of the Court or a certificate of the Registrar.

Payment out: Small Intestate Estates (O. 22, r. 11)

11. Where a person entitled to a fund in Court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration of his estate has been made and that the assets of his estate do not exceed \$50,000 in value, including the value of the fund or share it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

Payment of hospital expenses (O. 22, r. 12)

12. (1) This rule applies in relation to an action or counterclaim for bodily injury arising out of the use of a motor vehicle on a road or any place to which the public have a right of access in which the claim for damages includes a sum for hospital expense.

(2) Where the party against whom the claim is made, or an authorised insurer pays the amount for which that party or insurer, as the case may be, is or may be liable in respect of the treatment afforded by a hospital to the person in respect of whom the claim is made, the party against whom the claim is made must, within 7 days after payment is made, give notice of the payment to all the other parties to the action.

[Subsidiary]**Written offers without prejudice save as to costs (O. 22, r. 13)**

13. (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 fails to be decided and the court shall, in accordance with Order 59, rule 5, take into account any offer which has been brought to its attention:

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 this Order.

ORDER 22A**OFFER TO SETTLE****Offer to settle (O. 22A, r. 1)**

1. A party to any proceedings may serve on any other party an offer to settle any one or more of the claims in the proceedings on the terms specified in the offer to settle.

Timing (O. 22A, r. 2)

2. An offer to settle may be made at any time before the Court disposes of the matter in respect of which it is made.

Acceptance (O. 22A, r. 3)

3. (1) An offer to settle shall be open for acceptance for a period of not less than 14 days after it is served. If an offer to settle is made less than 14 days before the hearing of the matter, it shall remain open for a period of not less than 14 days unless in the meanwhile the matter is disposed of.

(2) Subject to paragraph (1), an offer to settle which is expressed to be limited as to the time within which it is open for acceptance shall not be withdrawn within that time without the leave of the Court. An offer to settle which does not specify a time for acceptance may be withdrawn at any time after the expiry of 14 days from the date of service of the offer on the other party provided that at least one day’s prior notice of the intention to withdraw the offer is given.

(3) Where an offer to settle specifies a time within which it may be accepted and it is not accepted or withdrawn within that time, it is deemed to have been withdrawn when the time expires.

(4) Where an offer to settle does not specify a time, for acceptance, it may be accepted at any time before the Court disposes of the matter in respect of which it is made.

Without prejudice (O. 22A, r. 4)

4. An offer to settle is deemed to be an offer of compromise made without prejudice save as to costs.

Non-disclosure (O. 22A, r. 5)

5. (1) An offer to settle shall not be filed and no statement of the fact that such an offer has been made shall be contained in any pleading or affidavit.

(2) Where an offer to settle is not accepted, no communication respecting the offer shall be made to the Court at the hearing of the proceeding until all questions of liability and the relief to be granted, other than costs, have been determined.

Acceptance (O. 22A, r. 6)

6. (1) An offer to settle shall be accepted by serving an acceptance of offer on the party who made the offer.

(2) Where a party to whom an offer to settle is made rejects the offer or responds with a counter-offer that is not accepted, the party may thereafter accept the original offer to settle, unless it has been withdrawn or the Court has disposed of the matter in respect of which it was made.

(3) Where an offer is accepted, the Court may incorporate any of its terms into a judgment.

Disability (O. 22A, r. 7)

7. A party under disability may make, withdraw and accept an offer to settle, but no acceptance of an offer made by him and no acceptance by him of an offer made by another party is binding on him until the settlement has been approved.

Compliance (O. 22A, r. 8)

8. (1) Where a party to an accepted offer to settle fails to comply with any of the terms of the accepted offer, the other party may —

(a) make an application to a Judge for judgment in the terms of the accepted offer, and the Judge may grant judgment accordingly; or

(b) continue the proceeding as if there had been no accepted offer to settle.

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(2) Where the offer to settle involves the payment of money by instalments, the accepted offer to settle shall unless the parties otherwise provide be deemed to include a term that all instalments outstanding shall be immediately payable upon the failure to comply with the payment of any instalment.

Costs (O. 22A, r. 9)

9. (1) Where an offer to settle made by a plaintiff —

(a) is not withdrawn and has not expired before the disposal of the claim in respect of which the offer to settle is made; and

(b) is not accepted by the defendant, and the plaintiff obtains a judgment not less favourable than the terms of the offer to settle,

the plaintiff is entitled to costs on the standard basis to the date an offer to settle was served, unless the Court orders otherwise.

(2) Where an accepted offer to settle does not provide for costs, the plaintiff is entitled —

(a) where the offer was made by him, to his costs assessed to the date that the notice of acceptance was served; or

(b) where the offer was made by the defendant, to his costs assessed to the date the plaintiff was served with the offer.

(3) Where an offer to settle made by a defendant —

(a) is not withdrawn and has not expired before the disposal of the claim in respect of which the offer to settle is made; and

(b) is not accepted by the plaintiff, and the plaintiff obtains judgment not more favourable than the terms of the offer to settle,

the plaintiff is entitled to costs on the standard basis to the date the offer was served and the defendant is entitled to costs on the indemnity basis from that date, unless the Court orders otherwise.

(4) (a) Any interest awarded in respect of the period before service of the offer to settle is to be considered by the Court in determining whether the plaintiff's judgment is more favourable than the terms of the offer to settle.

(b) Any interest awarded in respect of the period after service of the offer to settle is not to be considered by the Court in determining whether the plaintiff's judgment is more favourable than the terms of the offer to settle.

Joint and several liability (O. 22A, r. 10)

10. Where there are two or more defendants, the plaintiff may offer to settle with any defendant and any defendant may offer to settle with the plaintiff, but where the defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a claim and rights of contribution or indemnity may exist between the defendants, the cost consequences prescribed by rule 9 do not apply to an offer to settle unless —

(a) in the case of an offer made by the plaintiff, the offer is made to all the defendants, and is an offer to settle the claim against all the defendants; or

(b) in the case of an offer made to the plaintiff —

(i) the offer is an offer to settle the plaintiff's claim against all the defendants and to pay the costs of any defendant who does not join in making the offer; or

(ii) the offer is made by all the defendants and is an offer to settle the claim against all the defendants, and, by the terms of the offer, they are made jointly and severally liable to the plaintiff for the whole of the offer.

Offer to contribute (O. 22A, r. 11)

11. (1) Where two or more defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a claim, any defendant may make to any other defendant an offer to contribute towards a settlement of the claim.

(2) The Court may take into account an offer to contribute in determining whether another defendant should be ordered —

(a) to pay the costs of the defendant who made the offer; or

(b) to indemnify the defendant who made the offer for any costs he is liable to pay to the plaintiff,

or to do both.

(3) Rules 2 to 12 shall apply to an offer to contribute as if it were an offer to settle.

Discretion of Court (O. 22A, r. 12)

12. Without prejudice to rules 9 and 10, the Court, in exercising its discretion with respect to costs, may take into account any offer to settle, the date the offer was made, the terms of the offer and the extent to which the plaintiff's judgment is more favourable than the terms of the offer to settle.

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Counterclaims and third party claims (O. 22A, r. 13)

13. Rules 1 to 12 shall apply, with the necessary modifications, to counterclaims and third party claims.

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 proceeding in the High Court, 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 (2), 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 proceeding as it thinks just.

(2) The Court shall not require a plaintiff to give security by reason only of paragraph (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.

(3) 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 proceeding 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, the security shall be given in such manner, at such time, and on such terms (if any), as the Court may direct.

Saving for written law (O. 23, r. 3)

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

ORDER 24

DISCOVERY AND INSPECTION OF DOCUMENTS

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 pleading 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 written law to make discovery of any documents or as requiring a defendant to an action to enforce a forfeiture to make discovery of any documents relating to the issue of forfeiture.

(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.

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(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 the 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 in Form 39 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 provisions of that rule, the Court, on the application of any party to whom the 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 document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

Order 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 40, 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) An affidavit made as aforesaid verifying a list of documents must be in Form 41.

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.

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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 document 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 document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

Disclosure by non-parties (O. 24, r. 7A)

7A. (1) On the application of any person, the Court shall have power to make an order providing for any one or more of the following matters —

(a) the inspection, photographing, preservation, custody and detention of property which appears to the Court to be property which may become the subject matter of subsequent proceedings in the Court, or as to which any question may arise in any such proceedings; and

(b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

(2) On the application of a person who appears to the Court to be likely to be a party to subsequent proceedings in that Court in which a claim in respect of personal injuries (as defined in section 20(3) of the Fatal Accidents and Personal Injuries Act (Chapter 160), or in respect of a person's death, is likely to be made, the Court shall have power to order a person who appears to the Court to be likely to be a party to the proceedings and to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising or likely to arise out of that claim —

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(a) to disclose whether those documents are in his possession, custody or power; and

(b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order —

- (i) to the applicant's solicitor;
- (ii) to the applicant's solicitor and any medical or other professional adviser of the applicant; or
- (iii) if the applicant has no solicitor, to any medical or other professional adviser of the applicant.

Disclosure in cases of personal injury or death (O. 24, r. 7B)

7B. (1) This rule applies to any proceedings in the Court in which a claim is made in respect of personal injuries (as defined in section 20(3) of the Fatal Accidents and Personal Injuries Act (Chapter 160) or in respect of a person's death.

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(2) On the application of a party to any proceedings to which this section applies, the Court shall have power to order a person who is not a party to the proceedings and who appears to the Court to be likely to have in his possession, custody or power any documents which are relevant to an issue arising out of that claim —

(a) to disclose whether those documents are in his possession, custody or power; and

(b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order —

- (i) to the applicant's solicitor;
- (ii) to the applicant's solicitor and any medical or other professional adviser of the applicant; or
- (iii) if the applicant has no solicitor, to any medical or other professional adviser of the applicant.

(3) On the application of a party to any proceedings to which this rule applies, the Court shall have power to make an order providing for any one or more of the following matters —

(a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject matter of the proceedings or as to which any question arises in the proceedings; and

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(b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

(4) The preceding provisions of this rule are without prejudice to the exercise by the Court of any power to make orders which is exercisable apart from those provisions.

Provisions supplementary to rules 7A and 7B (O. 24, r. 7C)

7C. The Court shall not make an order under rule 7A or 7B if it considers that compliance with the order, if made, would be likely to be injurious to the public interest.

Application under rule 7A or 7B (O. 24, r. 7D)

7D. (1) An application for an order under rule 7A for the disclosure of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under rule 7B for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must —

(a) in the case of a summons under paragraph (1) state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the High Court in which a claim in respect of personal injuries or in respect of a person's death is likely to be made;

(b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of a claim in respect of personal injuries or in respect of a person's death made or likely to be made in the proceedings and that the person against whom the order is sought is likely to have or to have had them in his possession, custody or power.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order under rule 7A or 7B for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require

the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become of them.

(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce —

(a) in the case of a summons under paragraph (1), if the subsequent proceedings had already been begun; or

(b) in the case of a summons under paragraph (2), if he had been served with a writ of subpoena *duces tecum* to produce documents at the trial.

(7) For the purposes of rules 10 and 11, an application for an order under rule 7A or 7B shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

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 in Form 42 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 in Form 43 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 in Form 44 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

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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 13(1), the Court may, on the application of the party entitled to inspection, make an order in Form 45 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 13(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.

Copies of documents (O. 24, r. 11A)

11A. (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 after receipt thereof supply the copy requested together with an account of the reasonable charges.

(3) Where 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. 12)

12. At any stage of the proceedings in any cause or matter the Court may, subject to rule 13(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. 13)

13. (1) No order for the production of any documents for inspection or to the Court 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 privilege from such production is claimed or objection is made to such production 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. 14)

14. (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 book 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.

Use of documents (O. 24, r. 14A)

14A. Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document 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.

Document disclosure of which would be injurious to public interest: Saving (O. 24, r. 15)

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

[Subsidiary]**Failure to comply with requirement for discovery etc. (O. 24, r. 16)**

16. (1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 11(1), 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) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he is liable to committal.

(3) Service on a party's solicitor of an order for discovery or production of documents 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 in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client is liable to committal.

Revocation and variation of Orders (O. 24, r. 17)

17. 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 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 one month after the pleadings in the action are deemed to be closed, take out a summons in Form 46 (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 has applied for judgment under Order 77, and directions have been given under the relevant Order;

(b) actions in which the plaintiff or defendant has applied under Order 18, rule 22, for trial without pleadings or further pleadings and directions have been given under that rule;

(c) actions in which an order has been made under Order 24, rule 4, for the trial of the 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 which have been referred for trial to the Registrar; and

(g) actions for the infringement of a patent.

(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 one 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.

[Subsidiary]

(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.

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 then 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, on the summons for directions, an action is ordered to be transferred to the Subordinate Courts, nothing in this Order shall be construed as requiring the Court to make any further order on the summons.

(5) If, on the summons for directions, the action or any question or issue therein is ordered to be tried before the Registrar, the Court may, without giving further directions, adjourn the summons so that it can be heard by the Registrar, and the party required to apply to the Registrar for directions may do so by notice without taking out a fresh summons.

(6) 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 2 days' notice to the other parties.

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

3. On the hearing of the summons for directions the Court shall in particular consider, if necessary of its own motion, whether, for the purpose of saving costs, any order should be made in the exercise of the powers conferred by any of the following provisions, that is to —

(a) the Evidence Act (Chapter 108), in particular, the sections which enable the Court to order the admission in evidence of statements in documents notwithstanding that the makers of the statements are not called as witnesses and notwithstanding that the original document is not produced;

(b) Order 20, rule 5, Order 38, rules 2 to 7, and Order 70, rule 24(3).

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 admissions 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 solicitors 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 to do so 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.

[Subsidiary]

(3) If the Court on any hearing of the summons for directions requires a party to the action or his solicitor or counsel 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 to do so, order the whole or any part of the pleadings of the party concerned to be struck out, 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 privileged from disclosure shall be required to be given or produced under this rule by or by the solicitors 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 in Form 47 specifying those orders and directions in so far 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 in so far 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 2 clear days' notice to the other party stating the grounds of the application.

Automatic direction in personal injury action (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), where 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 sub-paragraph, 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 set down within 6 months;

(f) the Court shall be notified, on setting down, of the estimated length of the trial.

(2) Where paragraph 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 order 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 “documents relating to special damages” include —

(a) documents relating to any industrial injury, industrial disablement or sickness benefit rights; and

(b) document 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

[Subsidiary]

(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 apply by summons in Form 48 to the Court for an order —

(a) 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; and

(b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

(2) A copy of the proposed interrogatories in Form 49 must be served with the summons by which the application for such leave is made.

(3) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs; and in deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.

(4) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

(5) If an order is made it must be in Form 50 and must be served by the applicant on the party against whom it is made.

(6) Interrogatories must be answered by affidavit in Form 51 and the affidavit must be filed and a copy thereof served on the party interrogating within the time named in the order.

Discovery by interrogatories without leave of Court (O. 26, r. 2)

2. A party to any cause or matter may at any time before the close of pleadings without the leave of the Court deliver interrogatories relating to any matter in question between the parties.

Interrogatories where party is body of persons (O. 26, r. 3)

3. Where a party to a cause or matter is a body of persons, whether corporate or unincorporate, being a body 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 Court may, on the application of any other party, make an order allowing him to serve interrogatories on such officer or member of the body or person as may be specified in the order.

Statement as to party etc. required to answer (O. 26, r. 4)

4. Where interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, a note at the end of the interrogatories shall state 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.

Objection to answer on ground of privilege (O. 26, r. 5)

5. Where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his affidavit in answer.

Insufficient answer (O. 26, r. 6)

6. If any person on whom interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, and either by affidavit or on oral examination as the Court may direct.

Failure to comply with Order (O. 26, r. 7)

7. (1) If a party against whom an order is made under rule 1 or 6 fails to comply with it, 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) If a party against whom an order is made under rule 1 or 6 fails to comply with it, then, without prejudice to paragraph (1) he is liable to committal.

(3) Service on a party's solicitor 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) A solicitor 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 is liable to committal.

[Subsidiary]**Use of answers to interrogatories at trial (O. 26, r. 8)**

8. 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 so 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. 9)

9. 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 facts (O. 27, r. 2)

2. (1) A party to a cause or matter may not later than 14 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.

(3) A notice to admit facts under paragraph (1) must be in Form 52 and an admission of facts under paragraph (2) in Form 53.

Judgment on admission of facts (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 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 14 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 to whom the list is served serves on the party whose list it is a notice stating, in relation to any documents specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he is not 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 is 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 14 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 14 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.

[Subsidiary]

(3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document is 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.

(5) A notice to admit, a notice of non-admission and a notice to produce document shall be in Forms 54, 55 and 56 respectively.

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 written 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 with the office of the Court out of which the summons was issued 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) Where 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 in the office of the Court out of which the summons is issued 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 in Court 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 the 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 direction 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) Where, in the case of an originating summons to which appearance is required to be entered, any defendant served with the summons has entered, or has within the time limited for appearing failed to enter, an appearance, the plaintiff may obtain an appointment for the attendance of the parties before the Court for the hearing of the summons, and a day and time for their attendance shall be fixed by a notice in Form 57 sealed with the seal of the Court.

(2) A day and time for the attendance of the parties before the Court for the hearing of an originating summons to which appearance is not required, 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.

(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 entered an appearance.

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

3. (1) Not less than 4 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 to which appearance is required to be entered, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has entered an appearance 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 to which appearance is not required, the plaintiff must serve the summons on every defendant.

[Subsidiary]

(3) Where the plaintiff intends to adduce evidence in support of an originating summons at the first hearing thereof he must do so by affidavit and, not less than 4 clear days before the hearing, serve a copy thereof on every defendant who has entered an appearance or, if the summons is one to which appearance is not required, on every defendant who has been served with the summons.

(4) Not less than 4 clear days before the day fixed for the hearing of an *ex parte* originating summons the applicant must file an affidavit in support of the summons.

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 hearing of an originating summons the Court disposes of the summons altogether or orders the cause or matter begun by it to be transferred to a Subordinate Court 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.

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, the party on whose application the day for its hearing was fixed under rule 2 may restore it to the list

on 2 days notice to all the other parties (except a defendant who has failed to enter an appearance, or if the summons is one to which an appearance is not required, has not been served with the summons), and any of those parties may restore it with the leave of the Court.

Applications affecting party in default of appearance (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 enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

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

7. (1) A defendant to an action begun by originating summons who has entered an appearance to 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 have been a summons for directions in the proceedings and that order were one of the orders to be made thereon.

[Subsidiary]

(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 orders it to be transferred to a Subordinate Court 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 thereof in accordance with this rule.

(2) 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 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.

Failure to prosecute proceedings with despatch (O. 28, r. 10)

10. (1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had begun by writ, the foregoing provisions of this rule shall not apply in relation to the cause or matter after the making of the order.

Abatement etc. of action (O. 28, r. 11)

11. Order 34, rule 6, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

ORDER 29

PART 1

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 application is the plaintiff and the case is one of urgency such application may be made *ex parte* by summons supported by an affidavit but, except as aforesaid, such application must be made by 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.

(4) An order for interim injunction must be in Form 58.

Cross-examination as to assets (O. 29, r. 1A)

1A. (1) Where —

(a) the Court has made an order restraining any party from removing from the jurisdiction of the High Court, or otherwise dealing with any assets;

(b) that party has in compliance with the order, or any order made in connection with it, filed affidavit evidence as to his or any other assets; and

(c) the Court has ordered that that party shall be cross-examined on his affidavit,

the Court may order that the cross-examination shall be conducted otherwise than before a Judge, in which case the cross-examination shall take place before a Registrar.

(2) A cross-examination of a kind referred to in paragraph (1)(c) shall take place in chambers and no transcript or other record of it may be used by any person, other than the party being cross-examined, for any purpose other than the purpose of the proceedings in which the order for the cross-examination was made, unless and to the extent that that party consents or the Court gives leave.

[Subsidiary]**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 immovable property 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.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he enters an appearance.

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 immovable property 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 movable property 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.

(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 purpose of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires.

Recovery of movable 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 movable property and the party from whom recovery is sought does not dispute the title of the party making the claim by 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.

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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 sub-paragraphs (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(l) 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 directions.

Property (O. 29, r. 7A)

7A. (1) An application for an order for the inspection of property which may become the subject matter of subsequent proceedings in the High Court or as to which any question may arise in any such proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

[Subsidiary]

(2) An application after the commencement of proceedings for an order in respect of property which is not the property of, or in the possession of, any party to the proceedings shall be by summons, which must be served on the person against whom the order is sought personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by affidavit which must specify or describe the property in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings or subsequent proceedings, that it is property which is or may become the subject matter of the proceedings or as to which any question arises or may arise in the proceedings.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order made under this rule may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just.

(6) No such order shall be made if it appears to the Court —

(a) that compliance with the order, if made, would result in the disclosure of information relating to a secret process, discovery or invention not in issue in the proceedings; and

(b) that the application would have been refused on that ground if —

(i) in the case of a summons under paragraph (1) the subsequent proceedings had already been begun; or

(ii) in the case of a summons under paragraph (2) the person against whom the order is sought were a party to the proceedings.

Allowance of income of property *pendente lite* (O. 29, r. 8)

8. Where any movable or immovable 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 movable property be transferred or delivered to any or all of such parties.

Injunctions (O. 29, r. 9)

9. (1) Without prejudice to the powers conferred by this Order, the Court may, by order, whether interlocutory or final, grant an injunction in all cases in which it appears to the Court to be just and convenient to do so.

(2) Any order made under this Order may be made either unconditionally or on such terms and conditions as the Court thinks fit.

(3) The power of the Court under this Order, to grant an interlocutory injunction restraining the party to any proceedings from removing from the jurisdiction of the High Court of Brunei Darussalam, to otherwise dealing with assets located within that jurisdiction, shall be exercisable as well in cases where that party is, as well as in cases where he is not, domiciled, resident or present within the jurisdiction.

PART 2**INTERIM PAYMENTS****Interpretation of Part 2 (O. 29, r. 10)**

10. 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. 11)

11. (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.

(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 to which the application relates and the grounds of the application;

(b) exhibit any documentary evidence relied on by the plaintiff in support of the application; and

[Subsidiary]

(c) if the plaintiff's claim is made under the Fatal Accidents and Personal Injuries Act (Chapter 160), contain the particulars mentioned in section 5(4) of that Act.

[S 34/2008]

(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. 12)

12. (1) If, on the hearing of an application under rule 11 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;

(b) that the plaintiff's 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 body; 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. 13)

13. If, on the hearing of an application under rule 11, 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;

(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 interim payment (O. 29, r. 14)

14. (1) Subject to Order 73, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for 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 paragraph (1) 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 11 (O. 29, r. 15)

15. Where an application is made under rule 11, the Court may give directions 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.

[Subsidiary]**Non-disclosure of interim payment (O. 29, r. 16)**

16. The fact that an order has been made under rule 12 or 13 shall not be pleaded and, unless the defendant consents or the court so directs, no communication of that fact or of 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. 17)

17. 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 had taken into account the interim payment.

Adjustment on final judgment or order or on discontinuance (O. 29, r. 18)

18. (1) 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 such 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. 19)

19. The preceding rules in this Part of this Order shall apply, with the necessary modifications, to any counterclaim or proceeding commenced 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 injunction, he may do so *ex parte* by summons supported by an 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) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.

(2) Where by virtue of paragraph (1), or 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 or, if the amount for which the security is to be given does not exceed \$20,000, by an undertaking in Form 59.

(4) The guarantee or undertaking must be filed in the Registry.

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

3. A person appointed receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

Service (O. 30, r. 3A)

3A. A copy of the judgment or order 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. 4)

4. (1) A receiver must submit accounts to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.

[Subsidiary]

(2) Unless the Court otherwise directs, each account submitted by a receiver must be accompanied by an affidavit verifying it in Form 60.

(3) The receiver's account and affidavit (if any) must be left at the Registry, and the plaintiff or party having the conduct of the cause or matter must thereupon obtain an appointment for the purpose of passing such account.

(4) The passing of a receiver's account must be certified by the Registry.

Payment of balance etc. by receiver (O. 30, r. 5)

5. The days on which a receiver must pay into Court the amounts shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the Court.

Default by receiver (O. 30, r. 6)

6. (1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was 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 passing of any account of his or fails to submit any account or fails to pay into Court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into Court, charge him with interest at the rate of 6 *per centum per annum* on that sum while in his possession as receiver.

Directions (O. 30, r. 7)

7. A receiver may at any time request the Court to give him directions and such request shall state in writing the matters with regard to which directions are required.

ORDER 31

SALES ETC. OF IMMOVABLE PROPERTY BY ORDER OF COURT

Power to order sale of immovable property (O. 31, r. 1)

1. Where in any cause or matter relating to any immovable property it appears necessary or expedient for the purposes of the cause or matter that the property or any part thereof should be sold, the Court may order that property or part to be sold, and any party bound by the order and in possession of that property 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.

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

2. (1) Where an order is made, whether in court or in Chambers, directing any immovable property to be sold, the Court may permit the party or person having the conduct of the sale to sell the property in such manner as he thinks fit, or may direct that the property be sold in such manner as the Court may either by the order or under paragraph (4) direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The party entitled to prosecute the order must, subject to paragraph (3), take out a summons to proceed with the order.

(3) Where an order for sale contains directions with regard to effecting the sale, the party entitled to prosecute the order shall not take out a summons under paragraph (2) unless and until he requires the further directions of the Court.

(4) On the hearing of the summons 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 by public auction, and the remuneration to be allowed to him;

(h) requiring the title to be referred to an advocate and solicitor for his opinion thereon and to settle the particulars and conditions of sale.

[Subsidiary]**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 a sale by order of the Court must be certified in Form 61 —

(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 solicitor or 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 solicitor, as the case may be.

(2) The solicitor of the party or person having the conduct of the sale must file the certificate and affidavit (if any) in the Registry.

Charge, exchange or partition under order of 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 immovable property under an order of the Court as they apply in relation to the sale of any immovable property under such an order.

Reference of matters to solicitor (O. 31, r. 5)

5. The Court may refer to a solicitor —

(a) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on charge thereof, or with a view to the sale thereof;

(b) any matter relating to the settlement of a draft of a transfer charge, settlement or other instrument; and

(c) any other matter it thinks fit,

and may act upon his opinion in the matter referred.

Objection to opinion of solicitor (O. 31, r. 6)

6. Any party may object to the opinion given by the solicitor on a reference under rule 5, and if he does so the point in dispute shall be determined by the Judge either in Chambers or in Court as he thinks fit.

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 must be made by summons in Form 62.

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 by an officer of the Registry.

(2) A summons may not be amended after issue without the leave of the Court.

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

3. A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than 2 clear days before the day so specified.

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 2 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 to do so.

(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 proceeded 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 rehear the summons.

[Subsidiary]

(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*.

7. *Revoked.*

Application for leave to institute certain proceedings (O. 32, r. 8)

8. (1) The jurisdiction of the High Court to grant leave under any law concerned with mental disorders to bring proceedings against a person, may be exercised in Chambers only by a Judge.

(2) No appearance need be entered to an originating summons by which an application for leave under the said law is made.

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

Jurisdiction of Registrar (O. 32, r. 9)

9. The Registrar shall have power to transact all such business and exercise all such authority and jurisdiction as under the Act or these Rules may be transacted and exercised by a Judge or Court except such business, authority and jurisdiction as the Chief Justice may from time to time direct to be transacted or exercised by a Judge in person or as may by any of these Rules be expressly directed to be transacted or exercised by a Judge in person: Provided that if, for any reason, no Judge is present in Brunei Darussalam, the Registrar may exercise any of such powers as may have been so directed.

Reference of matter to Judge (O. 32, r. 10)

10. The Registrar may refer to a Judge any matter which he thinks should properly be decided by a Judge, and the Judge may either dispose of the matter or refer it back to the Registrar, as the case may be, with such directions as he thinks fit.

Power to direct hearing in Court (O. 32, r. 11)

11. (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) may be adjourned from Court into Chambers.

Obtaining assistance of experts (O. 32, r. 12)

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

Notice of filing etc. of affidavit (O. 32, r. 13)

13. Any party —

(a) filing an affidavit intended to be used by him in any proceedings in Chambers; or

(b) intending to use in any such proceedings any affidavit filed by him in previous proceedings,

must give notice to every other party of the filing or, as the case may be, of his intention to do so.

Disposal of matters in Chambers (O. 32, r. 14)

14. 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.

Papers for use of Court etc. (O. 32, r. 15)

15. The original of any document which is to be used in evidence in proceedings in Chambers must, if it is available, be brought in, and copies of any such document or of any part thereof shall be supplied for the use of the Court or be given to the other parties to the proceedings.

Uncontested chamber applications (O. 32, r. 16)

16. If a Judge is satisfied that all parties to an application at Chambers have been served and have consented to the application he may in the absence of the parties or their solicitors order the granting of the application by minute on the file and the Court shall inform the applicant or his solicitor in writing of the order.

Notes of proceedings in Chambers (O. 32, r. 17)

17. (1) A note shall be kept of all proceedings in Chambers, with a short statement of the matters decided at each hearing.

(2) The note specified in paragraph (1) shall be privileged and private and shall not be disclosed to any person without the leave of the Judge or Registrar concerned.

[S 34/2008]

ORDER 33

MODE OF TRIAL

Mode of trial (O. 33, r. 1)

1. Subject to the provisions of these Rules, a cause or matter, or any question or issue arising therein, may be tried before —

(a) a Judge; or

(b) the Registrar.

Time etc. at trial of questions or issues (O. 33, r. 2)

2. 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 mode of trial (O. 33, r. 3)

3. (1) In every action begun by writ, an order made on the summons for directions shall determine the 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.

Dismissal of action etc. after decision of preliminary issue (O. 33, r. 4)

4. 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 therein as may be just.

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

4A. (1) This rule applies where an order is made under rule 3(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.

ORDER 34

SETTING DOWN FOR TRIAL ACTION 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.

Time for setting down action (O. 34, r. 2)

2. (1) Every order made on a summons for directions shall fix a period within which the plaintiff is to set down the action for trial and must contain an estimate of the length of the trial and the approximate number of witnesses, if any.

(2) Where the plaintiff does not, within the period fixed under paragraph (1), set the action down for trial, the defendant may set the action down for trial 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 order as it thinks just.

(3) An action set down for trial must contain an estimate of the length of the trial and the approximate number of witnesses (if any) and shall, subject to any directions under rule 4, specify the list in which the action is to be put.

Lodging documents when setting down (O. 34, r. 3)

3. (1) In order to set down for trial an action, the party setting it must deliver to the Registrar, by post or otherwise, a request in Form 63 that the action may be set down for trial together with two bundles (one of which shall serve as the record and the other be for the use of the Judge) consisting of one copy of each of the following documents —

(a) the writ;

(b) the pleadings (including any affidavits ordered to stand as pleadings), any notice or order for particulars and the particulars given; and

(c) all orders made on the summons for directions.

[Subsidiary]

(2) Such bundle must be bound up in the proper chronological order and have indorsed thereon the names, addresses and telephone numbers of the solicitors for the parties or, in the case of a party who has no solicitor, of the party himself.

Directions relating to lists (O. 34, r. 4)

4. Nothing in this Order shall prejudice any powers of the Chief Justice to give directions —

- (i) specifying the lists in which actions, or actions of any class or description, are to be set down for trial and providing for the keeping and publication of the lists;
- (ii) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place; and
- (iii) as to the making of applications (whether to a Court or a Judge or the Registrar) to fix, vacate or alter any such date, and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information.

Notification of setting down (O. 34, r. 5)

5. (1) A party to an action who sets it down for trial must, within 24 hours after doing so, notify in Form 64 the other parties to the action that he has done so.

(2) It shall be the duty of all parties to an action entered in any list to furnish without delay to the Registrar 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 Registrar of the fact without delay.

Abatement etc. of action (O. 34, r. 6)

6. (1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the Registrar and the Registrar shall cause the appropriate entry to be made in the cause book and in the list of actions set down for trial.

(2) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action shall on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.

Notice of trial (O. 34, r. 7)

7. Notice of trial may be given by the plaintiff or other party in the position of the plaintiff at any time after a reply has been delivered or after the time for delivery of a reply has expired.

Notice of trial by defendant. Application to dismiss for want of prosecution (O. 34, r. 8)

8. (1) If in any cause or matter where a notice of trial is required the plaintiff does not within 6 weeks after the time when he first becomes entitled to give notice of trial under rule 7 of this Order or within such extended time as the Court or a Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the Court or Judge may seem just.

(2) If no notice of trial is given or if the defendant makes no application to dismiss the action under subrule (1), the Court or Judge may after giving such notice as may be necessary dismiss the cause or matter or may make such order and on such terms as to costs or otherwise as to the Court or Judge may seem just.

Court bundle (O. 34, r. 9)

9. (1) At least 14 days before the date fixed for the trial, or, in the case of an action entered in any running list, within 3 weeks of the defendant's receiving notice of such entry, the defendant shall identify to the plaintiff those documents central to his case which he wishes included in the bundle to be provided under paragraph (2).

(2) At least 2 clear days before the date fixed for the trial the plaintiff shall lodge two bundles consisting of one copy of each of the following documents —

(a) witness statements which have been exchanged, and experts' reports which have been disclosed, together with an indication of whether the contents of such document are agreed;

(b) those documents which the defendant wishes to have included in the bundle and those central to the plaintiff's case; and

(c) 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; and

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(iii) a chronology of relevant events.

(3) Nothing in this rule shall —

(a) prevent the Court from giving, whether before or after the documents have been lodged, such further or different directions as to the documents to be lodged as may, in the circumstances, be appropriate; or

(b) prevent the making of an order for the transfer of the action to another court.

(4) 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.

Parties to appear by special notice (O. 34, r. 10)

10. (1) Parties or their solicitors in a cause or matter may by special notice be required to appear on any day for mention of such cause or matter.

(2) If the plaintiff or defendant fails to appear, the Court or Judge may fix a date for trial or make such other order as to the Court or Judge may seem just.

ORDER 34A

PRE-TRIAL CONFERENCES

Power to make orders (O. 34A, r. 1)

1. (1) Notwithstanding anything in these Rules, the Court may, at any time after the commencement of any proceedings, of its own motion direct any party or parties to those proceedings to appear before it, in order that the Court may make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter.

(2) Where any party fails to comply with any order made or direction given by the Court under paragraph (1), the Court may dismiss the action, strike out the defence or counterclaim or make such other order as it thinks fit.

(3) The Court may, in exercising its powers under paragraph (1), make such order as to costs as it thinks fit.

(4) Any judgment, order or direction given or made against any party who does not appear before the Court when directed to do so under paragraph (1) may be set aside or varied by the Court on such terms as it thinks just.

Directions as to pre-trial conferences (O. 34A, r. 2)

2. (1) Without prejudice to rule 1, at any time before any action or proceedings are tried, the Court may direct parties to attend a pre-trial conference relating to the matters arising in the action or proceedings.

(2) At the pre-trial conference, the Court may consider any matter including the possibility of settlement of any or all of the issues in the action or proceedings and require the parties to furnish the Court with any such information as it thinks fit, and may also give all such directions as appear to be necessary or desirable for securing the just, expeditious and economical disposal of the action or proceedings.

(3) The Court, having made directions under rule 2(2) or 3 may either on its own motion or upon the application of any party, if any party defaults in complying with any such directions, dismiss such action or proceedings or strike out the defence or counterclaim or enter judgment or make such order as it thinks fit.

(4) Any judgment or order made under rule 2(3) may be set aside by the Court, on the application of the party, on such terms, if any, as it thinks just.

(5) At any time during the pre-trial conference where the parties are agreeable to a settlement of some or all of the matters in dispute in the action or proceedings, the Court may enter judgment in the action or proceedings or make such order to give effect to the settlement.

Notification (O. 34A, r. 3)

3. All parties shall be informed of the date and time appointed for the holding of the pre-trial conference and each party shall comply with any such directions.

Attendance (O. 34A, r. 4)

4. Parties to the action or proceedings may be represented at the pre-trial conference by their solicitor, if any, but may, if they so desire, with the leave of the Court attend the pre-trial conference personally, at the time originally appointed or as adjourned, in addition to their solicitor.

Adjournments (O. 34A, r. 5)

5. A pre-trial conference may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

Failure to appear (O. 34A, r. 6)

6. (1) If, at the time appointed for the pre-trial conference, one or more of the parties fails to attend, the Court may dismiss the action or proceedings or strike out the defence or counterclaim or enter judgment or make such other order as the Court thinks fit.

[Subsidiary]

(2) An order made by the Court in the absence of a party concerned or affected by the order may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(3) Without prejudice to the preceding paragraphs of this rule, where one or more of the parties to the action or proceedings fails to attend the pre-trial conference, the Court may, if it thinks fit, adjourn the conference.

Non-disclosure (O. 34A, r. 7)

7. No communication of facts disclosed or of any matter considered in the course of a pre-trial conference in any action or proceedings shall be made to the Court conducting the trial of the action or proceeding.

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 of the list without prejudice, however, to the restoration thereof, on the direction of a Judge.

(2) If, when the trial of an action is called on, 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 or order 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.

Adjournments 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.

Order of speeches (O. 35, r. 4)

4. (1) The Judge before whom an action is tried 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 (O. 35, r. 5)

5. 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. All such expenses shall be costs in the proceedings.

[Subsidiary]**Death of party before giving of judgment (O. 35, r. 6)**

6. Where a party to any action dies after the 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.

Entries to be made by Registrar or proper officer of Court (O. 35, r. 7)

7. (1) The Registrar or the proper officer of the Court must make a note in the Minute Book of the time at which the trial commences and terminates, and the time actually occupied on each day on which the trial takes place.

(2) At the conclusion of the trial of any action, the Registrar or the said officer must enter in the Minute Book the judgment given by the Judge, and any order made by the Judge as to costs.

(3) The certificate of the Registrar or the said officer in Form 65 shall be sufficient authority for the proper officer in the Registry to enter judgment accordingly.

List of exhibits (O. 35, r. 8)

8. (1) The Registrar or the proper officer 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, so that all the exhibits put in by a party, or proved by a witness, are numbered in one consecutive series.

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 Registrar or the said officer shall cause a list in Form 66 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. 9)

9. (1) The Registrar shall retain all exhibits in his custody duly marked or labelled so that in the event of an appeal to the Court of Appeal, he may be able to produce the exhibits so marked or labelled at the hearing of the appeal.

(2) After the expiration of the time for appealing and if no appeal has been brought, or after the final disposal of the appeal, as the case may be, the exhibits shall be returned on request of the respective parties who put them in:

Provided that where the claim or counterclaim is for money due under a negotiable instrument which is received in evidence, the negotiable instrument must be retained in the Registry and must not be delivered out of the custody of the Registry except upon an order of the Registrar.

Impounded documents (O. 35, r. 10)

10. (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 the 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.

Continuation of trial by another Judge (O. 35, r. 11)

11. (1) When a Judge who has commenced a trial of any proceedings is unable through death, illness or other cause to conclude the trial, another Judge may with the consent of the parties deal with the evidence already recorded and proceed with the trial from the stage at which the previous Judge left it.

(2) Nothing herein shall prevent the Judge who continues the trial from recalling all or any of the witnesses or taking their evidence afresh.

ORDER 36

TRIALS BEFORE AND INQUIRIES BY REGISTRAR OR OTHER COURT

Power to order trial before Registrar or other Court (O. 36, r. 1)

1. If in any cause or matter, the Court considers, upon application by any party or of its own motion, that having regard to the nature of the case it is desirable (whether on grounds of expedition, economy or convenience or otherwise) in the interests of one or more of the parties, the Court may order that the cause or matter, or any question or issue of fact arising therein shall be tried before any other Court or the Registrar.

[Subsidiary]

Trial before and inquiry by Registrar or other Court (O. 36, r. 2) [S 34/2008]

2. The Court may, with the consent of the parties to any cause or matter, order that the cause or matter, or any question or issue of fact arising therein, be tried before any other Court or the Registrar.

ORDER 37

ASSESSMENT OF DAMAGES

Assessment of damages by Registrar (O. 37, r. 1)

1. (1) Where judgment is given for damages to be assessed and no provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of this Order, be assessed by the Registrar, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment from the Registrar 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 62, rule 10, a notice under this rule must be served on the party against whom the judgment is given.

(3) The attendance of witnesses and the production of documents before the Registrar in proceeding under this Order may be compelled by writ of subpoena, and the provisions of Order 35 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a trial.

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

2. Where in pursuance of this Order or otherwise damages are assessed by the Registrar, he shall certify the amount of the damages.

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 in default of appearance 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.

Power to order Assessment by Registrar or at trial (O. 37, r. 4)

4. The Court may, in the case of any such judgment as is mentioned in rule 1, order either —

(a) that the assessment of the damages shall be made by the Registrar; or

(b) that the action shall proceed to trial before a Judge as respects the damages,

and where the Court orders that the action shall proceed to trial, 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 desire and with any other necessary modifications, apply as if the application to the Court in pursuance of which the Court makes the order, were a summons for directions under Order 25.

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, as they apply to a judgment for 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.

Application of rules 7 to 10 (O. 37, r. 7)

7. (1) This rule and rules 8 to 10 shall apply to actions for damages for personal injuries.

(2) In the following rules of this Order, “award of provisional damages” means an award of damages for personal injuries under which —

(a) damages are assessed on the assumption that a contingency will not happen; and

(b) the injured person is entitled to apply for further damages at a future date if the contingency happens.

Provisional damages (O. 37 r. 8)

8. (1) The Court may, on such terms as it thinks just and subject to the provisions of this rule, make an award of provisional damages if the plaintiff has pleaded a claim for provisional damages.

(2) An order for an award of provisional damages shall specify the contingency in respect of which an application may be made at a future date, and shall also, unless the Court otherwise determines, specify the period within such application may be made.

[Subsidiary]

(3) The Court may, on the application of the plaintiff made within the period, if any, specified in paragraph (2), by order extend that period if it thinks it just to do so, and the plaintiff may make more than one such application.

(4) An order for an award of provisional damages may be made in respect of more than one contingency and may in respect of each contingency specify a different period within which an application may be made at a future date.

(5) Orders 13 and 19 shall not apply in relation to an action in which the plaintiff claims provisional damages.

Offer to submit (O. 37, r. 9)

9. (1) Where an application is made for an award of provisional damages, any defendant may at any time (whether or not he makes a payment into Court or makes an offer to settle) make a written offer to the plaintiff —

(a) to tender a sum of money (which may include an amount to be specified, in respect of interest) in satisfaction of the plaintiff's claim for damages assessed on the assumption that the injured person will not develop the contingency and identifying the contingency in question; and

(b) to agree to the making of an award of provisional damages.

(2) Any offer made under paragraph (1) shall not be brought to the attention of the Court until after the Court has determined the claim for an award of provisional damages.

(3) Where an offer is made under paragraph (1), the plaintiff may, within 21 days after receipt of the offer, give written notice to the defendant of his acceptance of the offer and shall on such acceptance make an application to the Court for an order in accordance with the provisions of rule 8(2).

Application for further damages (O. 37, r. 10)

10. (1) This rule shall apply where the plaintiff, pursuant to an award of provisional damages, claims further damages.

(2) No application for further damages may be made after the expiration of the period, if any, specified under rule 8(2), or of such period as extended under rule 8(3).

(3) The plaintiff shall give not less than 3 months' written notice to the defendant of his intention to apply for further damages and, if the defendant is to the plaintiff's knowledge insured in respect of the plaintiff's claim, to the insurers.

ORDER 38

EVIDENCE

PART 1

GENERAL RULES

[S 34/2008]

General rule: Witnesses to be examined orally (O. 38, r. 1)

1. Subject to the provisions of these Rules and of the Evidence Act (Chapter 108), and of any other written 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.

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

2. (1) Without prejudice to the generality of rule 1, and unless otherwise provided by any written law or by these Rules, at the trial of an action commenced by writ, evidence in chief of a witness shall be given by way of affidavit. Unless the Court otherwise orders or the parties to the action otherwise agree, such a witness shall attend trial for cross-examination and, in default of his attendance, his affidavit shall not be received in evidence except with the leave of the Court.

(2) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence shall 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.

(3) Unless the Court otherwise orders, no deponent to an affidavit may at the trial or hearing of any cause or matter give evidence in chief, the substance of which is not contained in his affidavit except in relation to matters which have arisen after the filing of the affidavit.

(4) Notwithstanding paragraph (1), (2) or (3), the Court may, if it thinks just, order that evidence of a party or any witness or any part of such evidence be given orally at the trial or hearing of any cause or matter.

(5) Nothing in this rule shall make admissible evidence which if given orally would be inadmissible.

[Subsidiary]**Exchange of witness statements (O. 38, r. 2A)**

2A. (1) The powers of the Court under this rule shall 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; and
- (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 shall 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.

Order 3, rule 4(3) shall not apply to any period specified by the Court under this paragraph.

(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's 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) 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 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.

(10) 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).

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

[Subsidiary]

(12) A request under paragraph (11) may be made orally or in writing.

(13) The Judge may refuse to give a direction under paragraph (11) 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 Judge certifies under paragraph (11) that a witness statement as open to inspection, he shall —

(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 certificate is given until the end of 7 days after the conclusion of the trial.

(16) In this rule —

(a) any reference in paragraphs (11) 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) to (8) and (11) to (16)) and to give such alternative directions as it thinks fit.

Evidence by particular facts (O. 38, r. 3)

3. (1) Without prejudice to rule 2, 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 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 place, by the production of a specified 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.

Expert evidence in action arising out of accident (O. 38, r. 6)

6. (1) In an action arising out of an accident on land due to a collision or apprehended collision, unless at or before the trial the Court otherwise orders, the oral expert evidence of an engineer sought to be called on account of his skill and knowledge as respects motor vehicles shall not be receivable in evidence at the trial unless a copy of a report from him containing the substance of his evidence has been made available to all parties for inspection before the hearing of the summons for directions and an order made on the summons for directions or an application thereunder authorises the admission of the evidence.

(2) The references in this rule 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, whether with or without modifications.

Revocation or variation of orders under rules 2 to 6 (O. 38, r. 7)

7. Any order under rules 2 to 6 (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.

[Subsidiary]**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 received 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) Office copies of writs, records, pleadings and documents filed in the Registry 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 written law, every document purporting to be sealed with the seal of the High 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 High Court is deemed to be an 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 proceedings 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 proceedings in the cause or matter and produce any document, to be specified or described in the 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 a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

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

14. (1) A writ of subpoena must be in Form 67, 68 or 69 whichever is appropriate.

(2) Issue of a writ of subpoena takes place upon its being sealed by an officer of the Registry.

(3) Before a writ of subpoena is issued a praecipe in Form 70 for the issue of the writ must be filed in the Registry; and the praecipe must contain the name and address of the party issuing the writ, if he is acting in person, or the name of firm and business address of that party's solicitor.

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

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

Writ of subpoena *duces tecum* (O. 38, r. 16)

16. (1) A writ of subpoena *duces tecum* must contain the name of one person only.

(2) Any person served with a writ of subpoena *duces tecum* shall sufficiently comply if he causes the document to be produced without attending personally.

Amendment of writ of subpoena (O. 38, r. 17)

17. 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 re-sealed in correct form by filing a second praecipe under rule 14(3) indorsed with the words "Amended and re-sealed".

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Service of writ of subpoena (O. 38, r. 18)

18. (1) Unless the Court otherwise orders, 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.

(2) A writ of subpoena shall not be served on any person outside the jurisdiction.

Duration of writ of subpoena (O. 38, r. 19)

19. A writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

Court records (O. 38 r. 20)

20. (1) An officer of the High Court or of any Subordinate Court shall not be required by a writ of subpoena *duces tecum* to produce the records of the Court.

(2) If the original of any record of a Court or of any document filed in such court is for any special reason required, a request for production thereof may, on the application of the party requiring the same, be addressed by the Registrar to that Court.

(3) No mark shall be placed upon any record or document produced under this rule.

Attendance of prisoner as witness or party (O. 38, r. 21)

21. (1) An application for an order under section 32 of the Prisons Act (Chapter 51) for the production before the Court of a person confined in prison may be made *ex parte* by summons supported by an affidavit in Form 71.

(2) Unless the Court otherwise orders, the costs of conveyance of the witness in safe custody to and from the Court must be paid in the first instance by the party on whose application the order was issued and shall be costs in the cause.

(3) An order for the production of such person must be in Form 72.

Tender of expenses (O. 38, r. 22)

22. A witness shall not be compelled to attend on a writ of subpoena unless a reasonable sum to cover his expenses of going to, remaining at, and returning from, Court is extended to him.

Affidavit of service of writ of subpoena (O. 38 r. 23)

23. An affidavit filed for the purpose of proving the service of a writ of subpoena must state when, where, how and by whom the service was effected.

PART 2

HEARSAY EVIDENCE

Interpretation (O. 38, r. 24)

24. (1) In this Part, the “Act” means Chapter XII of the Evidence Act (Chapter 108), and any expressions used in this Part and in the Act shall have the same meaning in this Part as they have in the Act.

(2) In this Act —

“hearsay evidence” means evidence consisting of hearsay within the meaning of section 169(2) of the Act;

“hearsay notice” means a notice under section 170 of the Act.

(3) This Part applies in relation to the trial or hearing of an issue or question arising in a cause or matter and to a reference, inquiry or assessment of damages, as it applies to the trial or hearing of a cause or matter.

Hearsay notices (O. 38, r. 25)

25. (1) A hearsay notice must —

(a) state that it is a hearsay notice;

(b) identify the hearsay evidence;

(c) identify the person who made the statement which is to be given in evidence;

(d) state why that person will (or may) not be called to give oral evidence; and

(e) if the hearsay evidence is contained in a witness statement, refer to the part of the witness statement where it is set out.

(2) A single hearsay notice may deal with the hearsay evidence of more than one witness.

(3) The requirement to give a hearsay notice does not apply to —

(a) evidence which is authorised to be given by or in an affidavit; or

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(b) a statement which a party to a probate action desires to give in evidence and which is alleged to have been made by the person whose estate is the subject of the action.

(4) Subject to paragraph (5), a party who desires to give in evidence at the trial or hearing of a cause or matter; hearsay evidence, shall —

(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 28 days after it is set down or so adjourned or within such other period as the Court may specify; and

(b) in any other case, within 28 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 a hearsay notice on every party to the cause or matter.

(5) Where witness statements are served under this Order, any hearsay notice served under this rule shall be served at the same time as the witness statements.

Cross-examination on hearsay evidence (O. 38, r. 26)

26. (1) Where a party tenders as hearsay evidence a statement made by a person but does not propose to call the person who made the statement to give evidence, the Court may, on application, allow another party to call and cross-examine the person who made the statement on its contents.

[S 53/2005]

(2) An application under paragraph (1) shall be made on notice to all other parties not later than 28 days after service of the hearsay notice.

(3) Where the Court allows another party to call and cross-examine the person who made the statement, it may give such directions as it thinks fit to secure the attendance of that person and as to the procedure to be followed.

[S 53/2005]

Credibility (O. 38, r. 27)

27. (1) If —

(a) a party tenders as hearsay evidence a statement made by a person but does not call the person who made the statement to give oral evidence; and

(b) another party wishes to attack the credibility of the person who made the statement,

that other party shall notify the party tendering the hearsay evidence of his intention.

(2) A notice under paragraph (1) shall be given not later than 28 days after service of the hearsay notice.

Jurisdiction (O. 38, r. 28)

28. The jurisdiction of the Court under rules 24 to 27 may be exercised in Chambers.

PART 3

EXPERT EVIDENCE

Interpretation (O. 38, r. 29)

29. In this Part, a reference to a summons for directions includes a reference to any summons or application to which any rules 2 to 7, of Order 25 applies.

Restrictions on expert evidence (O. 38, r. 30)

30. (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 —

(a) has applied to the Court to determine whether a direction should be given under rule 31 or 34 (whichever is appropriate) and has complied with any direction given on the application; or

(b) 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.

Direction that report be disclosed (O. 38, r. 31)

31. (1) Subject to paragraph (2), where in any cause or matter an application is made under rule 30(1) in respect of oral expert evidence, then, unless the Court considers that there are special reasons for 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.

(2) Nothing in paragraph (1) shall require a party to disclose a further medical report if he proposes to rely at the trial on the report provided pursuant to Order 18, rule 11(1A) or (1B) but, where a party claiming damages for personal injuries discloses a further report, that report shall be accompanied by a statement of the special damages

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claimed and, in this paragraph, “a statement of the special damages claimed” has the same meaning as in Order 18, rule 11(1C).

Meeting of experts (O. 38, r. 32)

32. 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. 33)

33. Where the Court considers that any circumstances rendering it undesirable to give a direction under rule 31 relate to part only of the evidence sought to be adduced, the Court may, if it thinks fit, direct disclosure of the remainder.

Expert evidence contained in statement (O. 38, r. 34)

34. Where an application is made under rule 30 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 24 to 27 shall apply with such modifications as the Court thinks fit.

Expert report disclosed by another party (O. 38, r. 35)

35. 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.

Time for putting expert report in evidence (O. 38, r. 36)

36. 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 31, 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. 37)

37. Any direction given under this Part 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 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 in Form 73 for the examination on oath before a Judge or the Registrar 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.

Where person to be examined is out of 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 in Form 74 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 in Form 75 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 Brunei Darussalam 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 High Court; or

(b) with the consent of the Minister.

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 provision of this rule shall apply.

(2) The party obtaining the order must prepare the letter of request and lodge it in the Registry, and the letter must be in Form 76 with such variations as the order may require.

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(3) If the evidence of the person to be examined is to be obtained by means of written questions, there must be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination.

(4) Unless the official language or one of the official languages of the country in which the examination is to be taken is English, each document lodged 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.

(5) Every translation lodged 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 lodges in the Registry the documents mentioned in paragraphs (2) to (5), also file in the Registry an undertaking in Form 77 signed by him or his solicitor to be responsible personally for all expenses incurred by the Minister of Foreign Affairs and Trade in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the office of the said Minister and to produce a receipt for the payment to the proper officer of the Registry.

[S 34/2008]

Examination not 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 Registrar 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 Registry, 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.

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(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 cause 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 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 Registry and shall be filed therein.

Time taken by examination to be indorsed on depositions (O. 39, r. 12)

12. Before sending any deposition to the Registry, the examiner must indorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees to be paid 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 thereat, 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 make an order against the party on whose application the order for examination was made to pay the examiner the fees and expenses due to 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.

ORDER 40

COURT EXPERT

Appointment of expert to report on certain question (O. 40, r. 1).

1. (1) In any cause or matter 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 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 Registrar must send copies of the report to the parties or their solicitors.

(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 solicitors and shall, if possible, make an arrangement with them as to the expenses involved, the person 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 expert on his report, and on that application the Court shall make an order for the cross-examination of the expert by all the parties either —

(a) at the trial; or

(b) before an examiner 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 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.

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(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 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.

(5) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(6) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.

(7) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.

(8) A jurat must be in one of the forms in Form 78.

Affidavit by two or more deponents (O. 41, r. 2)

2. (1) 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 “abovenamed” deponents.

(2) When the oath is administered to deponents in different languages, there shall be a separate jurat for those sworn in each language.

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 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.

Scandalous etc. matter in affidavits (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. (1) An affidavit which has in the jurat or body thereof any 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.

(2) No alteration shall be made in any affidavit after it has been filed, but, before an affidavit is filed alterations may be made therein and the affidavit must be re-sworn with a further jurat commencing with the word “re-sworn”, added.

Affidavit not to be sworn before solicitor of party etc. (O. 41, r. 8)

8. No affidavit shall be sufficient if sworn before the solicitor of the party on whose behalf the affidavit is to be used or before any member of the firm of that solicitor.

Filing of affidavits (O. 41, r.9)

9. (1) Except as otherwise provided by these Rules, every affidavit must be filed in the Registry.

(2) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.

[Subsidiary]**Use of original affidavit or office copy (O. 41, r. 10)**

10. (1) Subject to paragraph (2) an original affidavit may be used in proceedings with the leave of the Court, notwithstanding that it has not been filed in accordance with rule 9.

(2) An original affidavit may not be used in any proceedings unless it has previously been stamped with the appropriate fee.

(3) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he must immediately after it is used file it with the proper officer in the Registry.

(4) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

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 a copy thereof 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.

Affidavit taken outside Brunei Darussalam admissible without proof of seal etc. (O. 41, r. 12)

12. 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 in a Commonwealth country and in the case of any other country the seal or signature of a consular officer of a Commonwealth country in testimony of an affidavit being taken 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.

ORDER 42

JUDGMENTS AND ORDERS

Delivery of judgment (O. 42, r. 1)

1. (1) Subject to paragraph (2), every judgment after the hearing of a cause or matter shall be delivered in open Court or in Chambers, either on the conclusion of the hearing or on a subsequent day of which notice shall be given to the parties.

(2) Notwithstanding paragraph (1), a Judge who has tried any proceedings may give judgment, and his reasons therefor, in writing at a later date, by sending a copy thereof to all parties to the proceeding.

Written judgment to be filed (O. 42, r. 2)

2. Whenever the Court delivers a written judgment, the original or a copy thereof, signed by the Judge must be filed.

Judgment of absent Judge (O. 42, r. 3)

3. When a Judge who has tried any proceedings is absent from Brunei Darussalam or is unable through death, illness or other cause to pronounce judgment, the judgment written by him may be read by any other Judge or by the Registrar.

Entry of judgment in Cause Book (O. 42, r. 4)

4. The proper officer in the Registry must enter in the cause book a minute of every judgment or final order given or made by the Court.

Form of judgment etc. (O. 42, r. 5)

5. (1) If, in the case of any judgment, a form thereof is prescribed in Form 79 the judgment must be in that form.

(2) The party entering any judgment shall be entitled to have recited therein a statement of the manner in which the writ or other originating process by which the cause or matter in question was begun was served.

(3) An order must be marked with the name of the Judge or the Registrar by whom it was made and must be sealed.

Judgment etc. requiring act to be done: Time for doing it (O. 42, r. 6)

6. (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 immovable property or deliver any movable property, 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. 7)

7. (1) A judgment or order of the Court takes effect from the day of its date.

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(2) Such a 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 other earlier or later day, in which case it shall be dated as of that other day.

Preparation of judgment or order (O. 42, r. 8)

8. (1) Where the party in whose favour a judgment or order is given or made is represented by a solicitor, a copy of the draft shall be submitted for approval to the solicitor (if any) of the other party who shall within 2 days of the receipt thereof, or within such further time as may in any case be allowed by the Registrar, return such copy with his signed consent or any required amendments thereto.

(2) When the solicitor omits to return the copy of the draft within the time prescribed, he is deemed to have consented to the terms thereof.

(3) In any case where the solicitors concerned are unable to agree upon the draft, any one of them may obtain an appointment before the Registrar, of which notice shall be given to the other, to settle the terms of the judgment or order.

(4) Every judgment or order shall be settled by the Registrar but in the case of a judgment or order made by a Judge, any party may require the matter in dispute to be referred to the Judge for his determination.

(5) Where the other party has no solicitor, the draft shall be submitted to the Registrar.

Orders required to be drawn up (O. 42, r. 9)

9. (1) Subject to paragraph (2), every order of the Court shall be drawn up 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 unless the Court otherwise directs.

(3) The acts referred to in paragraph (2)(a)(ii) are —

(a) the issue of any writ, other than a writ of summons notice of which is required for service out of the jurisdiction;

(b) the amendment of a writ of summons or other originating process or a pleading;

(c) the filing of any document;

(d) any act to be done by an officer of the Court other than a solicitor.

Drawing up and entry of judgments and orders (O. 42, r. 10)

10. (1) Where a judgment given in a cause or matter is presented for entry in accordance with this rule at the Registry, it shall be entered by an officer of the Registry in the book kept for the purpose.

(2) The party seeking to have such a judgment entered must draw up the judgment and present it to the proper officer of the Registry for entry.

(3) On entering any such judgment the proper officer shall file the judgment and return a duplicate thereof to the party who presented it for entry.

(4) Every order required to be drawn up must be drawn up by the party in whose favour the order has been made and if that party fails to draw up the order within 7 days after it is made any other party affected by the order may draw it up.

(5) The order referred to in paragraph (4) must, when drawn up, be produced at the Registry, together with a copy thereof, and when passed by the proper officer the order, sealed with the seal of the High Court, shall be returned to the party producing it and the copy shall be lodged in the Registry.

Duplicates of judgments and orders (O. 42, r. 11)

11. (1) Not less than one clear day after a judgment or order has been filed a duplicate thereof shall be supplied on payment of the prescribed fee out of the Registry to any party in the proceedings.

(2) The duplicate of a judgment or order may be a carbon copy of the original except that if the Registrar so directs, the duplicate of every judgment or order of such class as he directs, shall be a photographic copy or a copy produced by type lithography or other similar process.

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(3) Before a duplicate of a judgment or order is issued it must be sealed and there must be noted thereon the number of the judgment, the date of entry and the amount of any stamp on the original.

(4) Where by any of these Rules or any order of the Court the original judgment or order is required to be produced or served it shall be sufficient to produce or serve the duplicate.

(5) A further duplicate of a judgment or order may, on payment of the prescribed fee, be issued if the Registrar is satisfied that the duplicate has been lost and that the applicant for a further duplicate is entitled to it.

(6) A judgment or order shall not be amended except on production of the duplicate thereof last issued, and if the judgment or order is amended the duplicate so issued shall be similarly amended, and the amendment sealed, under the direction of the Registrar.

Interest on judgment debts (O. 42, r.12)

12. Except when it has been otherwise agreed between the parties, every judgment debt shall carry interest at the rate of 6 *per centum per annum* or at such other rate as the Chief Justice may from time to time direct, such interest to be calculated from the date of judgment until the judgment is satisfied.

Interest on debts and damages (O. 42, r. 13)

13. (1) In any proceedings before the Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

(2) Nothing in paragraph (1) shall —

(a) authorise the awarding of interest upon interest;

(b) apply in relation to any debt upon which interest is payable as of right; whether by virtue of any agreement or otherwise; or

(c) affect the damages recoverable for the dishonour of a bill of exchange.

(3) In relation to a judgment given in respect of damages for personal injuries (as defined in section 20(3) of the Fatal Accidents and Personal Injuries Act (Chapter 160) or in respect of a person's death, which exceed \$10,000, paragraph (1) shall have effect —

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(a) with the substitution of “shall” for “may, if it thinks fit”; and

(b) with the addition of, “unless the court is satisfied that there are special reason to the contrary”, immediately after “given”.

(4) Interest may be awarded under paragraph (1) in the case of any sum paid before judgment, only to the date of the payment.

(5) Interest awarded under paragraph (1) may be calculated at different rates in respect of different periods.

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 entered an appearance or after the time limited for appearing, 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 in Form 80.

(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 (O. 43, r. 3)

3. (1) Where the Court orders an account to be taken 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.

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(2) Without prejudice to the generality to paragraph (1), the Court may direct that in taking the account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections 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 lodge the account with the Registry 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 commissions 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 item 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 allowances shall be made without any direction to that effect.

Delay in prosecution of accounts etc. (O. 43, r. 7).

7. If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in 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.

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.

ORDER 44

PROCEEDINGS UNDER JUDGMENTS AND
ORDERS ON EQUITY SIDE**Application to proceedings under order (O. 44, r. 1)**

1. This Order shall, with the necessary modifications, apply in relation to proceedings under an order as it applies in relation to proceedings under a judgment and, accordingly, references therein to a judgment shall be construed as including references to an order.

Documents to be filed at registry: Summons to proceed (O. 44, r. 2)

2. (1) Where in order to carry out any directions contained in a judgment given in a cause or matter it is necessary to proceed in Chambers under the judgment, the party entitled to prosecute the judgment must, within 10 days after entry of the judgment, take out a summons to proceed under the judgment.

(2) If the party entitled to prosecute the judgment fails to comply with paragraph (1), any other party to the cause or matter shall, unless the Court otherwise directs, become entitled to prosecute the judgment.

(3) The party entitled to prosecute the judgment must take out a summons to proceed under the judgment.

Service of notice of judgment on person not party (O. 44, r. 3)

3. (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 which affects the rights or interests of persons not parties to the action or directs any account to be taken or inquiry made, 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 person interested in the estate or under the trust or in the property, as the case may be; and any person duly served with notice of a judgment in accordance with this rule shall, subject to paragraph (5), be bound by the judgment to the same extent as he would have been if he had originally be made a party to the action.

(2) The Court may direct a notice of judgment to be served personally or in such manner as it may specify on the person required to be served, or if it appears to the

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Court that it is impracticable for any reason to serve such notice on any person it may dispense with service of the notice on that person.

Before notice of a judgment is served the notice must be indorsed with a memorandum in Form 81.

(3) Where no appearance has been entered by a person served with notice of the judgment the party prosecuting the judgment must file a certificate in the Registry to that effect.

(4) Where the Court dispenses with service of notice of a judgment on any person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly, except where the judgment has been obtained by fraud or non-disclosure of material facts.

(5) A person served with notice of a judgment may, within one month after service of the notice on him, and without entering an appearance, apply to the Court to discharge, vary or add to the judgment.

(6) A person served with notice of a judgment may, after entering an appearance to the notice, attend the proceedings under the judgment.

(7) Order 12, rules 1 to 3, shall apply in relation to the entry of appearance to a notice of judgment as if the judgment were a writ, and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

Directions by Court (O. 44, r. 4)

4. (1) 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 enquiry is to be prosecuted;
- (b) the evidence to be adduced in support thereof;
- (c) the parties required to attend all or any part of the proceedings; and
- (d) 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.

Court may require parties to be represented by same solicitor (O. 44, r. 5)

5. Where on the hearing of the summons to proceed or at any stage of the proceedings under the judgment it appears to the Court that the interests of the parties can be classified, it may require the parties constituting each or any class to be represented by the same solicitor, and where the parties constituting any class cannot agree on the solicitor to represent them, the Court may nominate a solicitor to represent the class in the proceedings.

Court may require parties to be represented by different solicitors (O. 44, r. 6)

6. Where on the hearing of the summons to proceed or at any stage of the proceedings under the judgment it appears to the Court that two or more of the parties who are represented by the same solicitor ought to be separately represented, it may require them to be so represented and may adjourn the proceedings until they are.

Leave to attend proceedings etc. (O. 44, r. 7)

7. Any party to the proceedings under the judgment who has not been directed to attend may apply to the Court for leave to attend any part of the proceedings at the cost of the estate or other property to which the proceedings relate and to have the conduct of that part either in addition to or in substitution for any other party.

Judgment requiring deed to be settled by Court: Directions (O. 44, r. 8)

8. Where the judgment directs any deed or other instrument to be settled by the Judge in Chambers, or to be settled by him if the parties to the deed fail to agree to it, the Court hearing the summons to proceed under the judgment shall direct —

(a) that within such period as it may specify the party entitled to prepare a draft of the deed must serve a copy of the draft on every other party who will be a party to the deed; and

(b) that within 8 days, or such other period, if any, as it may specify, after service on any such other party of a copy of the draft that party must serve on the party by whom the draft was prepared a written statement of his objections (if any) to the draft.

Application of rules 10 to 17 (O. 44, r. 9)

9. Rules 10 to 17 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

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(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. 10)

10. (1) On the hearing of the summons to proceed the Court may direct the issue of advertisements for creditors in Form 82 or other claimants in Form 83 and in deciding whether to do so shall have regard to any advertisement previously issued by the personal representatives or trustees concerned.

(2) Every such advertisement shall be prepared by the party prosecuting the judgment, and —

(a) in the case of an advertisement for creditors, shall be signed by that party's solicitor or, if he has no solicitor, by the Registrar; and

(b) in the case of an advertisement for other claimants, shall be submitted to the Registrar and if approved by the Registrar shall be signed by him.

(3) The Court shall fix the time within which, and the person to whom, any claimant is to send his name and address and particulars of his claim, and that time and the name and address of that person shall be stated in the advertisement.

Failure to claim within specified time (O. 44, r. 11)

11. A claimant who fails to send full particulars of his claim to the person named in any advertisement directed by the Court within the time therein specified shall not be entitled to prove his claim except with the leave of the Court, and in granting leave the Court may impose such terms as to costs and otherwise as it thinks just.

Examination etc. of claims (O. 44, r. 12)

12. (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 and determine, so far as he is able, to which of such claims the estate is liable; and

(b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit in Form 84 verifying lists of —

(i) claims sent in pursuance of any advertisement;

- (ii) claims which have been received by any of the personal representatives otherwise than in pursuance of an advertisement; and
- (iii) debts of the deceased at the time of his death in respect of which no claim has been received but which are or may still be due and which have come to the knowledge of any of the personal representatives.

(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 and determine, so far as he is able, which of them are valid claims; and

(b) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit in Form 85 verifying lists of —

- (i) claims sent in pursuance of any advertisement; and
- (ii) claims received by any of the personal representatives or trustees concerned, otherwise than in pursuance of an advertisement, or which have come to his knowledge.

(3) The affidavit required by paragraph (1) or (2) must, as the circumstances of the case require, specify, in relation to the claims of creditors, the claims and debts which in the belief of the deponent are liabilities of the estate of the deceased and ought to be allowed, in whole or in part, and, in relation to the claims of persons other than creditors, the claims which in the belief of the deponent are valid claims, with, in either case, the reasons for such belief.

(4) 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. 13)

13. (1) The Court adjudicating on the claims —

- (a) may allow any such claim after or without proof thereof;
- (b) may direct any such claim to be investigated in such manner as it thinks fit;
- (c) may require any claimant to attend and prove his claim or to furnish further particulars or evidence of it.

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(2) Where the Court exercises the power conferred by paragraph (1)(c) in relation to any claimant, such party as the Court may direct must serve on that claimant a notice requiring him —

(a) to file an affidavit in support of his claim within such time, not being less than 7 days after service of the notice, as may be specified in the notice and to attend before the Court for adjudication on the claim at such time as may be so specified; or

(b) to produce to the Court at such time as may be so specified such documents in support of his claim as may be so specified or described.

(3) Where a claimant fails to comply with a notice served on him under paragraph (2) his claim may be disallowed.

(4) A claimant who files an affidavit in compliance with a notice served on him under paragraph (2) must serve notice of the filing on the party by whom the first-mentioned notice was served and unless the Court otherwise directs, that party must produce an office copy of the affidavit at the adjudication of the claim.

(5) No person claiming to be a creditor need make an affidavit or attend in support of his claim, except for the purpose of producing any documents which he is required to produce, unless served with a notice under rule 2(a).

(6) If the Court so directs, a person claiming to be a secured creditor must produce his security to the Registrar.

(7) In this rule references to a claim include references to part of a claim.

Adjournment of adjudication (O. 44, r. 14)

14. Where on the day appointed for adjudication of claims any claim is not then disposed of, the adjudication shall be adjourned to a day appointed by the Court, and the Court may fix the time within which any evidence in support of or in opposition to the claim is to be filed.

Service of notice of judgment on certain claimants (O. 44, r. 15)

15. (1) Where a claimant other than a creditor has established his claim, then, unless he is a party to the cause or matter or has previously been served with notice of the judgment or the Court otherwise directs, the party having the conduct of the cause or matter must serve notice of the judgment on him.

(2) A person duly served with notice of a judgment under this rule shall, subject to rule 3(5), as applied by paragraph (4), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(3) Where the Court directs under paragraph (1) that notice of a judgment shall not be served on a person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

(4) Rule 3(5), (6) and (7) shall apply in relation to a person served with notice of a judgment under this rule as they apply in relation to a person served with notice of a judgment under that rule.

Notice etc. of claims allowed (O. 44, r. 16)

16. (1) Such party as the Court may direct must serve 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.

(2) Such party, if any, as the Court may direct must make out a list of the creditors' claims, and a list of any other claims, allowed and file it at the Registry.

Service of notices (O. 44, r. 17)

17. For the purpose of Order 62, rule 6, in its application to the service of any notice under this Order on a claimant, the proper address of a claimant shall be the address stated in his claim, or if a solicitor is acting for him in connection with the claim, the business address of that solicitor.

Interest on debts (O. 44, r. 18)

18. (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, at the rate of 6 *per cent per annum* from the date of the judgment.

(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 at the rate of 6 *per cent per annum* from the date of the judgment 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.

Interest on legacies (O. 44, r. 19)

19. Where 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

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Court, interest be allowed on each legacy at the rate of 6 *per cent per annum* beginning at the expiration of one year after the testator's death.

Determination by judge of question arising before Registrar (O. 44, r. 20)

20. (1) Any party may, before the proceedings before the Registrar under any judgment are concluded, apply to the Judge for the determination of any question arising in the course of the proceedings.

Unless the Court otherwise directs, a fresh summons shall not be issued for the purpose of an application under this paragraph.

(2) It shall not be necessary to draw up the order or directions made or given by the Judge on the determination of such question, except in the event of an appeal to the Court of Appeal, but the Registrar shall refer to such order or directions in his certificate under rule 21.

Registrar's certificate (O. 44, r. 21)

21. (1) The result of proceedings before the Registrar under a judgment shall be stated in the form of a certificate in Form 86 signed by the Registrar.

(2) Such certificate shall refer to so much of the judgment, to such documents or parts thereof and to such of the evidence as will make it clear upon what the result stated in the certificate is founded but shall not, unless the circumstances of the case render it necessary, set out the judgment or any documents, evidence or reasons.

(3) Where the judgment requires the taking of any account, the certificate must refer to the account verified by filed affidavit and must specify by reference to the numbered items in the account which, if any, of such items have been disallowed or varied and the additions, if any, which have been made by way of surcharge or otherwise.

(4) Where by reason of the alterations made in the account verified by filed affidavit the Court has directed a fresh account incorporating the alterations to be made, the reference in paragraph (3) to the account so verified shall be construed as a reference to the fresh account.

Settling and filing of Registrar's certificate (O. 44, r. 22)

22. (1) A draft of the Registrar's certificate shall be drawn up by a party to the proceedings as directed by the Registrar and the draft shall be settled by the parties before the Registrar on such day as the Registrar may appoint.

(2) The certificate signed by the Registrar and any account referred to therein shall be filed in the Registry.

Discharge or variation of Registrar's certificate (O. 44, r. 23)

23. (1) Any party to proceedings under a judgment may, not later than —

(a) 8 clear days after the filing of the Registrar's certificate therein; or

(b) if the certificate is to be acted upon by the Treasury without further order or is a certificate passing a receiver's account, 2 clear days after the filing thereof,

apply by summons for an order of the Judge in person discharging or varying the certificate.

A copy of any summons to discharge or vary a certificate which is to be acted upon by the Treasury without further order must be served on the Treasury as soon as practicable after the issue thereof.

(2) Subject to paragraph (3) any such certificate shall, on the expiration of the period specified in relation to it in paragraph (1), become binding on the parties to the proceedings unless discharged or varied by order under paragraph (1).

(3) The Judge in person may, in special circumstances, by order discharge or vary the certificate of the Registrar notwithstanding that the certificate has become binding on the parties.

An application for an order under this paragraph may be by summons.

Further consideration of cause or matter in Chambers (O. 44, r. 24)

24. (1) Where a Registrar's certificate has been filed in any cause or matter, then, if —

(a) the cause or matter in which it was filed is a debenture holders' action or the judgment to be made in the cause or matter in which it was filed is for the distribution of an insolvent estate or for the distribution of the estate of a person who died intestate; or

(b) the order on which the certificate was made in Chambers and no direction has been given that the cause or matter be adjourned for further consideration in Court; or

(c) an order has been made directing that the cause or matter be adjourned for further consideration in Chambers,

a summons for the further consideration of the cause or matter may be issued —

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- (i) after the expiration of 8 clear days, and before the expiration of 14 days, from the filing of the Registrar's certificate, by the plaintiff or party having the conduct of the proceedings; or
- (ii) after the expiration of the said 14 days, by any party.

(2) There shall be at least 6 days between the service of a summons under this rule and the day named therein for the further consideration of the cause or matter.

Further consideration of cause or matter in court (O. 44, r. 25)

25. (1) Where a Registrar's certificate has been filed in any cause or matter, then, if —

(a) the judgment on which the certificate was made was given in Court and the cause or matter is not such as is mentioned in rule 24(1)(a) and no direction has been given that it be adjourned for further consideration in Chambers; or

(b) an order has been made directing that the cause or matter be adjourned for further consideration in Court,

the cause or matter may be set down by the Registrar in the cause book for further consideration —

- (i) after the expiration of 8 clear days, and before the expiration of 14 days, from the filing of the Registrar's certificate, on the written request of the plaintiff or party having the conduct of the proceedings; or
- (ii) after the expiration of the said 14 days, on the written request of any party,

upon the production, in either case, of the judgment adjourning the cause or matter for further consideration, or an office copy thereof, and an office copy of the Registrar's certificate or a memorandum of the date of filing of the certificate, indorsed on request by the proper office on the judgment or office copy thereof.

When a cause or matter is so set down, a copy of the writ or other originating process by which the cause or matter was begun, a copy of the pleadings (if any) and two copies of minutes of the judgment sought must also be left with the proper officer.

(2) A cause or matter so set down shall not be put into the list for further consideration until after the expiration of 10 days from the day on which it was so set down, and shall be marked in the cause book accordingly, and notice of the setting down and of the day marked in the cause book as the day before which the cause or matter is not to be put in the list for further consideration must be given to the other parties to the cause or matter at least 6 days before that day.

ORDER 45

ENFORCEMENT OF JUDGMENTS AND ORDERS

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 seizure and sale;
- (b) garnishee proceedings;
- (c) a charging order;
- (d) the appointment of a receiver;
- (e) in a case in which rule 5 applies, an order of committal.

(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 —

- (a) the appointment of a receiver;
- (b) in a case in which rule 5 applies, an order of committal.

(3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the written law relating to bankruptcy or the winding up of companies.

2. *(Repealed by S 34/2008).*

Enforcement of judgment for possession of immovable property (O. 45, r. 3)

3. (1) Subject to the provisions of these Rules, a judgment or order for the giving of possession of immovable property may be enforced by one or more of the following means —

- (a) writ of possession;
- (b) in a case in which rule 5 applies, an order of committal.

(2) A writ of possession to enforce a judgment or order for the giving of possession of any immovable property shall not be issued without the leave of the Court

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except where the judgment or order was given or made in a charge action to which Order 79 applies.

(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 immovable property 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 movable property (O. 45, r. 4)

4. (1) Subject to the provisions of these Rules, a judgment or order for the delivery of any movable property which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the property may be enforced by one or more of the following means —

(a) writ of delivery to recover the property without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as writ of specific delivery);

(b) in a case in which rule 5 applies, an order of committal.

(2) Subject to the provisions of these Rules, a judgment or order for the delivery of any movable property or payment of their assessed value may be enforced by one or more of the following means —

(a) writ of delivery to recover the property or its assessed value;

(b) with the leave of the Court, writ of specific delivery;

(c) in a case in which rule 5 applies, an order of committal.

(3) A writ of specific delivery, a writ of delivery to recover any movable property 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 movable property may be enforced by the same means as to any other judgment or order for the payment of money.

Enforcement of judgment to do or abstain from doing 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 4; or

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(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 —

- (i) with the leave of the Court, an order of committal;
- (ii) where that person is a body corporate, with the leave of the Court, an order of committal against any director or other officer of the body.

(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 movable property the person liable to execution has the alternative of paying the assessed value of the property, 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 property 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 it (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 6(1) or by reason of Order 42, rule 6(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

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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 62, rule 10, be served on the person required to do the act in question.

Service of copy of judgment etc. prerequisite to enforcement under rule 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 16(3), Order 26, rule 7(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) 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 seizure and sale 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 in Form 87 informing the person on whom the copy is served —

(a) in the case of service under paragraph (2), 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 62, rule 5, 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 its powers under the Act and 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 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

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person interested may take any proceedings which either are warranted by the judgment or order or might have 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 fit.

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Forms of writs (O. 45, r. 12)

- 12.** (1) A writ of seizure and sale must be in Form 88.
- (2) A writ of delivery must be in Form 89.
- (3) A writ of possession must be in Form 90.

Enforcement of judgments and orders for recovery of money etc. (O. 45, r. 13)

13. (1) Rule (1) of this Order, with the omission of sub-paragraph (e) 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 paragraph (1)(b) thereof, and Order 47, rule 2(2), shall apply in relation to a judgment or order for the recovery of possession of immovable property as they apply in relation to a judgment or order for the giving or delivery of possession of immovable property.

(3) Rule 4 of this Order, with the omission of paragraphs 1(b) and 2(c) thereof, and Order 47, rule 2(2) shall apply in relation to a judgment or order that a person do have a return of any movable property and to a judgment or order that a person do have a return of any movable property or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any movable property and a judgment or order for the delivery of any movable property or payment of the assessed value thereof respectively.

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 seizure and sale, a writ of possession and a writ of delivery.

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 —

(a) where 6 years or more have lapsed 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 movable property sought to be seized under a writ of execution is in the hands of a receiver appointed by the Court.

(2) Paragraph (1) is without prejudice to any written law 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 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 one 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.

Application for leave to issue writ (O. 46, r. 3)

3. (1) An application for leave to issue a writ of execution may be made *ex parte* by summons in Form 91.

(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 reasons for the delay in enforcing the judgment or order;

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(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;

(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.

Issue of writ of execution (O. 46, r. 4)

4. (1) Issue of a writ of execution takes place on its being sealed by an officer of the Registry.

(2) Before such a writ is issued a praecipe in one of the forms in Form 92 for its issue must be filed.

(3) The praecipe must be signed by the solicitor 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 produces —

(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;

(iii) (*repealed by S 34/2008*); and

(b) the officer authorised to seal it 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 has expired.

(5) Every writ of execution shall bear the date of the day on which it is issued.

5. *(Repealed by S 34/2008).*

Duration and renewal of writ of execution (O. 46, r. 6)

6. (1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of the 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.

(3) Before a writ the validity of which has been extended under this rule is executed the writ must be marked in Form 5 showing the date on which the order extending its validity was made.

(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 issued.

(5) The production of a writ of execution, purporting to be sealed as mentioned in paragraph (3), shall be evidence that the validity of that writ has been extended this rule.

Fees, expenses etc. to be levied (O. 46, r. 7)

7. In every case of execution the party entitled to execution may levy the commission, fees and expenses of execution over and above the sum recovered.

Costs of writs (O. 46, r. 8)

8. Subject to these Rules, the costs of and incidental to writs of execution or distress, whether executed or unexecuted, or unproductive, shall be allowed against the person liable, unless the Court otherwise orders.

Satisfaction by consent (O. 46, r. 9)

9. (1) Any person who has satisfied a judgment debt may on filing a consent of the judgment creditor in Form 93 apply to the Court for satisfaction to be entered in the Cause Book and the Court may order satisfaction to be entered accordingly.

(2) The consent of the judgment creditor must be attested by his solicitor or if he has no solicitor, by a Commissioner of Oaths.

[Subsidiary]**Where consent refused (O. 46, r. 10)**

10. (1) If a judgment creditor refuses or neglects to give such consent when requested, or cannot be found, the judgment debtor may apply to the Registrar for an order that satisfaction be entered.

(2) The summons must be served on the judgment creditor at least 2 clear days before the hearing thereof unless the Registrar otherwise orders.

(3) If on such application the Registrar is satisfied that the judgment debt has been satisfied and that the judgment creditor has no reasonable ground for refusing or neglecting to give such consent, the Registrar may order that satisfaction be entered in the cause book and that the judgment creditor pay the costs of and incidental to the application.

Deposit costs of execution with Sheriff (O. 46, r. 11)

11. Before any writ of execution or distress is executed the person at whose instance the writ was issued (hereinafter called the execution creditor) must, if the sheriff so requests, deposit in the Registry a sufficient sum of money to defray the costs of the execution.

Where Sheriff in possession more than 14 days (O. 46, r. 12)

12. Where the sheriff has to remain in possession of movable property for more than 14 days, the execution creditor must before or at the end of the first 14 days of the sheriff keeping possession deposit in the Registry, if the sheriff so requests, a further sum of money to provide for the costs of execution for the next ensuing 14 days and must continue to make such deposits in advance before or at the end of each successive period of 14 days so long as the sheriff continues in possession.

Proper officer to give receipt (O. 46, r. 13)

13. (1) The proper officer in the Registry must give a receipt for each sum of money deposited and he shall apply such sums or so much thereof as is necessary for the costs of the execution.

(2) The sheriff must return to the execution creditor any balance of money remaining over after the release of the person or the movable property seized, as the case may be, under the writ of execution or distress.

(3) Where the movable property seized under a writ of execution or distress is sold by the sheriff or he receives the amount of the levy without sale, any sums of money deposited by the execution creditor must, so far as the monies coming to the hands of the sheriff will allow, be refunded to the execution creditor.

Duties of Sheriff**Time of lodgment to be forthwith indorsed on writ (O. 46, r. 14)**

14. Whenever any writ of execution or distress is issued, the sheriff must indorse thereon the day, hour and minute of the receipt of it.

Time of execution (O. 46, r. 15)

15. Any writ of execution or distress may be executed between the hours of 9 a.m. and 4 p.m., unless the sheriff otherwise orders.

Notice of seizure and inventory (O. 46, r. 16)

16. (1) Where any movable property is seized by the sheriff under a writ of execution or distress, he must give to the execution debtor a notice of seizure in Form 94, and a copy of the notice must be filed.

(2) Where the sheriff removes from a place any movable property that is seized, he must give to the execution debtor at the time the property is removed or immediately afterwards an inventory of the property so removed.

(3) The notice of seizure under paragraph (1) and notice of removal and inventory under paragraph (2) may be —

- (a) handed to the execution debtor personally; or
- (b) sent to him by post to his place of residence; or
- (c) left at or sent by post addressed to him at the place from which the property was seized.

Proper officer to keep records and to prepare statement of accounts (O. 46, r. 17)

17. (1) The proper officer receiving any money under any writ of execution or distress must give for every sum so received a receipt.

(2) The proper officer must keep a record of all sums of money received by him under a writ of execution or distress and of the manner in which he has applied them, and shall indorse on or annex to the writ a statement thereof.

(3) Subject to these Rules, the proper officer must prepare a statement of account in respect of the monies received by him under a writ of execution or distress as follows —

- (a) first the Court fees and commission;

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- (b) next the expenses of execution;
- (c) next monies due to the execution creditor under rule 13 which have not been returned to him;
- (d) next monies claimed by the landlord, not exceeding 6 months' rent, due under a writ of distress;
- (e) next monies available for payment to the execution creditor to satisfy the judgment or order in respect of which the execution was issued;
- (f) next where there is more than one writ of execution in his hands against the same defendant, monies available to satisfy the various execution creditors in the order of the priority of their writs according to the dates of issue;
- (g) next after accounting for the monies - for payment to the execution creditors, show - any balance due to the execution debtor.

(4) If the proceeds of the sale received by the proper officer are insufficient to cover the fees, commission and expenses of execution, the execution creditor must pay to the proper officer the amount of the deficiency and shall be entitled to add such amount to the judgment debt to be eventually recovered from the judgment debtor.

Sheriff to give information if required (O. 46, r. 18)

18. (1) On a written application by the execution creditor, or the execution debtor, or any claimant to movable property seized by him, the sheriff must within 2 days furnish to such applicant a memorandum stating —

- (a) the date on which the writ was delivered to him;
- (b) the amount leviable under the writ;
- (c) the particulars of property seized;
- (d) the place of seizure;
- (e) particulars of any claim to such property of which he has received notice;
- (f) the gross proceeds of sale;
- (g) the amount of the fees, commission and expenses; and
- (h) the monies paid by him into the Registry and to whose credit.

(2) The sheriff shall at all times permit the execution creditor, or judgment debtor, or any claimant to property seized by him to inspect and copy free of charge any inventory of property seized, sale account, or not of the fees, commission and expenses together with all vouchers in support thereof.

Date of arrest to be indorsed (O. 46, r. 19)

19. The sheriff executing an order to arrest shall indorse thereon the day, hour and minute of the arrest.

Sheriff may be required to show cause for neglect of duty (O. 46, r. 20)

20. Any person aggrieved by any alleged non-observance by the sheriff of any duty imposed on him by any written law or by these Rules, may apply to the Court for an order that the sheriff show cause why he should not do the thing required, and the sheriff may be required to show cause accordingly.

Payment out (O. 46, r. 21)

21. Subject to these Rules and to any other written law, any sum of money paid by the sheriff to the credit of the execution creditor or by the judgment debtor, under rule 17 shall, subject to any order of Court, be paid to the execution creditor or judgment debtor respectively on his application without an order:

Provided that the sheriff may, in his discretion, require the execution creditor or judgment debtor, as the case may be, to apply to Court for an order for payment out.

Sale by Sheriff

Sheriff to sell (O. 46, r. 22)

22. Subject to these Rules, the sheriff must sell all property seized by him under a writ of execution or distress.

Sale by public auction (O. 46, r. 23)

23. Unless the sheriff otherwise orders, all sales must be by public auction between the hours of 9 a.m. and 4 p.m. and notice in Form 95 of the day, hour and place of any intended sale must be posted on the Notice Board of the Registry and as far as practicable at the place of intended sale 7 days before the sale.

Where property exceeds \$5,000 sale by licensed auctioneer (O. 46, r. 24)

24. (1) Where the value of the property attached or seized is estimated by the sheriff to exceed \$5,000, the sale must, unless the sheriff otherwise orders, be conducted by a licensed auctioneer and the sale must be publicly advertised by the sheriff or auctioneer on and during 2 days next preceding the day of sale.

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(2) In any other case the sale may be conducted by the sheriff.

Negotiable instruments (O. 46, r. 25)

25. Negotiable instruments may, with the leave of the Court, be sold through the agency of such broker and on such terms as the Court shall think just.

Sheriff may execute or indorse documents (O. 46, r. 26)

26. Where the execution or indorsement of any document is ordinarily lawfully required to give effect to any sale by the sheriff, the sheriff may execute or indorse such document; and the execution or indorsement thereof by the sheriff shall have the same effect as the execution or indorsement by the judgment debtor.

Interpretation of terms (O. 46, r. 27)

27. In this Order, where a writ of distress has been issued, the term “execution creditor” shall include a “landlord” and the term “judgment debtor” shall include a “tenant”.

ORDER 47

WRITS OF SEIZURE AND SALE

Power to stay execution by writ of seizure and sale (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 seizure and sale 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 enter an appearance in the action.

(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 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.

Separate writs to enforce payment of costs etc. (O. 47, r. 2)

2. (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 seizure and sale to enforce the judgment or order 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.

(2) 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 seizure and sale to enforce payment of any damages or costs awarded to him by that judgment or order.

Where landlord claims arrears of rent of premises where property seized (O. 47, r. 3)

3. (1) Where the landlord or any other person entitled to receive the rent of the premises in which any movable property has been seized by the sheriff has any claim for arrears of rent of those premises, he may apply to the Registrar, at any time before the sale of such property, for a writ of distress for recovery of such arrears of rent.

(2) Unless a writ of distress is issued for the recovery of such arrears of rent the property seized by the sheriff is deemed not to be liable to be seized under a writ of distress and to be free from all claims in respect of rent and may be dealt with accordingly and the landlord or other person entitled to receive rent as aforesaid, shall have no claim in respect of the property or to the proceeds of sale or any part thereof.

After seizure dealings with property void (O. 47, r. 4)

4. After seizure has been made of the judgment debtor's movable property under a writ of seizure and sale, and during the continuance of the seizure, otherwise than by the leave of the Court, any alienation of the property seized, whether by sale, gift, mortgage or otherwise, shall be void against the sheriff and any person on whose behalf the movable property was seized.

[Subsidiary]**Withdrawal and suspension of writ (O. 47, r. 5)**

5. (1) Where any execution creditor requests the sheriff to withdraw the seizure, he is deemed to have abandoned the execution, and the sheriff shall mark the writ of seizure and sale as withdrawn by request of the execution creditor:

Provided that where the request is made in consequence of a claim having been made in an interpleader proceedings, the execution is deemed to be abandoned in respect only of the property so claimed.

(2) A writ of seizure and sale which has been withdrawn under this rule shall not be re-issued but the execution creditor may apply by summons supported by affidavit stating the grounds of the application for a fresh writ of seizure and sale to be issued, and such writ shall take priority according to its date of issue.

Exemption from execution (O. 47, r. 5A)

5A. The following property shall be exempt from execution —

(a) the necessary wearing apparel, cooking utensils, beds and bedding of the judgment debtor and his wife and children;

(b) the tools used by the judgment debtor in his trade or business;

(c) if the judgment debtor is a farmer, his implements of husbandry, and such cattle, buffaloes and seed grain as may, in the opinion of the Court, be necessary to enable him to earn a living as a farmer;

(d) if the judgment debtor is a fisherman, his fishing gear, nets, traps and bait and such boats as may, in the opinion of the Court, be necessary to enable him to earn a living as a fisherman.

Immovable property (O. 47, r. 6)

6. Where the property to be seized consists of immovable property or any registered interest therein the following provisions shall apply —

(1) Seizure shall be made by an order prohibiting the judgment debtor from transferring, charging or leasing such property or interest. For the purpose of this rule “charging” shall include the creation of a *lien* by deposit of a document of title.

(2) A copy of the order shall be served on the judgment debtor and one or more copies, as the case may require, shall be issued to the judgment creditor in order that he may present the same, in compliance with the provisions of any written law relating to such land, for registration at the Land Office whereat the land or interest in land specified in such order is registered.

(3) No prohibitory order issued under this rule shall affect any immovable property or registered interest therein and no immovable property or registered interest therein is deemed to have been seized until such prohibitory order shall have been registered as provided by any written law relating to such land.

(4) Subject to the provisions of subrule (5), any prohibitory order shall upon the expiration of 2 years from the date thereof cease to affect the immovable property or registered interest therein specified in such order.

(5) Upon the application of any judgment creditor on whose application a prohibitory order has been issued the Court or a Judge, if it or he considers that special circumstances render an extension just, may from time to time by order extend the period of 2 years referred to in subrule (4), for any period not exceeding 2 years, provided that no order made under this rule shall have any force or effect unless it is presented for registration at the Land Office before the expiration of the prohibitory order which such order purports to extend.

(6) The provisions of subrule (2) apply to orders made under subrule (5) of this rule.

(7) When a judgment creditor has obtained in any suit or proceeding a prohibitory order, in execution of an order or judgment in such suit or proceeding, affecting any immovable property or registered interest therein, no further prohibitory order affecting the same property or interest shall be made in the same suit or proceeding in execution of the same order or judgment on the application of such judgment creditor or of any other person unless the Court or a Judge shall by order otherwise direct, on the ground of the existence of special circumstances.

(8) A copy of every order made under this rule shall be sent by the Court making the order to the Land Officer of the District wherein the land affected is situate or to both as may be necessary.

Sale of immovable property (O. 47, r. 7)

7. Sale of immovable property, or any interest therein, shall be subject to the following conditions —

(a) There shall be no sale until the expiration of 14 days from the registration of the prohibitory order under rule 6(3);

(b) The particulars and conditions shall be drawn up by the sheriff or by his solicitor, and shall be submitted for the approval of a Judge. At least 2 clear days notice in writing of an appointment to obtain the approval of the Judge shall be served on the judgment creditor and judgment debtor at their addresses for service respectively, unless the Judge shall in any case otherwise order;

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(c) The judgment debtor may apply by summons to a Judge for postponement of the sale in order that he may raise the amount leviable under the writ by charge or lease, or sale of a portion only, of the immovable property seized, or by sale of any other property of the judgment debtor, or otherwise, and the Judge, if satisfied that there is reasonable ground to believe that the said amount may be raised in any such manner, may postpone the sale for such period and on such terms as are just;

(d) The judgment creditor may apply to a Judge for the appointment of a receiver of the rents and profits, or a receiver and manager of the immovable property, *in lieu* of sale thereof, and on such application the Judge may appoint such receiver or receiver and manager, and give all necessary directions in respect of such rents and profits or immovable property;

(e) Where immovable property or any registered interest therein has been sold in execution of a decree, the decree holder or any person entitled to share in a rateable distribution of assets or whose interests are affected by the sale may apply to the Court or a Judge to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court or a Judge is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud;

(f) The purchaser at any such sale in execution of a decree may apply to the Court or a Judge to set aside the sale on the ground that the judgment debtor had no saleable interest in the property sold;

(g) (i) Where no application is made under paragraph (e) or (f) or where such application is made and disallowed, the Court or a Judge shall make an order confirming the sale, and thereupon the sale shall become absolute:

Provided that no such order shall be made until after the expiration of one month from the date of the sale;

(ii) Where such application is made and allowed, the Court or a Judge shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby;

(iii) No suit to set aside an order made under this paragraph shall be brought by any person against whom such order is made;

(h) (i) Where a sale is set aside under paragraph (g), the purchaser shall be entitled to an Order for repayment of his purchase-money (with

or without interest as the Court or a Judge may direct) against any person to whom it has been paid;

- (ii) A copy of any such order shall be issued to the purchaser in order that he may present the same for registration under the provisions of any written law relating to such land;
- (iii) Every such order shall for the purposes of the Stamp Act (Chapter 34) be deemed to be, and shall be stamped by the purchaser as, a conveyance.

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 Court may, on an application made *ex parte* by summons supported by affidavit in Form 96 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 the Registrar, and be orally examined on the questions —

(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 order under this rule must be in Form 97 and must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

(3) Any difficulty arising in the course of an examination under this rule before the Registrar, including any dispute with respect to the obligation of the person being examined to answer any question put to him, may be referred to the Court and the Court may determine it or give such directions for determining it as it thinks fit.

Examination of party liable to satisfy 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

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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.

Registrar to make record of debtor's statement (O. 48, r. 3)

3. The Registrar conducting the examination shall take down, or cause to be taken down, in writing the statement made by the judgment debtor or other person at the examination, read it to him and ask him to sign it; and if he refuses the Registrar shall sign the statement.

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 written law, 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:

Provided that no such order shall be made by the Court in respect of any debt due or accruing due to the judgment debtor by the Government or any public officer in his official capacity unless the consent in writing of the Attorney General has been first obtained by the judgment creditor.

(2) An order in Form 98 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* by summons supported by an affidavit in Form 99 —

(a) identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application; and

(b) 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) An order under rule 1 show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served —

(a) on the garnishee personally; and

(b) unless the Court otherwise directs, on the judgment debtor.

(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 in one of the forms in Form 100 under rule 1 against the garnishee.

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(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 in Form 101 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, without, if it orders trial before the Registrar, the need for any consent by the parties.

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 the 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

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such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

7. *(Repealed by S 34/2008).*

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) On issuing a summons under this rule the applicant must produce the summons at the office of the Treasury and leave a copy at that office, and the money to which the application relates shall not be paid out of Court until after the determination of the application.

If the application is dismissed, the applicant must give notice of that fact to the Treasury.

(3) 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.

(4) Subject to Order 70, rule 23, 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.

1. (No rule).

Order imposing charge on securities (O. 50, r. 2)

2. (1) The Court may for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person by order in Form 104 impose on any interest to which the judgment debtor is beneficially entitled in such of the securities to which this rule applies as may be specified in the order a charge for securing payment of the amount due under the judgment or order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, in Form 105 specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) The securities to which this rule applies are —

(a) any government stock, and any stock of any company registered under any written law, including any such stock standing in the name of the Treasury; and

(b) any dividend of or interest payable on such stock.

(4) In this Order “government stock” means any stock issued by the Government or any funds of or annuity granted by the Government, and “stock” includes shares, debentures and debenture stock.

Application for order under rule 2 (O. 50, r. 3)

3. An application for an order under rule 2 must be made *ex parte* by summons supported by an affidavit —

(a) identifying the judgment or order to be enforced, stating the amount unpaid under it at the date of the application, and showing that the applicant is entitled to enforce the judgment or order;

(b) specifying the securities on the judgment debtor’s interest in which it is sought to impose a charge and in whose name they stand;

(c) stating that to the best of the information or belief of the deponent the judgment debtor is beneficially entitled to an interest in the securities in question, describing that interest, and stating the sources of the deponent’s information or the grounds for his belief.

[Subsidiary]**Service of notice of order to show cause (O. 50, r. 4)**

4. (1) Unless the Court otherwise directs, a copy of the order under rule 2 to show cause must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served on the judgment debtor, and if he does not attend on such consideration proof of service must be given.

(2) Notice of the making of the order to show cause, with a copy of that order, must as soon as practicable after the making of the order be served —

(a) where the order relates to government stock, on the Treasury;

(b) where the order relates to other stock, on the company concerned;

(c) where the order relates to stock standing in the name of the Treasury, on the Treasury.

Effect of order to show cause (O. 50, r. 5)

5. (1) No disposition by the judgment debtor of his interest in any securities to which an order under rule 2 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 the Treasury or, as the case may be, a company shall not permit any transfer of any such stock as is specified in the order, or pay to any person any dividend thereof, or interest payable thereon, except with the authority of the Court.

(3) If after notice of the making of such order is served on the Treasury or a company the Treasury or company permits any transfer or makes any payment prohibited by paragraph (2), it shall be liable to pay the judgment creditor the value of the stock 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.

Making and effect of charging order absolute (O. 50, r. 6)

6. (1) On the further consideration of the matter the Court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(2) Where on the further consideration of the matter it appears to the Court that the order should not be made absolute it shall discharge the order.

(3) A charge imposed by an order under rule 2 made absolute under this rule shall have the same effect, and the judgment creditor in whose favour it is made shall,

subject to paragraph (4), have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) No proceedings to enforce a charge imposed by an order made absolute under this rule shall be taken until after the expiration of 6 months from the date of the order to show cause.

Discharge etc. of charging order (O. 50, r. 7)

7. The Court, on the application of the judgment debtor or any other person interested in the securities to which an order under rule 2 relates, 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 as it thinks just.

Money in court: Charging order (O. 50, r. 8)

8. (1) The Court may for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person by order impose on any interest to which the judgment debtor is beneficially entitled to any money in Court identified in the order a charge for securing payment of the amount due under the judgment or order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for the further consideration of the matter and imposing the charge until that time in any event.

(3) Rules 3 and 4(1) shall, with the necessary modifications, apply in relation of an application for an order under this rule and to the order as they apply in relation to an application for an order under rule 2 and to such order.

(4) Notice of the making of an order under this rule to show cause, with a copy of that order, must, as soon as practicable after the making of the order, be served on the Treasury.

(5) Rules 5(1), 6(1) and (2) and 7 shall, with the necessary modifications, apply in relation to an order under this rule as they apply in relation to an order under rule 2.

Registrar etc. may grant injunction ancillary to charging order (O. 50, r. 9)

9. The Registrar shall have power —

(a) to appoint a receiver to enforce a charge imposed by an order; or

(b) to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 2 or 8,

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and an application for the appointment of a receiver or an injunction under this rule may be joined with the application for the order under rule 2 or 8 to which it relates.

Enforcement of charging order by sale (O. 50, r. 9A)

9A. (1) Proceedings for the enforcement of a charging order by sale of the property charged must be begun by originating summons.

(2) The provisions of Order 79 shall apply to all such proceedings.

Securities not in Court. Stop notice (O. 50, r. 10)

10. (1) Any person claiming to be beneficially entitled to an interest in any securities to which rule 2 applies, other than securities in Court, who wishes to be notified of any proposed transfer of payment of those securities may avail himself of the provisions of this rule.

(2) A person claiming to be so entitled must file in the Registry —

(a) an affidavit identifying the securities in question and describing his interest therein by reference to the document which it arises; and

(b) a notice in Form 106 signed by the deponent to the affidavit, and annexed to it, addressed to the Treasury or, as the case may be, the company concerned,

and must serve an office copy of the affidavit, and a copy of the notice sealed with the seal of the High Court, on the Treasury or that company.

(3) There must be indorsed on the affidavit filed under this rule a notice stating the address to which any such notice as is referred to in rule 11(1) is to be sent and, subject to paragraph (4), that address shall for the purpose 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 11 by serving on the Treasury or, as the case may be, the company concerned, a notice to that effect, and as from the date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

Effect of stop notice (O. 50, r. 11)

11. (1) Where a notice under rule 10 has been served on the Treasury or a company, then, so long as the notice is in force, the Treasury or company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the

notice was filed at his address for service a notice informing him of the request for such transfer or payment.

(2) Where the Treasury or a company receive a request for such a transfer or payment as is mentioned in paragraph (1) made by or on behalf of the holder of the securities to which the notice under rule 10 relates, the Treasury or company shall not by reason only of that notice refuse to register the transfer or make the payment for longer than 8 days after receipt of the request except under the authority of an order of the Court.

Amendment of stop notice (O. 50, r. 12)

12. If any securities are incorrectly described in a notice filed under rule 10 the person on whose behalf the notice was filed may file in the Registry an amended notice and serve on the Treasury or, as the case may be, the company concerned a copy of that notice sealed with the seal of the High Court, and where he does so the notice under rule 10 is deemed to have been served on the Treasury or company on the day on which the copy of the amended notice was served on it.

Withdrawal etc. of stop notice (O. 50, r. 13)

13. (1) The person on whose behalf a notice under rule 10 was filed may withdraw it by serving a request for its withdrawal on the Treasury or, as the case may be, the company 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 solicitor.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 10 relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made by originating summons, and the summons must be served on the person on whose behalf the notice under rule 10 was filed.

No appearance need be entered to the summons.

Order prohibiting transfer etc. of securities (O. 50, r. 14)

14. (1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any government stock or any stock of any company registered under any written law, may by order in Form 107 prohibit the Treasury or, as the case may be, that company from registering any transfer of such part of that stock as may be specified in the order or from paying any dividend thereof or interest thereon.

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The name of the holder of the stock to which the order relates shall be stated in the order.

(2) An application for an order under this rule must be made by summons.

(3) The Court, on the application of any person claiming to be entitled to an interest in any stock to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs as it thinks fit.

ORDER 51

RECEIVERS: EQUITABLE EXECUTION

Appointment of receivers by way of equitable execution (O. 51, r. 1)

1. (1) Where an application is made for the appointment of a receiver by way of equitable execution, the Chief Justice 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.

(2) *(Repealed by S 34/2008).*

Registrar may appoint receiver etc. (O. 51, r. 2)

2. Subject to any directions given by the Chief Justice under Order 32, rule 9, the Registrar shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such an order.

Application of rules as to appointment of receiver etc. (O. 51, r. 3)

3. (1) 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.

(2) The summons for the appointment of a receiver must be in Form 108 and an order for the appointment of receiver by way of equitable execution must be in one of the forms in Form 109.

ORDER 51A

RATEABLE DISTRIBUTION

Proceeds of execution sale to be distributed rateably among judgment creditors (O. 51A, r. 1)

1. Where assets are realised by sale or otherwise in execution of an order or judgment and more persons than one have, prior to the realisation, attached the property from which such assets have been realised in execution of orders or judgments for the payment of money against the same judgment debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of the realisation, shall be distributed rateably among all such persons:

Provided as follows —

(a) where any property is sold subject to a charge, the chargee shall not as such be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of an order or judgment is subject to a charge, the Court may, with the consent of the chargee, order that the property be sold free from the charge, giving to the chargee the same right against the proceeds of the sale as he had against the property sold;

(c) where any immovable property is sold in execution of an order or judgment ordering its sale for the discharge of an incumbrancer thereon, the proceeds of sale shall be applied;

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal money due on the incumbrance;

thirdly, in discharging the interest and principal money due on subsequent incumbrances (if any);

fourthly, rateably among the holders of orders or judgment for the payment of money against the judgment debtor who have, prior to the sale of the said property, applied to the Court which passed the order or judgment ordering such sale for execution of such orders or judgments and have not obtained satisfaction thereof; and

(d) where the property from which such assets have been realised has prior to realisation been attached by the High Court and also by one or more of the Subordinate Courts, no holder of a decree passed by a Subordinate Court shall be entitled to in the distribution of such assets unless he shall prior to realisation have

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given notice in writing to the Registrar of the attachment at his instance of such property by such subordinate Court.

(2) Where all or any of the assets liable to be rateably distributed under this rule are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this rule shall operate to defeat or postpone any claim which under the provisions of any written law ought to be paid in priority.

Method of subsequent attachment (O. 51A, r. 2)

2. (1) Any property attached by way of execution by any court whether physically taken into the Court's custody or not, is deemed to have been seized by the Court and shall not thereafter be seized at the instance of any other person, but any subsequent order or warrant for the attachment or seizure of the same property by the same Court or any other Court, whether in the same or another place, or a certified copy thereof, may be delivered to the sheriff or the bailiff by whom the property was seized and shall thereupon operate and have effect as an attachment for the purpose of this Order.

(2) In the case of any property which cannot be taken into the physical custody of the bailiff or other officer of the Court, any prohibitory order or similar document for the purpose of protecting the interests of a subsequent attaching creditor may be served or registered and shall have effect in accordance with the provisions of paragraph (1).

(3) If the property is released from the prior attachment, it is deemed to have been attached and seized under the subsequent order or warrant.

(4) If the property remains under the prior attachment and no order for sale thereof has been made within 2 months after such attachment, the property is deemed to have been released from the prior attachment and the provisions of paragraph 3 shall apply.

Property attached in execution of order or judgment of several courts (O. 51A, r. 3)

3. Where property not in the custody of any Court is under attachment in execution of orders or judgments or more Courts than one, the Court which shall receive or realise such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or where there is no difference in grade between such Courts, the Court under whose order of judgment the property was first attached.

Immovable property (O. 51A, r. 4)

4. Where the property to be seized consists of immovable property or any registered interest therein the following provisions shall apply —

(1) Seizure shall be made by an order prohibiting the judgment debtor from transferring, charging or leasing such property or interest. For the purpose of this rule “charging” shall include the creation of a *lien* by deposit of a document of title;

(2) A copy of the order shall be served on the judgment debtor and one or more copies, as the case may require, shall be issued to the judgment creditor in order that he may present the same, in compliance with the provisions of any written law relating to such land, for registration at the Land Office whereat the land or interest in land specified in such order is registered;

(3) No prohibitory order issued under the this rule shall affect any immovable property or registered interest therein and no immovable property or registered interest therein is deemed to have been seized until such prohibitory order shall have been registered as provided by any written law relating to such land;

(4) Subject to the provisions of this rule any prohibitory order shall upon the expiration of 6 months from the date thereof cease to affect the immovable property or registered interest therein specified in such order.

ORDER 52

COMMITTAL

Committal for contempt of court (O. 52, r. 1)

1. (1) The power of the High Court to punish for contempt of court may be exercised by an order of committal in Form 110.

(2) Where contempt of court —

(a) is committed in connection with —

- (i) any proceedings before the High Court; or
- (ii) criminal proceedings, except where the contempt is committed in the face of the Court or consists of disobedience to an order of the Court or a breach of an undertaking to the Court; or
- (iii) proceedings in a Subordinate Court; or

(b) is committed otherwise than in connection with any proceedings,

then, subject to paragraph (4), an order of committal may be made by the Court.

(3) Where contempt of court is committed in connection with any proceedings in the High Court, an order of committal may be made by a Judge of the Court.

[Subsidiary]

(4) Where by virtue of any written law the High Court has power to punish or take steps for the punishment of any person charged with having done anything in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that Court, an order of committal may be made by a Judge of the Court.

Application to court (O. 52, r. 2)

2. (1) No application to a Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made *ex parte* to the Court, except in vacation when it may be made to a Judge in Chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

Application for order after leave to apply granted (O. 52, r. 3)

3. (1) When leave has been granted under rule 2 to apply for an order of committal, the application for the order must be made by motion to the Court and, unless the Court or Judge granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing.

(2) Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.

(3) Subject to paragraph (4), the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the Court or Judge under Order 62, rule 5, the Court or Judge may dispense with service of the notice of motion under this rule if it or he thinks it just to do so.

Saving for power to commit without application for purpose (O. 52, r. 4)

4. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the High 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. 5)

5. (1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases —

(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 an infant, or rights of access to an infant;

(b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder;

(c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;

(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) if he is being committed for a fixed period, the length of that period.

(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 statement under rule 2.

The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 7.

[S 53/2005]

(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.

[Subsidiary]**Power to suspend execution of committal order (O. 52, r. 6)**

6. (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. 7)

7. (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, then, if the thing is in the custody or power of the person committed, the sheriff 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 sheriff as it thinks fit.

Saving for other powers (O. 52, r. 8)

8. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any written law in like manner as if he had been guilty of contempt of the High 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.

Form of warrant for committal (O. 52, r. 9)

9. A warrant for committal must be in Form 111.

Reference to High Court (O. 52, r. 10)

10. Any reference in this Order to the High Court shall include a reference to the Court of Appeal.

ORDER 53

APPLICATION FOR ORDER OF MANDAMUS,
PROHIBITION, *CERTIORARI* ETC.**No application for order of mandamus etc. without leave (O. 53, r. 1)**

1. (1) No application for an order of mandamus, prohibition or *certiorari* shall be made unless leave therefor has been granted in accordance with this rule.

(2) An application for such leave must be made *ex parte* to the Court, and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Attorney General's Chambers and must at the same time lodge in those Chambers copies of the statement and affidavits.

(4) The Court or Judge may, in granting leave, impose such terms as to costs and as to giving security as it or he thinks fit.

(5) The grant of leave under this rule to apply for an order of prohibition or an order of *certiorari* shall, if the Court or Judge so directs, operate as a stay of the proceedings in question until the determination of the application or until the Court or Judge otherwise orders.

Time for applying for leave (O. 53, r. 1A)

1A. Leave shall not be granted to apply for an order of *certiorari* to remove any judgment, order, conviction or other proceedings for the purpose of its being quashed, unless the application for leave is made within 6 weeks after the date of the proceeding or such other period (if any) as may be prescribed by any enactment or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the Court or Judge to whom the application for leave is made and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Court or Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

Mode of applying for order of mandamus etc. (O. 53, r. 2)

2. (1) When leave has been granted to apply for an order of mandamus, prohibition or *certiorari*, the application for such order must be made by originating motion to a Court, and, unless the Court or Judge granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion or summons and the day named therein for the hearing.

[Subsidiary]

(2) The motion must be entered for hearing within 14 days after such leave was granted.

(3) The notice or summons must be served on all persons directly affected, and where it relates to any proceedings in or before a Court, and the object is either to compel the Court or an officer thereof to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must be served on the Clerk or Registrar of the Court, the other parties to the proceedings and, where any objection to the conduct of the Judge is to be made, on the Judge.

(4) An affidavit giving the names and addresses of, and the place and date of service on, all persons who have been served with the notice or summons must be filed before the motion or summons is entered for hearing, and, if any person who ought to be served under paragraph (3) has not been served, the affidavit must state that fact and the reason why service has not been effected, and the affidavit shall be before the Court or Judge on the hearing of the motion or summons.

(5) If on the hearing of the motion or summons the Court or Judge is of opinion that any person who ought to have been served with the notice or summons has not been served, whether or not he is a person who ought to have been served under paragraph (3), the Court or Judge may adjourn the hearing on such terms (if any) as it or he may direct in order that the notice or summons may be served on that person.

Statements and affidavits (O. 53, r. 3)

3. (1) Copies of the statement and of the affidavits in support of the application for leave under rule 1 must be served with the notice of motion or summons under rule 2 and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing of the motion or summons except the grounds and relief set out in the said statement.

(2) The Court or Judge may on the hearing of the motion or summons allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of any affidavit of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he must give notice of his intention and of any proposed amendment of his statement to every other party, and must supply copies of such further affidavits.

(3) Every party to the application must supply to any other party copies of the affidavits which he proposes to use at the hearing.

Right to be heard in opposition (O. 53, r. 4)

4. On the hearing of any motion or summons under rule 2, any person who desires to be heard in opposition to the motion or summons and appears to the Court or Judge to be a proper person to be heard shall be heard notwithstanding that he has not been served with the notice or summons.

Application for order of *certiorari* to quash proceedings (O. 53, r. 5)

5. (1) In the case of an application for an order of *certiorari* to remove any proceedings for the purpose of their being quashed, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has served a copy thereof verified by affidavit on the Attorney General, or accounts for his failure to do so to the satisfaction of the Court or Judge hearing the motion or summons.

(2) Where an order of *certiorari* is made in any such case the order shall direct that the proceeding shall be quashed forthwith on their removal to the High Court.

Saving for person acting in obedience to mandamus (O. 53, r. 6)

6. No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

Order made by Judge in Chambers may be set aside etc. (O. 53, r. 7)

7. An appeal shall lie from an order made by a Judge in Chambers under this Order as it does in the case of an interlocutory order.

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* must be made to the High Court except that —

(a) at any time when no Judge is sitting in Court, it may be made to a Judge otherwise than in Court; and

(b) in cases where the application is made on behalf of an infant, it must be made in the first instance to a Judge otherwise than in Court.

(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) Where 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.

[Subsidiary]**Power of court to whom *ex parte* application 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 otherwise than in Court, direct that an originating summons for the writ be issued, or that an application therefor be made by originating motion;

(b) where the application is made to a Judge in Court, adjourn the application so that notice thereof may be given.

(2) The summons or notice of the motion must be served on the person against whom the issue of the writ is sought and on such other persons as the Court or Judge may direct, and, unless the Court or 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 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 a sufficient warrant to any superintendent of a prison 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 Court or Judge by whom the order is made shall give directions as to 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 writ personally, or if it is directed to a superintendent of a prison or other public official, 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 in Form 112 stating 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 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 Court or Judge.

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 counsel shall be heard first, then the counsel for the Attorney General, and then one counsel for the person restrained in reply.

Form of writ (O. 54, r. 9)

9. A writ of *habeas corpus ad subjiciendum* must be in Form 113.

ORDER 55

APPEALS FROM SUBORDINATE COURTS AND STATUTORY BODIES

Entry of Appeal (O. 55, r. 1)

1. On receiving an appeal record under the Subordinate Courts Act (Chapter 6), the Registrar shall enter the appeal in a list of appeals from Subordinate Courts.

Memorandum of Appeal (O. 55, r. 2)

2. (1) The appellant shall, within 14 days from the date of service on him of the notice referred to rule 6(2) of the Magistrates' Courts (Civil Appeals) Rules (R 1 of Chapter 6), file in the High Court, in duplicate, a memorandum of Appeal in Form 113A.

[S 36/2004]

[Subsidiary]

(2) The appellant shall within the like period serve each respondent with a copy of such memorandum and a copy of the appeal record.

Notice of Cross-Appeal (O. 55, r. 3)

3. A respondent to an appeal may, within 7 days from the date of service on him of the memorandum of appeal, file in the High Court and serve upon the appellant a notice in Form 113B that he intends to contend on the hearing of the appeal that the decision of the Court below should be varied.

Amendments (O. 55, r. 4)

4. (1) The High Court may at any time allow amendment of the memorandum of appeal or notice of cross-appeal or other part of the record of appeal on such terms as it thinks fit.

(2) If the memorandum of appeal is not drawn up in the prescribed manner, the appeal may be dismissed.

(3) If the memorandum of appeal is not filed or is not served within the prescribed time and no sufficient ground is shown for the delay the appeal may be dismissed.

Appellant not appearing (O. 55, r. 5)

5. (1) If, on any day fixed for the hearing of an appeal, the appellant does not appear in person or by an advocate, the appeal may be dismissed but any cross-appeal may be heard.

(2) If the appellant appears, and any respondent fails to appear either in person or by an advocate, the appeal shall proceed in the absence of such respondent, unless the High Court for any sufficient reason sees fit to adjourn the hearing thereof.

(3) Where any appeal is dismissed or allowed under the provisions of subrule (1) or (2) the party who was absent may apply to the High Court for the re-hearing of the appeal and where it is proved that there was sufficient reason for the absence of such party, the High Court may order that the appeal be restored for hearing upon such terms as to costs or otherwise as it thinks fit.

(4) The provisions of subrule (3) of this rule shall apply *mutatis mutandis* to the hearing of any cross-appeal.

Withdrawal of appeal (O. 55, r. 6)

6. (1) An appellant may at any time before his appeal is called on for hearing serve on the parties to the appeal a notice to the effect that he does not intend further to prosecute the said appeal.

(2) A copy of such notice shall at the same time be filed by the appellant in the Registry of the High Court.

(3) If all parties to the appeal consent to the intended withdrawal of the appeal, the appellant may file in the Registry the document or documents signifying such consent and signed by the parties or by their solicitors, and the appeal shall thereupon be deemed to have been withdrawn and shall be struck out of the list of appeals by the Registrar. In such event any sum lodged in Court as security for costs of the appeal shall be paid out to the appellant.

(4) If all the parties do not consent to the intended withdrawal of the appeal, the appeal shall remain on the list, and shall come on for hearing of any issue as to costs or otherwise remaining outstanding between the parties, and for the making of an order as to the disposal of any sum lodged in Court as security for the costs of the appeal.

Notice of appeal by respondent where notice of appeal withdrawn or appeal not entered (O. 55, r. 7)

7. Where an appeal is withdrawn under the preceding rule, or where an appeal of which notice has been given is not entered within the time limited, any respondent who has not given notice of cross-appeal may give notice of appeal and proceed therewith in the manner prescribed by the foregoing rules; but in any such case the times limited for giving notice of appeal, entering the appeal, furnishing security for costs, and filing and serving the record of appeal and the memorandum of appeal may, on application to the High Court, or, if the appeal has not been entered, to the Court appealed from, be extended so far as is reasonably necessary in all the circumstances of the case.

High Court may direct service of notice on person not served (O. 55, r. 8)

8. When an appeal is called on for hearing or at any previous time on the application of any person interested, the High Court may direct that the record of appeal, or any notice of cross-appeal, be served on any party to the cause or matter who has not been served therewith, or on any person not already a party to the cause or matter, and may, for the purpose of such service, adjourn the hearing upon such terms as are just, and may give such judgment and make such order as might have been given or made if the parties served with such record or notice had been originally parties.

Interest (O. 55, r. 9)

9. On any appeal, interest, for such time as execution has been delayed by the appeal, shall be allowed, unless the High Court otherwise orders.

Pronouncement of judgment (O. 55, r. 10)

10. The judgment of the High Court shall be pronounced in open Court, either on the hearing of the appeal or at any subsequent time of which notice shall be given to the parties to the appeal.

[Subsidiary]**Decision on appeal to be sent to Court below (O. 55, r. 11)**

11. A certified copy of the judgment of the High Court on the appeal shall be sent to the Court from whose decision the appeal was brought.

Stay of execution (O. 55, r. 12)

12. An appeal shall not operate as a stay of execution under the decision appealed against except in so far as the Court appealed from or the High Court may order, and any application for stay shall be made in the first instance to the Court appealed from.

Appeal from persons or body of persons (O. 55, r. 13)

13. (1) Where under any written law an appeal lies from any decision of any person or body of persons to the High Court such appeal shall be made to the High Court by motion setting out the grounds of appeal, supported by affidavit and, if the Court so directs at the hearing, by oral evidence.

(2) Unless otherwise provided by any written law, such appeal shall be made within one month from the date on which the decision was given or the date on which such decision was notified to the person appealing, whichever is the later date.

(3) Unless otherwise provided by any written law, notice of the motion shall be served on the respondent in such appeal or where the respondent is a body of persons, on the secretary, registrar or such other officer of that body of persons.

ORDER 56

APPEALS FROM REGISTRAR AND JUDGE

Appeals from certain decisions of Registrar to Judge in Chambers (O. 56, r. 1)

1. (1) Except as provided by rule 3, an appeal shall lie to a Judge in Chambers from any judgment, order or decision of the Registrar.

[S 18/2011]

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice in Form 114 to attend before the Judge on a day specified in the notice.

(3) Unless the Court otherwise orders, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and served not less than 2 clear days before the day fixed for hearing the appeal.

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

Appeal from Judge (O. 56, r. 2)

2. (1) An appeal shall lie to the Court of Appeal from any judgment, order or decision of a Judge.

(2) *Revoked.*

Appeal from certain decisions of Registrar to Court of Appeal (O. 56, r. 3)

[S 18/2011]

3. An appeal shall lie to the Court of Appeal from any judgment, order or decision of the Registrar given or made after —

(a) a trial by the Registrar under Order 36; or

(b) an assessment of damages by the Registrar under Order 37.

ORDER 57**APPEALS TO COURT OF APPEAL****Application of order to appeals (O. 57, r. 1)**

1. This Order applies to every appeal to the Court of Appeal (including so far as it is applicable thereto, any appeal to that Court from any tribunal from which an appeal lies to the Court under or by virtue of any written law) not being an appeal for which other provision is made by these Rules.

Application of order to applications for new trial (O. 57, r. 2)

2. This Order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 14(1)) applies to an application to the Court of Appeal for a new trial or to set aside a finding or judgment after trial, as it applies to an appeal to the Court, and references in this Order to an appeal to an appellant shall be construed accordingly.

Notice of appeal (O. 57, r. 3)

3. (1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by notice of appeal in Form 115.

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the Court below; and every such notice must state the whole or part only, and what part, of the judgment or order is complained of, contain an address for service, and be signed by the appellant or his solicitor.

[Subsidiary]

(3) The appellant must at the time of filing the notice of appeal deposit a sum of \$1,000 by way of security for the respondent's costs of the appeal in the Registry and obtain a certificate in Form 116.

(4) The Court of Appeal at any time, in any case where it thinks fit, order further security for costs to be given.

(5) The Registrar must assign a number to the notice of appeal and enter the appeal on the list of appeals, stating therein the title of the cause or matter, the name of the appellant and his solicitor, if any, and the date of such entry.

(6) The notice of appeal must be served on all parties to the proceedings in the Court below who are directly affected by the appeal or their solicitors respectively at the time of filing the notice of appeal; and subject to rule 10, it shall not be necessary to serve the notice on parties not so affected.

Time for appealing (O. 57, r. 4)

4. (1) Subject to the provisions of this rule, every notice of appeal must be filed and served under rule 3(6) within one month —

(a) in the case of an appeal from an order in Chambers, from the date when such order was pronounced or when the appellant first had notice thereof;

(b) in the case of an appeal against the refusal of an application, from the date of such refusal;

(c) in all other cases, from the date on which the judgment or order appealed against was pronounced.

(2) Where a summons to vary or discharge a certificate and the further consideration of an action are heard together, and an order is made on both, notice of appeal in respect of the order made on the summons may be served at any time before the expiration of the period within which notice of appeal could be served in respect of the order made on further consideration.

Record of proceedings (O. 57, r. 5)

5. (1) When a notice of appeal has been filed, the Judge who gave the judgment or made the order must, unless the judgment was written, certify in writing the grounds of such judgment or order; but delay or failure so to certify shall not prevent the appellant from proceeding with the appeal.

(2) As soon as possible after notice of appeal has been filed the Registrar shall cause to be served on the appellant or his solicitor at his address for service specified in the notice of appeal a notice that a copy of the record of proceedings is available and thereupon the appellant or his solicitor shall pay the prescribed fee.

(3) The record of proceedings shall consist of a certified copy of the judgment or grounds of judgment or order (if any), and a certified copy of the notes of evidence taken at the hearing of the cause or matter.

Petition of appeal (O. 57, r. 6)

6. (1) Within one month after service of the notice referred to in rule 5(2), the appellant must, if he desires to proceed with the appeal, file in the Registry a petition of appeal in duplicate in Form 117 and a copy of the petition must be served on every respondent to the appeal or his solicitor.

(2) Every petition of appeal must be signed by the appellant or his solicitor and shall contain concisely and under distinct heads, without argument or narrative, particulars of the matters of law or of fact in regard to which the trial Court is alleged to have erred, such particulars to be numbered consecutively, and, except with the leave of the Court of Appeal, the appellant shall not be permitted on the hearing of the appeal, to rely on any ground of appeal other than those set out in the petition.

(3) If a petition of appeal is not filed within the time prescribed by paragraph (1), the appeal is deemed to have been withdrawn, but nothing in this rule is deemed to limit or restrict the powers of extending time conferred upon the Court of Appeal.

Respondent's notice (O. 57, r. 7)

7. (1) A respondent who, not having appealed from the decision of the Court below, desires to contend on the appeal that the decision of the Court should be varied, either in any event or in the event of the appeal being allowed in whole or in part, must give notice to that effect, specifying the grounds of that contention.

(2) A respondent who desires to contend on the appeal that the decision of the Court below should be affirmed on grounds other than those relied upon by that Court must give notice to that effect specifying the grounds of that contention.

(3) Except with the leave of the Court of Appeal, a respondent shall not be entitled on the hearing of the appeal to contend that the decision of the Court below should be varied upon grounds not specified in a notice given under this rule, to apply for any relief not so specified, or to support the decision of the Court below upon any grounds not relied upon by that Court or specified in such a notice.

(4) Any notice given by a respondent under this rule (in this Order referred to as respondent's notice) must be in Form 118 and must be filed and a copy thereof served on the appellant, and on all parties to the proceedings in the Court below who are directly affected by the contentions of the respondent must be served —

(a) in the case of an appeal against interlocutory order, within 7 days; and

(b) in any other case, within 14 days,

[Subsidiary]

after the service of the petition on the respondent.

Amendment of petition of appeal and respondent's notice (O. 57, r. 8)

8. A petition of appeal or respondent's notice may be amended —

(a) by or with the leave of the Court of Appeal, at any time;

(b) without such leave, by supplementary petition of appeal filed and served at least 10 days before the hearing of the appeal.

Record of appeal (O. 57, r. 9)

9. (1) Within 10 days after the filing of the petition of appeal referred to in rule 6(1), the appellant must file four copies of the record of appeal and serve a copy of it on every respondent to the appeal or his solicitor.

(2) The record of appeal shall consist of a copy each of the notice of appeal, petition of appeal, certificate of payment of security for costs, respondent's notice (if any), the record of proceedings referred to in rule 5(3), the documents in the nature of pleadings and other documents, so far as is necessary for showing the matter decided and the nature of the appeal, and the judgment or order appealed from.

(3) A draft index of the documents to be included in the record of appeal shall be sent by the appellant's solicitor to the solicitors for the respondents who or (if more than one) any of whom may within 48 hours object to the inclusion or exclusion of any document. In the event of the parties being unable to agree the matter shall be referred to the Registrar. The Registrar as well as the parties shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal taking special care to avoid the duplication of documents and unnecessary repetition of headings, and other merely formal parts of documents. Where in the course of preparation of the record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists on its being included, the record, as finally printed or typed shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate, in the index of papers, or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

(4) Where an appellant omits to comply with paragraph (1), any respondent who has filed a respondent's notice may proceed with his appeal, and in any such case the respondent shall as soon as practicable or within such time as may be allowed by the Registrar file a record of appeal.

(5) Where any respondent has not filed a respondent's notice and an appellant omits to comply with paragraph (1), the appeal is deemed to have been withdrawn, but nothing in this rule is deemed to limit or restrict the powers of extending time conferred upon the Court of Appeal.

Directions of Court as to service (O. 57, r. 10)

10. (1) The Court of Appeal may in any case direct that the record of Appeal be served on any party to the proceedings in the Court below on whom it has not been served, or on any person not party to those proceedings.

(2) In any case in which the Court of Appeal directs the record of appeal to be served on any party or person, the Court may also direct that any respondent's notice shall be served on him.

(3) The Court of Appeal may in any case where it gives a direction under this rule —

(a) postpone or adjourn the hearing of the appeal for such period and on such terms as may be just; and

(b) give such judgment and make such order on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

Withdrawal of notice (O. 57, r. 11)

11. (1) An appellant may at any time before his appeal is called on for hearing serve on the parties to the appeal and file a notice to the effect that he does not intend further to prosecute the said appeal.

(2) If all parties to the appeal consent to the intended withdrawal of the appeal, the appellant must file the document signifying such consent signed by the parties or by their solicitor, and the appeal shall thereupon be deemed to have been withdrawn and shall be struck out of the list of appeals by the Registrar; in such event any sum lodged in Court as security for the costs of the appeal shall be paid out to the appellant.

(3) If all the parties do not consent to the intended withdrawal of the appeal, the appeal shall remain on the list, and shall come on for the hearing of any issue as to costs or otherwise remaining outstanding between the parties, and for the making of an order as to the disposal of any sum lodged in Court as security for the costs of the appeal.

Respondent's notice where appeal not proceeded with (O. 57, r. 12)

12. Where an appeal is not proceeded with under rule 9 or where an appeal is withdrawn under rule 11, any respondent who has filed a respondent's notice may proceed therewith in the manner prescribed by the foregoing Rules.

General powers of Court (O. 57, r. 13)

13. (1) In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court.

[Subsidiary]

(2) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in Court, by affidavit, or by deposition taken before an examiner, but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of trial or hearing) shall be admitted except on special grounds.

(3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular parts of the decision of the Court below or by any particular party to the proceedings in that Court, or that any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(5) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

Powers of Court as to new trial (O. 57, r. 14)

14. (1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside any finding or judgment of the Court below.

(2) The Court of Appeal shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court of Appeal some substantial wrong has been thereby occasioned.

(3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong as is mentioned in paragraph (2) affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

(4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded are excessive or inadequate, the Court may, *in lieu* of ordering a new trial —

(a) substitute for the sum awarded such sum as appears to the Court to be proper;

(b) reduce or increase the sum awarded by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded,

but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages.

(5) A new trial shall not be ordered by reason of the ruling of any Judge that a document is sufficiently stamped or does not require to be stamped.

Stay of execution etc. (O. 57, r. 15)

15. (1) Except so far as the Court below or the Court of Appeal may otherwise direct —

(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the Court below;

(b) no intermediate act or proceeding shall be invalidated by an appeal.

(2) On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court otherwise orders.

Application to Court of Appeal (O. 57, r. 16)

16. (1) Every application to the Court of Appeal shall be by motion, and the provisions of Order 8 shall apply thereto.

(2) Any application to the Court of Appeal for leave to appeal (other than an application made after the expiration of the time for appealing) must, if the appellant is acting in person, be made *ex parte* in the first instance; but unless the application is then dismissed or it appears to that Court that undue hardship would be caused by an adjournment, the Court shall adjourn the application and give directions for the service of the notice thereof on the party or parties affected.

(3) Where an *ex parte* application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within 7 days after the date of the refusal.

(4) Whenever under these Rules an application may be made either to the Court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the Court below.

[Subsidiary]**Extension of time (O. 57, r. 17)**

17. Without prejudice to the power of the Court of Appeal under Order 3, rule 5, to extend the time prescribed by any provision of this Order, the period for serving notice of appeal under rule 4 or for making application *ex parte* under rule 16(3) may be extended by the Court below on application made before the expiration of that period.

Appellant of respondent not appearing (O. 57, r. 18)

18. (1) If on any day fixed for the hearing of an appeal, the appellant does not appear in person or by an advocate, the appeal may be dismissed.

(2) If the appellant appears, and any respondent fails to appear, either in person or by an advocate, the appeal shall proceed in the absence of such respondent, unless the Court for any sufficient reason sees fit to adjourn the hearing thereof.

(3) Where any appeal is dismissed or allowed under the provisions of paragraph (1) or (2), the party who was absent may apply to the Court of Appeal for the rehearing of the appeal and where it is proved that there was sufficient reason for the absence of such party the Court of Appeal may order that the appeal be restored for hearing upon such terms as to costs or otherwise as it thinks fit.

(4) The provisions of this rule shall apply *mutatis mutandis* to the hearing of any respondent's notice.

Powers of single Judge and Registrar (O. 57, r. 19)

19. (1) Those powers of the Court of Appeal which are specified in paragraph (2) may be exercised by a single Judge of the High Court or of the Court of Appeal or by the Registrar.

(2) The said powers are the following —

- (a) to order further security for costs under rule 3(4);
- (b) to extend the time within which notice of appeal may be given;
- (c) to allow an amendment of a petition of appeal or respondent's notice under rule 8;
- (d) to extend time under rule 9(1);
- (e) to give directions as to service under rule 10(1);
- (f) any power, other than that of a direction, under rule 10;
- (g) to extend time under rule 17;

(h) any other matter incidental to the hearing but not concerned with the merits thereof.

(3) If a single Judge of the High Court or of the Court of Appeal or the Registrar refuses an application by any person to exercise in his favour any of the said powers, the applicant shall be entitled to have the application determined by the Court of Appeal.

ORDER 58

(No Order)

ORDER 59

COSTS

Preliminary

Interpretation (O. 59, r. 1)

1. (1) In this Order —

“certificate” includes allocatur;

“contentious business” have the same meanings respectively as in the Legal Profession Act (Chapter 132);

“costs” includes fees, charges, disbursements, expenses and remuneration;

“non-contentious business” have the same meanings respectively as in the Legal Profession Act (Chapter 132);

“taxed costs” means costs taxed in accordance with this Order.

(2) In this Order 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 any estate or property, whether movable or immovable, held for the benefit of any person or class of persons; 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) The item 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 that table.

TABLE

Term	Effect
“Costs”	Where this order is made in interlocutory proceedings, the party in whose favour it is made shall be entitled to his costs in respect of those proceedings whatever the outcome of the cause of matter in which the proceedings arise;
“Costs reserved”	The party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which this order is made unless the Court orders otherwise;
“Costs in any event”	This order has the same effect as an order for “costs” except that the costs shall be taxed only after the conclusion of the cause or matter in which the proceedings arise;
“Costs here and below”	The party in whose favour this 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, tribunal or other body constituted under any written law or in arbitration proceedings;
“Costs in the cause” or “costs in application”	The party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which such an order is made.

Application (O. 59, r. 2)

2. (1) Where by virtue of any written law the costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any written law, not being proceedings in the High Court, are taxable in the High Court, the following provisions of this Order, rule 7(4) and (5), rule 8(6), rules 13 and 14, rule 15(1), rule 16, rules 20 to 25 and rules 34 to 36, shall have effect in relation to proceedings for taxation of those costs as they have effect in relation to proceedings for taxation of the costs of or arising out of proceedings in the High Court.

(2) Subject to the express provisions of any written law and of these Rules, the costs of and incidental to proceedings in the Court, including the administration of

estates and trusts, shall be in the discretion of the Court, and the Court shall be full power to determine by whom and to what extent the costs are to be paid.

Entitlement to Costs

When costs to follow event (O. 59, r. 3)

3. (1) Subject to the following provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, 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.

(3) The costs of and occasioned by any amendment made without leave in the writ of summons or any pleadings shall be borne by the party making the amendment, unless the Court otherwise orders.

(4) The costs of and occasioned by any application to extend the time fixed by these Rules, or any direction or order thereunder, for serving or filing any document or doing any other act (including the costs of any order made on the application) shall be borne by the party making the application, unless the Court otherwise orders.

(5) 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 7 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 shall be paid by him, unless the Court otherwise orders.

(6) If a party —

(a) on whom a list of documents is served in pursuance of any provision of 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 shall be paid by him, unless the Court otherwise orders.

(7) Where a defendant by notice in writing and without leave discontinues his counterclaim against any party or withdraws any particular claim made by him therein against any party, that party shall, unless the Court otherwise directs, be entitled to his

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costs of the 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.

(8) Where a plaintiff accepts money paid into Court by a defendant who counterclaimed against him, then, if the notice of payment given by that defendant stated that he had taken into account and satisfied the cause of action or, as the case may be, all the causes of action in respect of which he counterclaimed, that defendant shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim incurred to the time of receipt of the notice of acceptance by the plaintiff of the money paid into Court.

(9) Where any person claiming to be a creditor —

(a) seeks to establish his 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 notice as is mentioned in Order 83, rule 13,

he shall, if his claim succeeds, be entitled to his costs incurred in establishing it, unless the Court otherwise directs, and, if his claim or any part of it fails, may be ordered to pay the costs of any person incurred in opposing it.

(10) Where a claimant is entitled to costs under paragraph (9), the amount of the costs shall be fixed by the Court unless it thinks fit to direct taxation and the amount fixed or allowed shall be added to the claimant's debt.

(11) Where a claimant (other than a person claiming to be a creditor) having established a claim to be entitled under a judgment or order in accordance with Order 44 has been served with notice of the judgment or order pursuant to rule 3 or 15 of that Order, he shall, if he enters an appearance, be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim, unless the Court otherwise directs; 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.

Stage of proceedings at which costs to be dealt with (O. 59, r. 4)

4. (1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings; and any order of the Court for the payment of any costs may, if the Court thinks fit, require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded.

(2) In the case of any proceedings transferred or removed to the High Court from any other court, the costs of the whole proceedings, both before and after the transfer or removal, may be dealt with by the Court to which the proceedings are transferred or removed.

(3) Where under paragraph (2) the Court makes an order as to the costs of any proceedings before another court, rules 27, 30 and 31 shall not apply in relation to those costs, but, except in relation to costs of proceedings transferred or removed from a Subordinate Court, the order —

(a) shall specify the amount of the costs to be allowed; or

(b) shall direct that the costs shall be assessed by the court before which the proceedings took place; or

(c) if the order is made on appeal from a Subordinate Court in relation to proceedings in that Court, may direct that the costs shall be taxed by the Registrar.

Special matters to be taken into account in exercising discretion (O. 59, r. 5)

5. The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account —

(a) any such offer of contribution as is mentioned in Order 16, rule 10, which is brought to its attention in pursuance of a reserved right to do so;

(b) any payment of money into court and the amount of such payment;

(c) the fact that the action ought to have been brought in another Court.

Restriction of discretion to order costs (O. 59, r. 6)

6. (1) Notwithstanding anything in this Order or under any written law unless the Court is of opinion that there was no reasonable ground for opposing the will, no order shall be made for the costs of the other side to be paid by the party opposing a will in a probate action who has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or chargee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the charged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or chargee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

[Subsidiary]**Costs arising from misconduct or neglect (O. 59, r. 7)**

7. (1) Where in any cause or matter anything is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

(2) Without prejudice to the generality of paragraph (1) the Court shall for the purpose of that paragraph have regard in particular to the following matters, that is to say —

(a) the omission to do anything the doing of which would have been calculated to save costs;

(b) the doing of anything calculated to occasion, or in a manner or at a time calculated to occasion unnecessary costs;

(c) any unnecessary delay in the proceedings.

(3) The Court may, instead of giving a direction under paragraph (1) in relation to anything done or omission made, direct the Registrar to inquire into it and, if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

(4) The Registrar shall, in relation to anything done or omission made in the course of taxation and in relation to any failure to procure taxation have the same power to disallow or to award costs as the Court has under paragraph (1) to direct that costs shall be disallowed to or paid by any party.

(5) Where a party entitled to costs fails to procure or fails to proceed with taxation, the Registrar in order to prevent any other parties being prejudiced by that failure, may allow the party so entitled a nominal or other sum for costs or may certify the failure and the costs of the other parties.

Costs of taxations (O. 59, r. 7A)

7A. (1) Subject to this Order and any written law, the party whose bill is being taxed is entitled to his costs of taxation proceedings.

(2) The party liable to pay such costs may make a written offer to pay a sum in satisfaction of those costs within 7 days of delivery to him of a copy of the bill of costs.

(3) The Registrar may take such an offer into account.

Personal liability of solicitor for costs (O. 59, r. 8)

8. (1) Subject to the following provisions of this rule, where any proceeding costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default the Court may make against any solicitor whom it considers to be responsible (whether personally or through a servant or agent) an order —

(a) disallowing the costs as between the solicitor and his client; and

(b) directing the solicitor to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or

(c) directing the solicitor personally to indemnify such other parties against cost payable by them.

(2) No order under this rule shall be made against a solicitor unless he has been given a reasonable opportunity to appear before the Court and show cause why the order should not be made, except where any proceeding in Court or in Chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made —

(a) because of the failure of the solicitor to attend in person or by a proper representative; or

(b) because of the failure of the solicitor 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 otherwise to proceed.

(3) Before making an order under this rule the Court may, if it thinks fit, refer the matter (except in the case of undue delay in the drawing up of, or in any proceedings under, any order or judgment as to which the Registrar has reported to the Court) to the Registrar for inquiry and report and direct the solicitor in the first place to show cause before him.

(4) The Court may, if it thinks fit, authorise the Attorney General to attend and take part in any proceedings or inquiry under this rule, and may make such order as it thinks fit as to the payment of his costs.

(5) The Court may direct that notice of any proceedings or order against a solicitor under this rule shall be given to his client in such manner as may be specified in the direction.

(6) Where in any proceedings before the Registrar the solicitor representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the Registrar may direct the solicitor to pay costs personally to any of the parties to those proceedings; and where any solicitor fails

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to leave his bill of costs (with the documents required by this Order) for taxation within the time fixed by an order of court or otherwise delays or impedes the taxation, then, unless the Registrar otherwise directs the solicitor shall not be allowed the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.

(7) If, on the taxation of costs to be paid out of a fund, one-sixth or more of the amount of the bill for those costs is taxed off, the solicitor whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bills and for attending the taxation.

Fractional or gross sum in place of taxed costs (O. 59, r. 9)

9. (1) Subject to this Order, where by or under these Rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

(2) Paragraph (1) shall not apply to costs which by or under any order or direction of the Court —

(a) are to be paid to a receiver appointed by the High Court in respect of his remuneration, disbursements or expenses; or

(b) are to be assessed or settled by the Registrar, but rules 27, 30 and 31 shall apply in relation to the assessment or settlement by the Registrar of costs which are to be assessed or settled as aforesaid.

(3) Where a writ in an action is indorsed in accordance with Order 6, rule 2(1)(b), and judgment is entered in default of appearance or of defence for the amount claimed for costs (whether alone or together with any other amount claimed), paragraph (1) of this rule shall not apply to those costs; but if the amount claimed for costs as aforesaid is paid in accordance with the indorsement (or is accepted by the plaintiff as if so paid) the defendant shall nevertheless be entitled to have those costs taxed.

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled —

(a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or

(b) to a gross sum so specified *in lieu* of taxed costs.

When party may sign judgment for costs without order (O. 59, r. 10)

10. (1) Where a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made

by him therein against any defendant, the defendant may tax his costs of the action of his costs occasioned by the matter withdrawn, as the case maybe, and, if the taxed costs are not paid within 4 days after taxation, may sign judgment for them.

(2) If a plaintiff accepts money paid into Court in satisfaction of the cause of action, or all the causes of action, in respect of which he claims, or if he accepts a sum or sums paid in respect of one or more specified causes of action and gives notice that he abandons the others, then subject to paragraph (4), he may, after 4 days from payment out and unless the Court otherwise orders, tax his costs incurred to the time of receipt of the notice of payment into Court and 48 hours after taxation may sign judgment for his taxed costs.

(3) Where a plaintiff in an action for libel or slander against several defendants sued jointly accepts money paid into Court by one of the defendants, he may, subject to paragraph (4), tax his costs and sign judgment for them against that defendant in accordance with paragraph (2).

(4) Where money paid into Court in an action is accepted by the plaintiff after the trial or hearing has begun, the plaintiff shall not be entitled to tax his costs under paragraph (2) or (3).

When order for taxation of costs not required (O. 59, r. 11)

11. (1) When an action, petition or summons is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled under rule 10 to tax his costs, no order directing the taxation of those costs need be made.

(2) Where a summons is taken out to set aside with costs any proceeding on the ground of irregularity and the summons is dismissed but no direction is given as to costs, the summons is to be taken as having been dismissed with costs.

Powers of Registrar to tax costs (O. 59, r. 12)

12. The Registrar shall have power to tax —

- (a) the costs of or arising out of any cause or matter in the Court;
- (b) the costs directed by an award made on a reference to arbitration under any written law or pursuant to an arbitration agreement to be paid;
- (c) any other costs the taxation of which is directed by an order of the Court; and
- (d) any costs directed to be taxed or settled by or under any written law.

[Subsidiary]**Supplementary powers of Registrar (O. 59, r. 13)**

13. The Registrar may, in the discharge of his functions with respect to the taxation of costs —

(a) take an account of any dealings in money made in connect with the payment of the costs being taxed, if the Court so directs;

(b) require any party represented jointly with any other party in any proceedings before him to be separately represented;

(c) examine any witness in those proceedings;

(d) direct the production of any document which may be relevant in connection with those proceedings.

Extension etc. of time (O. 59, r. 14)

14. (1) The Registrar may —

(a) extend the period within which a party is required by or under this Order to begin proceedings for taxation or to do anything in or in connection with proceedings before the Registrar;

(b) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) Where an order of the Court specifies a period within which anything is to be done by or before the Registrar then, unless the Court otherwise directs, the Registrar may from time to time extend the period so specified on such terms (if any) as he thinks just.

(3) The Registrar may extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period.

Interim certificates (O. 59, r. 15)

15. (1) The Registrar may from time to time in the course of the taxation of any costs by him issue an interim certificate for any part of those costs which has been taxed.

(2) If, in the course of the taxation of a solicitor's bill to his own client, it appears to the Registrar that in any event the solicitor will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the solicitor to his client.

(3) On the filing of a certificate issued under paragraph (2) the Court may order the amount specified therein to be paid forthwith to the client or into court.

Power of Registrar where party liable to be paid and to pay costs (O. 59, r. 16)

16. Where a party entitled to be paid costs is also liable to pay costs, the Registrar may —

(a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or

(b) delay the issue of a certificate for the costs he 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 account (O. 59, r. 17)

17. (1) Where the Court directs an account to be taken and the account consists in part of a bill of costs, the Court may direct the Registrar to tax those costs and the Registrar shall tax the costs in accordance with the direction and shall return the bill of costs, after taxation thereof, together with his report thereon to the Court.

(2) The Registrar taxing a bill of costs in accordance with a direction under this rule shall have the same powers, and the same fees shall be payable in connection with the taxation as if an order for taxation of the costs had been made by the Court.

Registrar to fix certain fees payable to conveyancing counsel etc. (O. 59, r. 18)

18. (1) Where the Court refers any matter to any solicitor or obtains the assistance of any other person under Order 32, rule 12, the fees payable to the solicitor or that other person in respect of the work done by him in connection with the reference or, as the case may be, in assisting the Court shall be fixed by the Registrar.

(2) An appeal from the decision of the Registrar under this rule shall lie to the Court, and the decision of the Court thereon shall be final.

Litigants in person (O. 59, r. 18A)

18A. On a taxation of the costs of a litigant in person, there may be allowed such costs as would reasonably compensate the litigant for the time expended by him, and all expenses reasonably incurred.

Fees for more than one counsel (O. 59, r. 19)

19. (1) Fees for more than one counsel for one party or set of defendants shall not be allowed unless the Court or Judge at the hearing or within 7 days so certifies.

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(2) Such fees may be allowed notwithstanding that both counsel are members of the same firm of solicitors.

Procedure on Taxation

Mode of beginning proceedings for taxation (O. 59, r. 20)

20. A party entitled to require any costs to be taxed must begin proceedings for the taxation of those costs by producing at the Registry the bill of costs and a copy thereof together with all necessary papers and vouchers.

Notification of time appointed for taxation (O. 59, r. 21)

21. (1) Where proceedings for taxation have been duly begun in accordance with rule 20, then, subject to paragraph (2) and rule 23, the Registrar shall give to the party beginning the proceedings and to any other party entitled to be heard in the taxation proceedings, not less than 7 days notice of the day and time appointed for taxation.

(2) A notice under this rule need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings:

Provided that this paragraph shall not apply where an order for the taxation of a solicitor's bill of costs made under the Legal Profession Act (Chapter 132), at the instance of the solicitor gave rise to the taxation proceedings.

Delivery of bills etc. (O. 59, r. 22)

22. A party whose costs are to be taxed in any taxation proceedings, except a solicitor whose costs are to be taxed by virtue of an order made under the Legal Profession Act (Chapter 132), must within 2 days after receiving a notice under rule 21(1) send a copy of his bill of costs to every other party entitled to be heard in the proceedings unless that party has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

Short and urgent taxation (O. 59, r. 23)

23. (1) Where a party entitled to require taxation of any costs of or arising out of proceedings in the Court begins proceedings for the taxation of those costs in accordance with rule 20 then if, when he begins such proceedings, he satisfies the Registrar —

(a) that, in view of the amount of any bill of costs to be taxed, the time required for taxation is likely to be short; and

(b) that the speedy completion of the taxation is necessary in the interest of any person concerned in the taxation,

the Registrar shall enter the proceedings for taxation in a list kept for the purpose of this rule and shall forthwith give notice of the day and time appointed for taxation to the party whose costs are to be taxed.

(2) A party whose costs are to be taxed in proceedings entered for taxation in the list referred to in paragraph (1) must —

(a) at the time when the proceedings are so entered, deliver to the Registrar any bill of costs to be taxed in the proceedings; and

(b) subject to paragraph (3) not less than 2 days before the day appointed for taxation send a copy of his bill of costs to every other party entitled to be heard in the proceedings with a notice of the day and time appointed for taxation.

(3) A notice under paragraph (2) need not be given to any party who has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

Form of bill of costs (O. 59, r. 24)

24. (1) A bill of costs must distinguish, by insertion in separate columns, costs out of pocket from charges for work done and time expended, and showing by a statement, where the bill of costs is to be taxed between solicitor and client, all sums of money received from or agreed to be paid by the client in respect of the cause or matter under taxation, or in connection therewith.

(2) Dates must be furnished to each item, but they shall be kept within the body of the bill, so as to leave the left hand margin for deduction.

(3) Every bill must be headed in the cause or matter to which the same relates, with the name of the party whose bill it is, and the judgment, direction or order under which the same is to be taxed, and whether the same is to be taxed between party and party or solicitor and client.

(4) A bill of costs must be indorsed with the name or firm and business address of the solicitor whose bill it is.

Provisions as to taxation proceedings (O. 59, r. 25)

25. (1) If any party entitled to be heard in any taxation proceedings does not attend within a reasonable time after the time appointed for the taxation, the Registrar if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the taxation.

(2) The Registrar by whom any taxation proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time.

[Subsidiary]**Powers of Registrar taxing costs payable out of fund (O. 59, r. 26)**

26. (1) Where any costs are to be paid out of a fund the Registrar may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that a solicitor's bill of costs be taxed for the purpose of being paid out of a fund the Registrar by whom the bill is being taxed may, if he thinks fit, adjourn the taxation for a reasonable period and direct the solicitor to send to any person having an interest in the fund a copy of the bill, or any party thereof, free of charge together with a letter containing the following information —

(a) that the bill of costs, a copy of which or of part of which is sent with the letter has been referred to the Registrar for taxation;

(b) that the taxation will take place at the Chambers of the Registrar;

(c) the time appointed by the Registrar at which the taxation will be continued; and

(d) such other information, if any, as the Registrar may direct.

Assessment of Costs**Costs payable to one party by another or out of fund (O. 59, r. 27)**

27. (1) This rule applies to costs which by or under these Rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representatives).

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

(3) The Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be taxed on the common fund basis.

(4) On a taxation on the common fund basis, being a more generous basis than that provided for by paragraph (2), there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and paragraph (2) shall not apply; and accordingly in all cases where costs are to be taxed on the common fund basis the ordinary rules applicable on a taxation as between solicitor and client where the costs

are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

(5) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if —

(a) the costs are to be paid out of a fund; or

(b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be taxed as if the person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be, and where the Court so orders or directs rule 30(2) shall have effect in relation to the taxation in substitution for paragraph (2).

(6) Notwithstanding the foregoing provisions of this rule, if any action is brought in the High Court, which would have been within the jurisdiction of a Subordinate Court, or in which the plaintiff recovers by Judgment a sum not exceeding \$20,000, the plaintiff shall not be entitled to any more costs than he would have been entitled to if the proceedings had been brought in a Subordinate Court, unless in any such action a Judge certifies that there was sufficient reason for bringing the action in the High Court.

Costs payable to solicitor by his own client (O. 59, r. 28)

28. (1) On the taxation of a solicitor's bill to his own client (except a bill with respect to non-contentious business) all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(2) For the purpose of paragraph (1), all costs incurred with the express or implied approval of the client shall, subject to paragraph (3), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(3) For the purpose of paragraph (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs in a case to which rule 27(2) applies, shall, unless the solicitor expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

(4) In paragraphs (2) and (3), references to the client shall be construed —

(a) if the client was at the material time incapable by reason of unsoundness of mind for managing and administering his property and affairs and represented by a person acting as guardian *ad litem* or next friend, as

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references to that person acting, where necessary, with the authority of the authority having jurisdiction under that Act;

(b) if the client was at the material time an infant and represented by a person acting as guardian *ad litem* or next friend, as references to that person.

Costs payable to solicitor where money recovered by or on behalf of infant etc. (O. 59, r. 29)

29. (1) This rule applies to —

(a) any proceedings in which 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 who is an infant or incapable by reason of unsoundness of mind of managing and administering his property and affairs or in which money paid into Court is accepted by or on behalf of such a person; and

(b) any proceedings in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the widow of the person whose death gave rise to the proceedings in satisfaction of a claim or in which money paid into Court is accepted by her or on her behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjudged or ordered or agreed to be paid, or accepted, is an infant; and

(c) any proceedings in the Court of Appeal on an application or appeal made in connection with any proceedings to which this rule applies by virtue of the foregoing provisions of this paragraph.

(2) The costs payable to his solicitor by any plaintiff in any proceedings to which this rule applies by virtue of paragraph 1(a) or (b), being the costs of those proceedings or incident to the claim therein or consequent thereon, shall be taxed under rule 28; and no costs shall be payable to the solicitor of any plaintiff in respect of those proceedings except such amount of costs as may be certified in accordance with this rule on the taxation under rule 28 of the solicitor's bill to the plaintiff.

(3) On the taxation under rule 28 of a solicitor's bill to any plaintiff in any proceedings to which this rule applies by virtue of paragraph 1(a) or (b) who is his own client, the Registrar shall also tax any costs payable to that plaintiff in those proceedings and shall certify —

(a) the amount allowed on the taxation under rule 28, the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings and the amount (if any) by which the first-mentioned amount exceeds the other; and

(b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who

is an infant or incapable, by reason of unsoundness of mind of managing and administering his property and affairs of the widow of the man whose death gave rise to the proceedings and any other party.

(4) Paragraphs (2) and (3) shall apply in relation to any proceedings to which this rule applies by virtue of paragraph (1)(c) as if for references to a plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings which gave rise to the first-mentioned proceedings.

(5) Nothing in the foregoing provisions of this rule shall prejudice a solicitor's *lien* for costs.

(6) The foregoing provisions of this rule shall apply in relation to —

(a) a counterclaim by or on behalf of a person who is an infant or incapable by reason of unsoundness of mind of managing and administering his property and affairs and a counterclaim consisting of or including a claim by or on behalf of the widow of the man whose death gave rise to the claim; and

(b) a claim made by or on behalf of a person who is an infant or incapable as aforesaid in an action by any other person for relief under the Merchant Shipping Order, 2002 (S 27/2002) and a claim consisting of or including a claim made by or on behalf of that widow in such an action,

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as if for references to a plaintiff there were substituted references to a defendant.

Costs payable to trustee out of trust fund etc. (O. 59, r. 30)

30. (1) This rule applies to every taxation of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.

(2) On any taxation to which this rule applies, no costs shall be disallowed, except in so far as those costs or any part of their amount shall not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

Scale of costs (O. 59, r. 31)

31. (1) Subject to the foregoing rules and the following provisions of this rule, the scale of costs contained in Appendix 1 to this Order, together with the notes and general provisions contained in that Appendix, shall apply to the taxation of all costs incurred in relation to contentious business done on or after the coming into force of these Rules.

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(2) On a taxation in relation to which rule 28 or 30(2) has effect and in other special cases costs may at the discretion of the Registrar be allowed —

(a) in relation to items not mentioned in the said scale; or

(b) of an amount higher than that prescribed by the said scale.

(3) Where the amount of a solicitor's remuneration in respect of non-contentious business connected with scales, purchases, leases, charges and other matters of conveyancing or in respect of any other non-contentious business is regulated (in the absence of agreement to the contrary) by any written law, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in Appendix 1 to this Order.

(4) Notwithstanding paragraph (1) costs shall, unless the Court otherwise orders, be allowed in the causes to which Appendix 2 to this Order applies in accordance with the provisions of that Appendix.

Certificate

Certificate (O. 59, r. 32)

32. When the bill has been taxed the solicitor shall cast up the deductions therefrom, which, with the casting of the bill, shall be checked by the Registrar, and the Registrar shall proceed to make his certificate or allocatur for the amount of such costs less the deduction.

Certificate of Registrar to be conclusive unless set aside (O. 59, r. 33)

33. Upon the taxation of the bill the certificate of the Registrar, unless set aside, shall be conclusive as to the amount thereof, and where the order contains a submission to pay, the solicitor may after 48 hours, if there is no application for review, issue execution for the same.

Review

Application to Registrar for review (O. 59, r. 34)

34. (1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by the Registrar in respect of any item, may apply to the Registrar to review his decision in respect of that item.

(2) An application under this rule for review of the Registrar's decision may be made at any time within 14 days after that decision or such shorter period as may be fixed by the Registrar.

(3) Every applicant for review under this rule must at the time of making his application deliver to the Registrar objections in writing specifying by a list the items or parts of items the allowance or disallowance of which or the amount allowed in respect of which is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objections to each other party (if any) who attended on the taxation of those items or to whom the Registrar directs that a copy of the objections shall be delivered.

(4) Any party to whom a copy of the objection is delivered under this rule may, within 14 days after delivery of the copy to him or such shorter period as may be fixed by the Registrar, deliver to the Registrar 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 each other party (if any) to whom a copy of the objections has been delivered or to whom the Registrar directs that a copy of the answers shall be delivered.

(5) An application under this rule for review of the Registrar's decision in respect of any item shall not prejudice the power of the Registrar under rule 15 to issue an interim certificate in respect of items his decision as to which is not object to.

Review by Registrar (O. 59, r. 35)

35. (1) On reviewing any decision in respect of any item, the Registrar may receive further evidence and may exercise all the powers which he might exercise on an original taxation in respect of that item, including the power to award costs of and incidental to the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(2) On a hearing of a review under rule 34 a party to whom a copy of objections was delivered under paragraph (4) of that rule shall be entitled to be heard, with the leave of the Registrar, in respect of any item to which the objections relate notwithstanding that he did not deliver written answers to the objections under that paragraph.

(3) The Registrar who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it.

A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the Registrar.

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Review of Registrar's certificate by Judge (O. 59, r. 36)

36. (1) Any party who is dissatisfied with the decision of the Registrar to allow or to disallow any item in whole or in part on review under rule 34 or 35, or with the amount allowed in respect of any item by the Registrar on any such review, may apply to a Judge for an order to review the taxation as to that item or part of an item, if, but only if, one of the parties to the proceedings before the Registrar requested the Registrar in accordance with rule 35(3) to state the reasons for his decision in respect of that item or part on the review.

(2) An application under this rule for review of the Registrar's decision in respect of any item may be made at any time within 14 days, or such longer time as the Registrar at the time when he signs the certificate or the Court at any time, may allow.

(3) An application under this rule shall be made by summons and shall, except where the Judge thinks fit to adjourn into Court, be heard in Chambers.

(4) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on the review by the Registrar but, save as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the Registrar in relation to the subject matter of the application.

(5) On an application under this rule the Judge may make such order as the circumstances require, and in particular may order the Registrar's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the Registrar for taxation.

APPENDIX 1

SCALE OF COSTS

PART 1

INSTITUTION ETC. OF PROCEEDINGS

Item	\$	¢		\$	¢
1. Drawing, issuing, filing and service on one party of writ of summons (including statement of claim indorsed thereon), third party notice	120	00	to	360	00
2. Issued and service on one party, of concurrent writ of summons or originating summons	30	00			
Note to items 1 and 2 —					
Reference in these items to service on one party of a writ of summons shall, in relation to a writ of summons issued in an Admiralty action <i>in rem</i> , be construed as references to service of the writ on a ship or on the Registrar, as the circumstances of the case require.					
3. Renewing writ of summons issued —					
(a) in Admiralty action	240	00			
(b) in any other action	104	00			
including drawing and filing application and affidavit, attending on application for renewal and obtaining other.					
4. Drawing, presenting, filing and service on one party of a petition, originating summons and notice of originating motion	120	00	to	360	00
Or if special	Discretionary				
5. Drawing, issuing, filing and service on one party of notice of motion (other than an originating motion)	60	00	to	200	00

APPENDIX 1 — (continued)

Item	\$	¢		\$	¢
6. Drawing, filing and service on one party of —					
(a) case or special case stated by party or parties to any cause or matter			Discretionary		
(b) case or special case stated by inferior court of civil jurisdiction, statutory tribunal, Board of Review under any Act, arbitrator or umpire			Discretionary		
(c) notice of appeal (including notice of the grounds of the appeal) from decision given on an investigation or inquiry under Part IX of the Merchant Shipping Order, 2002 (S 27/2002)			Discretionary		
			[S 34/2008]		
Note to item 6 —					
This item includes service on one party of notice that the case referred to in paragraph (b) thereof has been entered for hearing.					
7. Drawing, filing and service on one party of statement of claim (if not indorsed on writ), or other pleading, answer to petition, claim in a reference under Order 70, rule 39	400	00	to	700	00
8. Drawing, filing and service on one party of particulars of pleading and drawing and service on one party of request for such particulars	60	00	to	400	00
9. Drawing and filing of preliminary act, drawing notice of filing and service on one party of such notice			Discretionary		
10. Drawing amendment of document referred to item 1, 4, 5 or 7, filing and service on one party of amended document	40	00	to	120	00
11. Drawing of notice of writ of summons for service out of jurisdiction	30	00			

APPENDIX 1 — *(continued)*

Item	\$	¢	\$	¢
12. Drawing, issuing and filing any document, attending on any application and doing any other work necessary to obtain —				
(a) order for substituted service of any document;				
(b) order giving leave to serve any document out of the jurisdiction,				
and obtaining order			Discretionary	

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PART 2

PROCEEDINGS IN CHAMBERS AND INTERLOCUTORY
MATTERS IN OPEN COURT

13. Drawing, issuing, filing and service on one party of summons —				
(a) to proceed under a judgment or order	50	00		
(b) for order in terms of annexed minutes	50	00		
(c) to extend time	50	00		
14. Drawing, issuing, filing and service on one party of summons for directions or notice under Order 25, rule 7 —				
(a) in Admiralty Action			Discretionary	
(b) in any other action	50	00	to	120 00
15. Drawing, issuing, filing and service on one party of summons to attend at Chambers (other than summons referred to in item 13)	60	00	to	120 00
16. Drawing brief on an interlocutory application or on further consideration thereof including copy for counsel	40	00	to	300 00
17. Attending to obtain appointment for hearing before Judge or Registrar	30	00		

[Subsidiary]

APPENDIX 1 — (continued)

Item	\$	¢		\$	¢
18. Attending to deliver papers required for use of Judge or Registrar in Chambers	30	00			
19. Attending hearing of summons or application in Chambers	100	00	to	480	00
OR					
Fee <i>in lieu</i> of counsel's fee, where no counsel is briefed	Discretionary				
20. Attending —					
(a) to settle draft or minutes of any decree or order	40	00			
or					
(b) at the Registrar's discretion not to exceed	160	00			
21. Attending to draw up and enter any order, where item 20 does not apply	20	00			

PART 3

DISCOVERY AND INSPECTION

22. Drawing, filing and service of —
- (a) affidavit of documents or list of document
 - (b) interrogatories for examination of a party) 120 00 to 500 00
 - (c) affidavit in answer to interrogatories)
including when appropriate, attending)
deponent to be sworn and copy for)
service
23. Attending to inspect, or produce for inspection, documents production of which for inspection is required by order of the Court or by virtue of any provision of Order 24 —
- (a) for the first hour or part of an hour 40 00

APPENDIX 1 — (continued)

Item	\$	¢	\$	¢
(b) for every subsequent half hour or part thereof	20	00		

PART 4

PREPARATION FOR TRIAL OR HEARING,
WHETHER IN OPEN COURT OR OTHERWISE

24. Drawing and issue of —

(a) writ of subpoena <i>ad testificandum</i> for one, two or three witnesses	60	00
(b) writ of subpoena <i>dues tecum</i> , for each witness	60	00

including filing of praecipe, attending to obtain writ and copy of service.

Where the writ mentioned in paragraph (a) is for more than one witness, copy for service on each additional witness	60	00
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25. Drawing and service of notice —

(a) to produce for inspection document referred to in pleading or affidavit	30	00
(b) to produce document at trial or hearing	30	00
(c) to admit any document or fact	30	00

including copy for service.

26. Instructions for trial or hearing of any cause or matter, whatever the mode of trial or hearing Discretionary

27. Instructions for appeal from an interlocutory or final order or judgment Discretionary

Note to items 26 and 27 —

These items are intended to cover the doing of any work, not otherwise provided for, necessarily or properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including —

APPENDIX 1 — (continued)

Item	\$	¢	\$	¢
(a) taking instructions to sue, defend, counterclaim or appeal, or for any pleading, particulars of pleading, affidavit, preliminary act or claim in a reference under Order 70, rule 39;				
(b) considering the facts and law;				
(c) attending on and corresponding with client;				
(d) interviewing and corresponding with witnesses and potential witnesses and taking proofs of their evidence;				
(e) arranging to obtain reports or advice from experts and plans, photographs and models;				
(f) making search in a Government Office and elsewhere for relevant documents;				
(g) inspecting any property or place material to the proceedings;				
(h) perusing pleadings, affidavits and other relevant documents;				
(i) where the cause or matter does not proceed to trial or hearing, work done in connection with the negotiation of a settlement; and				
(j) the general care and conduct of the proceedings.				
28. Drawing instructions to counsel to advise in writing or in conference including copy for counsel	40	00	to	300 00
29. Attending counsel in conference	100	00		
And for every half hour beyond the first hour	40	00		

Note to item 29 —

This item includes attending to make appointment for conference.

APPENDIX 1 — (continued)

Item	\$	¢		\$	¢
30. Drawing brief with observations to counsel and proofs of evidence, per folio	6	00			
31. Attending to obtain appointment to examine witness and on examination of witness before any commissioner, officer of the Court or other person appointed to examine him under Order 70, rule 29	300	00	to	600	00
	per	day			

PART 5

TRIAL OR HEARING

32. Attending in open Court for purpose of —

(a) any application relating to or consequent on trial or hearing of a cause or matter —

(i) where counsel is briefed 100 00 to 600 00
per day

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(ii) where no counsel is briefed 500 00 to 1,500 00

(b) trial or hearing of a cause of matter for each day —

(i) where counsel is briefed 100 00 to 600 00

(ii) where no counsel is briefed 500 00 to 1,500 00

(c) hearing deferred judgment 100 00 to 400 00

33. Attending to obtain certificate of Registrar, and attending to enter or obtain judgment, other than judgment given in Admiralty cause or matter

20 00

34. Attending under Order 70, rule 39, to obtain judgment in Admiralty cause or matter, decision on reference and grounds of decision

20 00

APPENDIX 1 — *(continued)*

Item	\$	¢	\$	¢
PART 6				
TAXATION				
35. Drawing bill of costs and notice of taxation (including copy for Registrar), per folio	4	00		
36. Obtaining appointment for taxation	20	00		
37. Attending taxation, completing bill of costs, producing vouchers for disbursements and attending to obtain Registrar's Certificate or order	60	00	to	300 00
38. Drawing objection to decision of Registrar on taxation, or answers to objections, including copies for service and filing, delivery to one party of such objections or answers and attending hearing of review by Registrar	60	00	to	300 00
PART 7				
EXECUTION				
39. Drawing, and attending to obtain — issue of writ of execution or other writ to enforce any judgment or order	40	00		
Necessary copies of any such writ shall be allowed.				
40. Renewing writ of execution including drawing and filing application and affidavit, attending on application for renewal and obtaining order	100	00		

APPENDIX 1 — (continued)

Item	\$	¢	\$	¢
PART 8				
GENERAL AND MISCELLANEOUS				
Attendances				
41. To obtain —				
(a) consent of person to act as next friend or guardian <i>ad litem</i> and consent or approval of any other interested party ...	40	00	to	80 00
(b) any other consent	20	00		
Note to item 41 —				
This item includes drawing the form of consent or approval.				
42. To give consent	20	00		
43. To enter appearance	30	00		
If appearance entered for more than one person at the same time, for each additional person	4	00		
Note to item 43 —				
This item includes copy and service of notice of appearance.				
44. To search —				
(a) for appearance	20	00		
(b) for appearance and to obtain certificate of non-appearance	20	00		
45. To register memorandum of a <i>lis pendens</i>	20	00		
Note to item 45 —				
This item shall not be allowed on a taxation of costs in accordance with rule 27(2).				
46. At the Registry to file any necessary document	20	00		
47. At the Registry to bespeak or search for affidavit ..	20	00		

[Subsidiary]

APPENDIX 1 — (continued)

Item	\$	¢	\$	¢
48. To enter order amending record by striking out or adding a party or consolidating causes or matters ..	20	00		
49. To —				
(a) set down action, summons or appeal for trial or hearing	20	00		
(b) enter special case, or set down point of law, for argument	20	00		
(c) enter for hearing case or special case stated	20	00		
(d) enter for hearing reference to the Registrar	20	00		
50. On the appropriate officer to certify that cause or matter set down for trial or hearing is settled or is for any other reason not to be included in list for trial or hearing	20	00		
51. On a deponent swearing, or solicitor or clerk deposing to, any affidavit other than an affidavit of service	20	00		
52. To examine title deeds in connection with any cause or matter, per hour	50	00		
53. To produce deeds for examination in connection with any cause of matter —				
(a) for the first hour or part thereof	40	00		
(b) for each subsequent half hour or part thereof	20	00		
54. To obtain certificates of birth, marriage or death, for every three certificates obtained at the same Registry at the same time	20	00		
55. On printer to insert advertisement in Government <i>Gazette</i> or other paper, for each publication	20	00		
56. On counsel with brief, case for written opinion or instruction to settle any document	20	00		
Or where counsel's fee is \$200 or more	30	00		

APPENDIX 1 — (continued)

Item	\$	¢	\$	¢
57. Other proper and necessary attendances not provided for or allowed under any other item	20	00		
58. On the solicitor for the other party when necessary	20	00		
Attendances etc. at the Treasury's Office of the Registry				
59. To obtain directions for lodgment of money in Court, and at the Treasury and obtain receipt	20	00		
60. To draw and lodge documents required to authorise payment out of money lodged in Court and to receive payment	20	00		
61. To bespeak power of attorney to receive money out of Court, obtain execution of power, stamp and lodge it, receive money and send it to grantor			Discretionary	
62. To indemnify person entitled to receive cheque	40	00		
63. To lodge securities in Court or procure transfer of securities into or out of Court			Discretionary	
Note to item 63 —				
This item includes all attendances required in connection with the lodgment or transfer and the preparation of any document so required.				
64. To procure certificate, or re-dating of certificates, of funds in Court	20	00		
Or where more than one certificate is procured or re-dated at the same time			Discretionary	
65. To procure transcript of account	20	00		
66. Drawing request for payment by post, obtaining signature and lodging request	20	00		
67. Preparing, where person entitled to receive interest or other periodical payments, evidence of life or of the fulfilment of any conditions affecting the payments			Discretionary	
68. Drawing certificate required by the Treasury			Discretionary	

[Subsidiary]

APPENDIX 1 — (continued)

Item	\$	¢	\$	¢
69. Procuring any necessary certificate for lodgment with the Treasury	30	00		
Drawing Documents				
70. Case for opinion of counsel before institution of proceedings including copy of counsel	40	00	to	400 00
71. Affidavit of service	80	00		
Note to item 71 —				
This item includes engrossing affidavit, attending to have it sworn and file it.				
72. Affidavit, other than affidavit of service or affidavit under item 22, per folio	6	00		
73. Preparation for making by Commissioner of Oaths of exhibit to affidavit, for each exhibit	8	00		
74. Advertisement to be signed by Registrar, first folio	40	00		
And thereafter per folio	20	00		
Note to item 74 —				
This item includes attending Chambers to obtain signature.				
75. Minutes of order, accounts, statements and other documents required for use in Court or Chambers, per folio	6	00		
76. Pedigree, for each completed ring	6	00		
77. Memorandum of a <i>lis pendens</i> , including copy thereof	30	00		
78. Drawing any necessary or proper document not otherwise provided, per folio	8	00		
Note to item 78 —				
This item shall not be allowed on a taxation of costs in accordance with rule 27(2).				

APPENDIX 1 — (continued)

Item	\$	¢	\$	¢
Notices etc.				
79. Drawing or filing up a notice to a creditor requiring him to prove his claim or informing him that cheque may be received from the Treasury	4	00		
80. Drawing any notice not otherwise provided for service or any request under Order 6, rule 4(3) ...	6	00		
Copies etc.				
81. Copy of document not otherwise provided for —				
(a) typed copy, other than carbon copy, or written copy, per folio	4	00		
(b) printed or carbon copy, per folio	2	00		
(c) photographic copy	Discretionary			
82. Examining proof print, per folio	2	00		
Letters etc.				
83. Letter not included under any other item	8	00		
Or if long	12	00		
Or if similar	6	00		
Or if a circular letter	4	00		
84. Long or special letters, messages and telephone calls not provided for or allowed under any other item	Discretionary			
Perusal				
85. Perusing any document not provided for or allowed under any other item, per folio	4	00		

[Subsidiary]

APPENDIX 1 — (continued)

Item		\$	¢		\$	¢
	Service					
86.	Where more than one attendance is necessary to effect service on, or delivery to, one party of document referred to in Part 1 of this Appendix or in item 13, 14, 15 or 38 thereof, or where service is effected within the jurisdiction otherwise than by personal attendance or by post or is effected out of the jurisdiction			Discretionary		
87.	Where document referred to in Part 1 of this Appendix or in item 13, 14, 15 or 38 thereof is required to be served on, or delivered to, more than one person, service on, or delivery to, each additional person —					
	(a) if required to be served personally or delivered	20	00	to	60	00
	(b) if service by post authorised	12	00			
88.	Service or delivery of any document, not provided for or allowed under any other item —					
	(a) if required to be served personally or delivered	20	00			
	(b) if service by post authorised	12	00			
	In addition to the amount allowed under paragraph (a) hereof, a mileage allowance in respect of each mile after the first 2 miles between the place at which service or delivery is effected and the nearest place of business of the solicitor effecting it	4	00			

PART 9

ADDITIONAL PROCEEDINGS ARISING ONLY IN
CONNECTION WITH ADMIRALTY CAUSES AND MATTERS

89. Procuring issue and service of warrant of arrest	240	00
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APPENDIX 1 — (continued)

Item	\$	¢	\$	¢
Note to item 88 —				
This item includes procuring the warrant, affidavits, and other documents required in connection with the issue and service of the warrant and any attendances required to procure its issue and service, the swearing of any such affidavit and the filing of any such document.				
90. Procuring issue of instrument of release under Order 70, rule 12	240	00		
Note to item 90 —				
This item includes drawing the instrument and other documents required in connection with the issue of the instrument, obtaining any consent so required and any attendances required to procure the issue of the instrument and the filing of any such document.				
91. Procuring entry, renewal or withdrawal of caveat against the issue of a warrant, the release of property or the payment of money out of Court ..	40	00		
Note to item 91 —				
This item includes drawing and filing any document required to procure the entry, renewal or withdrawal and any attendances so required.				
92. Giving bail —				
(a) one surety	280	00		
(b) two sureties	300	00		
Note to item 92 —				
This item includes drawing the bail bond, affidavits and other documents required in connection with the giving of bail and any attendances required to procure the signing of the bond, the swearing of any such affidavit and the filing and service of any such document.				

[Subsidiary]

APPENDIX 1 — (continued)

Item	\$	¢	\$	¢
93. Giving guarantee or undertaking <i>in lieu</i> of bail	160	00		
Note to item 93 —				
This item includes preparing the guarantee or undertaking and any attendances required to procure the signing and stamping thereof.				
Note to items 92 and 93 —				
The commission or fee paid to a person becoming surety to a bail bond or giving a guarantee or undertaking <i>in lieu</i> of bail, not exceeding 9 <i>per cent</i> of the amount for which the bond, guarantee or undertaking is given, shall be allowed on taxation.				
94. Obtaining bail	140	00		
Note to item 94 —				
This item includes perusing notice of bail and other relevant documents and any attendance to make enquiries as to sufficiency of sureties or to ensure that documents relating to bail have been filed.				
95. Obtaining —				
(a) guarantee <i>in lieu</i> of bail	140	00		
(b) undertaking <i>in lieu</i> of bail	80	00		
Note to item 95 —				
This item includes perusing the guarantee or undertaking and other relevant documents.				
96. Procuring the issue and execution of commission of appraisalment or of appraisalment and sale	120	00		
Note to item 96 —				
This item includes drawing and filing any document required in connection with the issue and execution of the commission and any attendances so required.				

APPENDIX 1 — *(continued)*

Item	\$	¢	\$	¢
97. Attending adverse solicitor to limit questions in dispute on reference under Order 70, rule 39	120	00		
And for every half hour beyond the first	60	00		
98. Negotiating agreement under Order 70, rule 33	Discretionary			
Note to item 98 —				
This item includes taking instructions in connection with the agreement, drawing and filing the agreement and any attendances required in connection with the negotiation, making and filing of the agreement.				
99. Negotiating agreement with respect to amount of damages, interest or other sums payable by opposite party	Discretionary			
Note to item 99 —				
This item includes any attendances and other work done in connection with the calculation of, and in obtaining agreement as to, the amount payable.				

PART 10

GENERAL

Discretionary costs

1. (1) Where in the foregoing provisions of this Appendix there is entered in the second column against any item specified in the first column either an upper and a lower sum of money or the word “Discretionary”, the amount of costs to be allowed in respect of that item shall (subject to any order of the Court fixing the costs to be allowed) be in the discretion of the Registrar, within the limits of the sums so entered, if any.

(2) In exercising his discretion under this paragraph or under rule 31(2) in relation to any item, the Registrar shall have regard to all relevant circumstances, and in particular to —

(a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

[Subsidiary]

(b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;

(c) the number and importance of the documents (however brief) prepared or perused;

(d) the place and circumstances in which the business involved is transacted;

(e) the importance of the cause or matter to the client;

(f) where money or property is involved, its amount or value;

(g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

Fees to counsel

2. (1) No fee to counsel shall be allowed unless —

(a) before taxation its amount has been agreed by the solicitor instructing counsel; and

(b) before the Registrar issues his certificate a receipt for the fees signed by counsel is produced.

(2) No retaining fee to counsel shall be allowed on any taxation of costs in relation to which rule 27(2) has effect.

(3) No costs shall be allowed in respect of counsel attending before the Registrar in Chambers or of more counsel than one attending before a Judge in Chambers unless the Registrar or Judge, as the case may be, has certified the attendance as being proper in the circumstances of the case.

(4) A refresher fee, the amount of which shall be in the discretion of the taxing officer, shall be allowed to counsel, either for each period of 5 hours (or part thereof) after the first, during which a trial or hearing is proceeding or, at the discretion of the taxing officer, in respect of each day, after the first day, on which the attendance of counsel at the place of trial is necessary.

Items to be authorised, certified etc.

3. (1) In an action arising out of an accident on land due to a collision or apprehended collision, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed unless —

(a) before the trial the Court authorised the preparation of the plan; or

(b) notwithstanding the absence of an authorisation under sub-paragraph (a) the Registrar is satisfied that it was reasonable to prepare the plan for use at the trial.

(2) The costs of calling expert witness with regard to any question as to which a Court expert or scientific adviser is appointed under Order 40 shall not be allowed on a taxation of costs in relation to which rule 27(2) or (3) has effect unless the Court at the trial has certified that the calling of the witness was reasonable.

Attendances in chambers

4. (1) The following provisions of this paragraph apply in relation to every hearing in Chambers.

(2) On a taxation of costs in relation to which rule 27(2) or (3) has effect, no costs shall be allowed for attending any such hearing as aforesaid except in so far as the costs (if any) to be allowed have been fixed by the Court at the hearing; and in fixing the costs to be allowed for attending any such hearing as aforesaid the Court shall have regard to all relevant circumstances, including in particular the matters mentioned in paragraph 1(2) of this Part of this Appendix, in so far as those circumstances affect the hearing, but not in so far as they may be taken into account in assessing any costs to be allowed in respect of preparation for the hearing.

(3) Where on any such hearing as aforesaid the Court certifies that the speedy and satisfactory disposal of the proceedings required and received from the solicitor engaged in them exceptional skill and labour in the preparation for the hearing, the Registrar in taxing the costs to be allowed for instructions in relation to the summons or application shall take the certificate into account.

Attendances before Registrar

5. On any attendances before the Registrar for the purpose of settling the terms of and passing any judgment or order, if it appears to the Registrar that the attendance is of a special nature or of unusual length or difficulty, he may, if requested to do so by any party, issue a certificate to that effect, and the Registrar in fixing the costs to be allowed for the attendance shall take the certificate into account.

Copies of documents

6. (1) There shall be allowed for printing copies of any document the amount properly paid to the printer, and where any part of a document is properly printed in a foreign language or as a facsimile or in any unusual or special manner, or where any alteration becomes necessary after the first proof of the document, there shall be allowed such an amount as the Registrar thinks reasonable, such amount to include any attendances on the printer.

[Subsidiary]

(2) The solicitor for a party entitled to take printed copies of any documents shall be allowed the amount he pays for such number of copies as he necessarily or properly takes.

(3) The allowance for printed copies of documents under item 81 of this Appendix shall be made in addition to the allowances under the foregoing provisions of this paragraph, and shall, subject to sub-paragraph (4) be made for such printed copies as may be necessary or proper —

(a) of any pleading, for service on the opposite party;

(b) of any special case, for filing;

(c) of any pleading or special case, for the use of the Court;

(d) of any affidavit, for attestation in print;

(e) of any pleading, special case or evidence for use in Court; or

(f) of any other document necessarily and properly copied and not otherwise provided for.

(4) The allowance under item 81 of this Appendix shall not be made in relation to printed copies of documents for the use of the Court or of counsel where written copies have been made before printing, and shall not be made more than once in the same cause or matter.

(5) The allowances under this Appendix for drawing any writ, pleading, summons, affidavit or other document shall be taken to include an allowance for preparing any necessary copies made for the use of the solicitor and his client or for counsel to settle or, in the case of a writ, pleading or summons, for service.

APPENDIX 2

FIXED COSTS

PART 1

COSTS ON JUDGMENT WITHOUT TRIAL FOR LIQUIDATED SUM

1. The scale of costs set out in Part 2 of this Appendix shall apply in relation to the following cases if the writ of summons therein was issued and indorsed in accordance with Order 6, rule 2(1)(b), with a claim for a debt or liquidated demand —

(a) cases in which the defendant pays the amount claimed within the time and in the manner required by the indorsement of the writ;

(b) cases in which the plaintiff obtains judgment in default of appearance under Order 13, rule 1, or under that rule by virtue of Order 79, rule 4; or judgment in default of defence under Order 19, rule 2, or under that rule by virtue of Order 79, rule 4;

(c) cases in which the plaintiff obtains judgment under Order 14 either unconditionally or unless that sum is paid into Court or to the plaintiff's solicitors.

PART 2

BASIC COSTS

Costs to be allowed in cases under the following sub-paragraphs of paragraph 1 of this Appendix.

	(a)	(b)	(c)		
	\$500	\$900	\$1,400		
				Costs to be allowed	
				\$	¢
2. (1) Where there is more than one defendant, in respect of each additional defendant served —					
(a) if the additional defendant is represented by the same solicitor as any other defendant				30	00
(b) in any other case				60	00
(2) Where substituted service is ordered and effected, in respect of each defendant served (excluding disbursements)				240	00
(3) Where service out of the jurisdiction is ordered and effected, in the case of service (excluding disbursements) —					
(a) in Singapore, Malaysia				400	00
(b) in any other place out of the jurisdiction				600	00
(4) In the case of judgment in default of defence or judgment under Order 14, where notice of appearance is not given on the day on which appearance is entered, and the plaintiff makes an affidavit of service for the purpose of a judgment in default of appearance (the allowance to include the search fee)				60	00

APPENDIX 2 — (continued)

	Costs to be allowed	
	\$	¢
(5) In the case of judgment under Order 14 where an affidavit of service of the summons is required	60	00
(6) In the case of judgment under Order 14, for each adjournment of the summons	60	00
(7) In the case of judgment in default of appearance or defence on an application by summons under Order 79, rule 4	100	00
And where there is more than one defendant in respect of each additional defendant	20	00
(8) A mileage allowance in respect of each mile after the first 2 miles from the High Court to the address of the defendant or defendants ...	4	00

PART 3

COSTS ON JUDGMENT WITHOUT TRIAL FOR POSSESSION OF LAND

3. (1) Where a writ of summons is indorsed with a claim for the possession of land and the plaintiff obtains judgment —

- (a) under Order 13, rule 4 or 5, in default of appearance; or
- (b) under Order 19, rule 5 or 6, in default of defence; or
- (c) under Order 14,

for possession of the land and costs, then, subject to sub-paragraph (2), there shall be allowed the costs prescribed by paragraph 4 of this Appendix.

(2) Where the plaintiff is also entitled under the judgment to damages to be assessed, or where the plaintiff claims any relief of the nature specified in Order 83, rule 1, this Part of the Appendix shall not apply.

4. The costs to be allowed under this Part of this Appendix shall be the costs which would be allowed under Part 1 thereof if judgment had been obtained in the same circumstances, in default of appearance or of defence or under Order 14.

APPENDIX 2 — (continued)

PART 4

MISCELLANEOUS

5. Where a plaintiff or defendant signs judgment for costs under rule 10, there shall be allowed —

	Costs to be allowed	
	\$	¢
Costs of judgment	60	00

6. Where upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money a garnishee order is made under Order 49, rule 1, against a garnishee attaching debts owing or accruing from him to the debtor the following costs shall be allowed —

(a) to the garnishee, to be deducted by him from any debt owing by him as aforesaid before payments to the applicant —

	If no affidavit used		If affidavit used	
	\$	¢	\$	¢
(i) where the garnishee resides within 2 miles of the High Court	60	00	140	00
(ii) where the garnishee does not so reside	100	00	180	00

(b) to the applicant, to be retained, unless the Court otherwise orders, out of the money recovered by him under the garnishee order and in priority to the amount of the debt owing to him under the judgment or order —

APPENDIX 2 — (continued)

BASIC COSTS

If the amount recovered by the applicant from the garnishee is —	Costs to be allowed	
	\$	¢
less than \$100	Nil	
not less than \$100 but not more than \$500	80	00
more than \$500	280	00

ADDITIONAL COSTS

Where the garnishee fails to attend the hearing of the application and an affidavit of service is required	60	00
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7. Where a charging order is made —

- (a) in respect of any securities under Order 50, rule 2; or
- (b) in respect of any partnership property or profits; or
- (c) in respect of land,

there shall be allowed —

Basic costs	360	00
Additional costs where an affidavit of service is required	50	00

8. Where leave is given under Order 45, rule 3 to enforce a judgment or order for the recovery of possession of land by writ of possession, if costs are allowed on the judgment or order there shall be allowed the following costs, which shall be added to the judgment or order —

Costs	140	00
Where notice of proceedings has been given to more than one person, in respect of each additional person	20	00

9. Where a writ of execution within the meaning of Order 46, rule 1 is issued against any party, there shall be allowed —

Costs of issuing execution	160	00
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ORDER 60

REGISTRY

Distribution of business (O. 60, r. 1)

1. The Registry shall be divided into such departments, and the business performed in the Registry shall be distributed among the departments in such manner, as the Chief Justice may direct.

Books to be kept in Registry (O. 60, r. 2)

2. The Registrar shall cause to be kept in Forms 119 to 134 the following —

- (a) a Cause Book;
 - (b) an Originating Summons Book;
 - (c) an Originating Motion Book;
 - (d) an Interpleader Summons Book;
 - (e) a Summons in Chambers Book;
 - (f) a Judgment Book;
 - (g) Writs of Execution Book;
 - (h) a Distress Book;
 - (i) a Probate Book;
 - (j) a Caveat Book;
 - (k) a Service Book;
 - (l) a Treasury Direction Book;
 - (m) an Index of Wills;
 - (n) a Register of Appeals to the Court of Appeal;
 - (o) a Register of Appeals from the Subordinate Courts and statutory bodies;
- and

[Subsidiary]

(p) such account books and other books as are prescribed or required to be kept by these Rules and such other books as may from time to time be found necessary.

Date of filing to be marked etc. (O. 60, r. 3)

3. (1) Any document filed in the Registry in any proceedings must be sealed with a seal showing the date on which the document was filed and any document not required by these Rules to be sealed must show the date on which it was filed.

(2) Particulars of the time of delivery at the Registry of any document for filing, the date of the document and the title of the cause or matter of which the document forms part of the record shall be entered in books kept in the Registry for the purpose.

Right to inspect etc. certain documents filed in Registry (O.60, r.4)

4. (1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Registry, namely —

(a) the copy of any writ of summons or other originating process;

(b) any judgment or order given or made in Court or the copy of any such judgment or order; and

(c) with the leave of the Registrar, which shall not be required in the case of an advocate and solicitor, any other document.

(2) Nothing in the foregoing provision shall be taken as preventing any party and his advocate and solicitor to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in the Registry in that cause or matter or filed therein before the commencement of the cause or matter but made with a view to its commencement.

Deposit of document (O. 60, r. 5)

5. Where the Court orders any documents to be lodged in Court, then, unless the order directs that the documents be so lodged by being deposited with the Treasury, the documents must be deposited in the Registry.

6. (No rule).

7. (No rule).

8. (No rule).

Restriction on removal of documents (O. 60, r. 9)

9. No document filed in or in the custody of the Registry shall be taken out of it without the leave of the Court unless the document is to be sent to a Subordinate Court.

ORDER 61

OFFICE HOURS

High Court Registry: Days on which open and office hours (O. 61, r. 1)

1. (1) The Registry of the High Court shall be open on every day of the year except on a weekly holiday or a public holiday.

(2) The hours during which the Registry of the High Court shall be open to the public shall be such as the Chief Justice may from time to time direct.

ORDER 62

SERVICE OF DOCUMENTS

When personal service required (O. 62, 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.

(3) No service of writ shall be required where the defendant or his solicitor undertakes in writing to accept service and enter an appearance.

Service by process server or other person (O. 62, r. 2)

2. (1) Personal service must be effected by a process server of the Supreme Court:

Provided that the Registrar may, either generally or in a particular cause or matter, allow personal service to be effected by any other named person.

(2) Whenever the service of a document is attended with expense, a process server or other person shall not, except by order of the Registrar, be bound to serve the same, unless reasonable expenses thereof have been tendered in the Registry by the party requiring the service.

[Subsidiary]

(3) Where service is by a process server, the Registrar shall forthwith give written notice to the plaintiff or person at whose instance the process is issued or to his solicitor, of the fact and manner of such service.

Personal Service: How effected (O. 62, r. 3)

3. Personal service of a document is effected by leaving a copy of the document with the person to be served and, if so requested by him at the time when it is left, showing him —

(a) in the case where the document is a writ or other originating process, the sealed copy; and

(b) in any other case, an office copy.

Service on corporations (O. 62, r. 4)

4. (1) Where an action is against a corporation, the writ may be served —

(a) by leaving a copy of it at the registered office (if any) of the corporation;
or

(b) by sending a copy of it by registered post addressed to the corporation at the office, or, if there be more offices than one at the principal office of the corporation, whether such office be situated within Brunei Darussalam or elsewhere; or

(c) by handing a copy of it to the secretary or to any director or other principal officer of the corporation; or

(d) in the case of a foreign company registered under the Companies Act (Chapter 39) by handing a copy of it to, or sending the same by registered post to, a person authorised to accept service of process on behalf of the foreign company.

(2) The rule does not restrict the operation of the provisions of any written law as to service on any particular person or authority.

(3) Where service is effected under this rule, the person served shall be entitled on demand to inspect the original writ.

Substituted service (O. 62, r. 5)

5. (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 in Form 135 for substituted service of that document.

(2) An application for an order for substituted service must be made by summons supported by an affidavit in Form 136 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. 62, r. 6)

6. (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; or

(b) by prepaid registered post; or

(c) in such other manner as the Court may direct; or

(d) by fax in accordance with paragraph (4).

(2) For the purposes of this rule, and section 2 of the Interpretation and General Clauses Act (Chapter 4), 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 proper address for the purposes aforesaid shall be —

(a) in any case, the business address of the solicitor (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.

(3) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any written law which provides for the manner in which documents may be served on bodies corporate.

[Subsidiary]

(4) Service by fax may be effected where —

(a) the party serving the document acts by a solicitor;

(b) the party on whom the document is served acts by a solicitor and service is effected by transmission to the business address of such a solicitor;

(c) the solicitor acting for the party on whom the document is served has indicated in writing to the solicitor serving the document that he is willing to accept service by fax at a specified fax number and the document is transmitted to that number; and for this purpose the inscription of a fax number on the writing paper of the solicitor is deemed to indicate that such a solicitor is willing to accept service by fax at that number in accordance with this paragraph unless he states otherwise in writing; and

(d) within 3 days after the day of service by fax, the solicitor acting for the party serving the document serves a copy of it on the solicitor acting for the other party by any of the other methods set out in rule 6(1), and if he fails to do so, the documents are deemed never to have been served by fax.

Service on Minister etc. in proceedings which are not by Government (O. 62, r. 7)

[S 34/2008]

7. Where for the purpose of or in connection with any proceedings in the High Court, not being civil proceedings by the Government, any document is required by any written law or these Rules to be served on the Minister of a Government department, or on such a department or on the Attorney General, these Rules, shall apply in relation to the service of the document as they apply in relation to the service of the documents required to be served on the Government for the purpose of or in connection with any civil proceedings by the Government.

Effect of service after certain hours (O. 62, r. 8)

8. Any document (other than a writ of summons or other originating process) service of which is effected under rule 3 or under rule 6(1)(a) after 12 noon on a day preceding the weekly holiday or after 4 in the afternoon on any other weekdays, shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the day following that day preceding the weekly holiday or on the day following that other weekly, as the case may be.

Affidavit of service (O. 62, r. 9)

9. An affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how and must be in one of the forms in Form 137.

No service required in certain cases (O. 62, r. 10)

10. 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 entry of appearance 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 notices from High Court (O. 62, r. 11)

11. Notices sent from any office of the High Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service. But nothing in this rule shall prevent any party from establishing, if such be the case, that he has not been so served.

Service where no appearance or address for service (O. 62, r. 12)

12. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service, all writs, notices, pleadings, orders, summonses, warrants and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer.

Service upon solicitor or party formerly appearing in person (O. 62, r. 13)

13. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorised to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor.

ORDER 63

PAPER, PRINTING, NOTICES AND COPIES

Quality and size of paper (O. 63, r. 1)

1. Unless the nature of the document renders it impracticable, every document prepared by a party for use in the High Court must be on paper of durable quality, approximately 11.69 inches (297 mm.) long, by 8.27 inches (210 mm.) wide, having a margin, not less than 1 inch wide to be left blank on either side of the paper.

[Subsidiary]**Regulations as to printing etc. (O. 63, r. 2)**

2. (1) Except where these Rules otherwise provide, every document prepared by a party for use in the High Court must be produced by one of the following means, 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 is 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. 63, r. 3)

3. (1) Where a document prepared by a party for use in the High Court is printed the party by whom it was prepared must, on receiving a written request from any other party entitled to a copy of that document supply him with a copy, and on payment of the proper charges, supply him with such number of further copies thereof, not exceeding ten, as may be specified in the request.

(2) Where a document prepared by a party for use in the High Court is written or typewritten, the party by whom it was prepared must supply and 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. 63, r. 4)

4. (1) Every copy of a document, whether an office copy or a copy supplied to a party under these Rules, must show on the indorsement the number of folios it contains.

(2) 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 solicitor by whom it was supplied.

(3) The party by whom a copy is supplied under rule 3, or, if he sues or appears by a solicitor, his solicitor, shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

ORDER 63A

[S 63/2015]

ELECTRONIC FILING AND SERVICE

Definitions (O. 63A, r. 1)**1.** In this Order —

“authorised user” means a person who is designated as an authorised user under rule 6(2);

“deemed” means deemed until the contrary is proved;

“electronic filing service” means the electronic filing service established under rule 2;

“electronic filing service provider” means an electronic filing service provider appointed under rule 3;

“electronic transmission” means electronic transmission by an authorised user or a registered user through the electronic filing service;

“entity” means a sole proprietorship, an incorporated or unincorporated partnership (including a limited liability partnership and a limited partnership), a law corporation, a company or other body corporate, the Attorney General’s Chambers, a department of the Government or a public authority;

“identification code” means the identification code of an authorised user or a registered user that is to be used in conjunction with the electronic filing service;

“public authority” means a body established or constituted by or under any other written law to perform or discharge a public function;

“registered user” means an entity who is registered under rule 6(1);

“service bureau” means a service bureau established under rule 5(1).

Electronic filing service (O. 63A, r. 2)

2. The Registrar may, with the approval of the Chief Justice, establish an electronic filing service and make provision for specified documents to be filed, served, delivered or otherwise conveyed using that service.

[Subsidiary]

Electronic filing service operator (O. 63A, r. 3)

3. The electronic filing service may be operated by the Registrar or an electronic filing service provider appointed by the Registrar with the approval of the Chief Justice.

Computer system of electronic service provider (O. 63A, r. 4)

4. For the purposes of this Order, the computer system of an electronic filing service provider shall mean the computer servers and network equipment operated, maintained or used by the electronic filing service provider notwithstanding that such computer servers and network equipment may be owned by that electronic filing service provider.

Service bureau (O. 63A, r. 5)

5. (1) The Registrar may establish or appoint agents to establish a service bureau or service bureaux to assist in the filing, service, delivery or conveyance of documents using the electronic filing service.

(2) Any agent appointed by the Registrar in pursuance of paragraph (1) shall not be treated as such for the purposes of the acceptance of the payment of fees or service charges.

Registered user and authorised user (O. 63A, r. 6)

6. (1) Any entity may apply to the Registrar to be a registered user in accordance with any procedure as may be set out for such applications in any practice directions.

(2) Any entity which is a registered user may designate one or more of its partners, directors, officers or employees to be an authorised user in accordance with any procedure as may be set out in any practice directions.

(3) The Registrar may allow an entity to be a registered user or a person to be an authorised user on such conditions as he thinks fit.

(4) A registered user who designates an authorised user and supplies the authorised user's identification code through the electronic filing service is deemed to approve the use of the identification code in conjunction with the electronic filing service by that authorised user.

(5) Before using the electronic filing service, the registered user shall —

(a) enter into an agreement with the electronic filing service provider for the provision of the electronic filing service; and

(b) make arrangements with the Registrar for the mode of payment of the applicable fees prescribed in these Rules.

(6) The Registrar may waive the application of paragraph (5) in whole or in part, in relation to such registered users or class of registered users as he thinks fit.

(7) For the purposes of these Rules, a service bureau is deemed to be a registered user and every employee of a service bureau is an authorised user.

Electronic filing (O. 63A, r. 7)

7. (1) Where a document is required to be filed with, served on, delivered or otherwise conveyed to the Registrar under any other provision of these Rules, it may be so filed, served, delivered or otherwise conveyed using the electronic filing service in accordance with this Order and any practice directions.

(2) For the purposes of paragraph (1), any requirement for the filing, service, delivery or otherwise conveyance of a document is satisfied by the filing, service, delivery or otherwise conveyance of a single copy using the electronic filing service in accordance with this Order.

(3) Filing, service, delivery or conveyance of a document using the electronic filing service in pursuance of paragraph (1) may be done in one of the following ways —

(a) by electronic transmission; or

(b) via a service bureau.

(4) Notwithstanding anything in paragraph (1), the Registrar may allow a document, part of a document or any class of documents to be filed, served, delivered or otherwise conveyed other than by using the electronic filing service.

(5) The form of any document shall be as set out —

(a) in any practice directions; or

(b) where the document is remotely composed on the computer system of the electronic filing service provider, in the form made available through the electronic filing service,

and shall, in the absence of such prescription, be in the form prescribed by Order 1, rule 6.

(6) Any document which is filed with, served on, delivered or otherwise conveyed to the Registrar through the electronic filing service by a registered user using an identification code is deemed to have been so filed, served, delivered or otherwise conveyed by the registered user and with his intention to do so.

[Subsidiary]

(7) Any document which is filed with, served on, delivered or otherwise conveyed to the Registrar through the electronic filing service by an authorised user (other than an employee of a service bureau) using an identification code is deemed to have been so filed, served, delivered or otherwise conveyed.

(a) by the authorised user on behalf and with the authority of the registered user to whom the authorised user belongs; and

(b) with the intention of that registered user to do so.

(8) Any document which is filed with, served on, delivered or otherwise conveyed to the Registrar through the electronic filing service by an authorised user, who is an employee of a service bureau, using an identification code is deemed to have been so filed, served, delivered or otherwise conveyed —

(a) on behalf and with the authority of the person tendering the document to the service bureau for such purpose and with the intention of that person to do so; or

(b) where the person tendering the document to the service bureau is acting as agent for his principal, on behalf and with the authority of his principal and with the intention of the principal to do so.

(9) For the avoidance of doubt, it is declared that a document which is filed, served, delivered or otherwise conveyed to the Registrar using an identification code in compliance with the security procedures of the electronic filing service is a secure electronic record within the meaning of the Electronic Transactions Act (Chapter 196).

Signing of electronic documents (O. 63A, r. 8)

8. (1) Where a document is filed, served, delivered or otherwise conveyed using the electronic filing service, any requirement under these Rules relating to signing by or the signature of an authorised user or a registered user, is deemed to be complied with if the identification code of the authorised user or registered user has been applied to or associated with, directly or indirectly, the document or the transmission containing the document.

(2) For the purposes of paragraph (1) —

(a) where the identification code of a registered user is applied to or associated with, directly or indirectly, a document or a transmission containing a document in compliance with the security procedures of the electronic filing service —

(i) the document is deemed to be signed by the registered user; and

- (ii) the contents of the document is deemed to be endorsed by the registered user;

(b) where the identification code of an authorised user (other than an employee of a service bureau) is applied to or associated with, directly or indirectly, a document or a transmission containing a document in compliance with the security procedures of the electronic filing service —

- (i) the document is deemed to be signed by the authorised user on behalf and with the authority of the registered user to whom the authorised user belongs; and
- (ii) the contents of the document is deemed to be endorsed by that registered user; or

(c) where the identification code of an authorised user, who is an employee of a service bureau, is applied to or associated with, directly or indirectly, a document or a transmission containing a document in compliance with the security procedures of the electronic filing service —

- (i) the document is deemed to be signed by the authorised user on behalf and with the authority of the person tendering the document to the service bureau and the contents of the document is deemed to be endorsed by that person; or
- (ii) where the person tendering the document to the service bureau is acting as agent for his principal, the document is deemed to be signed on behalf and with the authority of his principal and the contents of the document is deemed to be endorsed by his principal.

(3) Where any other written law or practice direction requires the signature of an advocate or solicitor, the requirement is deemed to be met where the identification code of the advocate or solicitor has been applied to or associated with, directly or indirectly, the document or the transmission containing the document to be signed in compliance with the security procedures of the electronic filing service.

(4) For the avoidance of doubt, it is declared that the application to or association of the identification code of an authorised user or a registered user, directly or indirectly, with a document or a transmission containing a document in compliance with the security procedures of the electronic filing service is a secure electronic signature within the meaning of the Electronic Transactions Act (Chapter 196).

Date of filing (O. 63A, r. 9)

9. (1) Where a document is filed with, served on, delivered or otherwise conveyed to the Registrar using the electronic filing service and is subsequently accepted by the Registrar, it is deemed to be filed, served, delivered or otherwise conveyed —

[Subsidiary]

(a) where the document is filed, served, delivered or otherwise conveyed by electronic transmission from the computer system of the authorised user or registered user, on the date and at the time that the first part of the transmission is received in the computer system of the Registrar or the electronic filing service provider, as the case may be;

(b) where the document is remotely composed on the computer system of the electronic filing service provider, on the date and at the time that the first part of the transmission containing instructions from the authorised user or registered user to so file, serve, deliver or otherwise convey the document is received in the computer system of the Registrar or the electronic filing service provider; as the case may be;

(c) where the document is filed, served, delivered or otherwise conveyed via a service bureau, on the date and at the time that the first part of the transmission is received in the computer system of the Registrar.

(2) Paragraph (1) does not apply to the following documents —

(a) a caveat against the issue of a warrant to arrest the property filed pursuant to Order 70, rule 5;

(b) a caveat against the issue of a release and payment out of Court filed pursuant to Order 70, rule 13.

(3) Where a document to which paragraph (2) applies is filed with, served on, delivered or otherwise conveyed to the Registrar using the electronic filing service and is subsequently accepted by the Registrar, it is deemed to be filed, served, delivered or otherwise conveyed —

(a) where the document is filed, served, delivered or otherwise conveyed by electronic transmission, on the date and at the time that the Registrar accepts the document, as reflected in the computer system of the Registrar;

(b) where the document is filed, served, delivered or otherwise conveyed via a service bureau, on the date and at the time that the Registrar accepts the document, as reflected in the computer system of the Registrar.

(4) Where an originating process is filed or otherwise conveyed using the electronic filing service and it is subsequently accepted by the Registrar, it is deemed to be issued —

(a) where the document is filed or otherwise conveyed by electronic transmission, on the date and at the time that the first part of the transmission is received in the computer system of the Registrar or electronic filing service provider, as the case may be;

(b) where the document is filed or otherwise conveyed via a service bureau, on the date and at the time that the first part of the transmission is received in the computer system of the Registrar or electronic filing service provider, as the case may be.

(5) The registered user may produce a record of the transmission issued by the Registrar, electronic filing service provider or service bureau, as the case may be, together with a copy of the notification of acceptance of the document by the Registrar as evidence of —

(a) the filing or issuance of an originating process;

(b) the filing, service, delivery or otherwise conveyance of any other document; or

(c) the date and time either or both of these events took place.

(6) If the Registrar is satisfied for any reason that a document should be treated as having been filed with, served on, delivered or otherwise conveyed to the Registrar, or issued, at some earlier date and time, than the date and time provided for under paragraph (1), (3) or (4), he may cause the electronic filing service to reflect such earlier date and time, and that earlier date and time is deemed for all purposes to be the date and time on and at which the document was filed, served, delivered, otherwise conveyed or issued, as the case may be.

Time for service (O. 63A, r. 10)

10. (1) Where a document is filed with, served on, delivered or otherwise conveyed to the Registrar by electronic transmission, the time for service of that document shall begin to run from the time the Registrar transmits an acknowledgment of his acceptance of the document to the registered user.

(2) Where a document is filed with or otherwise conveyed to the Registrar via a service bureau, the time for service of that document shall only begin to run from the time that the Registrar's notification of his acceptance of the document is received by the service bureau.

(3) If the Registrar's acknowledgement and notification referred to in paragraphs (1) and (2) respectively is received in the computer system of the registered user or service bureau, as the case may be, on a day other than a working day, it is deemed for the purpose of this rule to have been received on the next working day.

[Subsidiary]**Service of documents (O. 63A, r. 11)**

11. (1) If a document —

(a) other than a document which is required by these Rules to be served personally; or

(b) being a document which is required by these Rules to be served personally and which the party to be served has agreed may be served using the electronic filing service,

is required under any other provision of these Rules to be served, delivered or otherwise conveyed by a person to any other person and that person is an authorised user or a registered user or is represented by a solicitor who is an authorised user or a registered user (referred to in this rule as the person on whom the document is served), such service, delivery or otherwise conveyance may be effected by using the electronic filing service by electronic transmission or via a service bureau.

(2) For the purposes of paragraph (1)(b), a party who has instructed his solicitor to accept service of a document which is required by these Rules to be served personally is deemed to have agreed to be served using the electronic filing service.

(3) The document is deemed to be served, delivered or otherwise conveyed —

(a) where the document is served, delivered or otherwise conveyed by electronic transmission from the computer system of the authorised user or registered user on the date and at the time that the first part of the transmission is received in the computer system of the electronic filing service provider; and

(b) where the document is remotely composed on the computer system of the electronic filing service provider, on the date and at the time that the first part of the transmission containing instructions from the authorised user or registered user to so serve, deliver or otherwise convey the document is received in the computer system of the electronic filing service provider.

(4) The person serving the document may produce a record of the service, delivery or conveyance to the person on whom the document is served which is issued by the electronic filing service provider or the service bureau as evidence of the service, delivery or conveyance, as well as the date and time of such service, delivery or conveyance.

(5) The person serving the document may file a Registrar's certificate of service issued through the electronic filing service provider or the service bureau *in lieu* of an affidavit of service and the certificate shall be regarded as *prima facie* evidence of such service, delivery or conveyance on the date and at the time as stated.

(6) Where a document has to be served, delivered or conveyed by the person serving the document to more than one person, he may effect such service, delivery or conveyance using the electronic filing service on such of those persons who are registered users or authorised users, and paragraphs (1), (3) and (4) apply with such modifications as are necessary.

(7) Any document which is served, delivered or otherwise conveyed by a registered user to a person through the electronic filing service using an identification code is deemed to have been so served, delivered or otherwise conveyed by the registered user and with his intention to do so.

(8) Any document which is served, delivered or otherwise conveyed by an authorised user (other than an employee of a service bureau) to a person through the electronic filing service using an identification code is deemed to have been so served, delivered or otherwise conveyed —

(a) by the authorised user on behalf and with the authority of the registered user to whom the authorised user belongs; and

(b) with the intention of that registered user to do so.

(9) Any document which is served delivered or otherwise conveyed by an authorised user, who is an employee of a service bureau, is deemed to have been so served delivered or otherwise conveyed —

(a) on behalf and with the authority of the person tendering the document to the service bureau for such purpose and with the intention of that person to do so; or

(b) where the person tendering the document to the service bureau is acting as agent for his principal, on behalf and with the authority of his principal and with the intention of the principal to do so.

(10) For the avoidance of doubt, it is declared that any document which is served, delivered or otherwise conveyed to a person using an identification code in compliance with the security procedures of the electronic filing service is a secure electronic record within the meaning of the Electronic Transactions Act (Chapter 196).

(11) Order 62, rule 8 applies to service effected under this rule.

Notification or delivery by Registrar (O. 63A, r. 12)

12. Where the Registrar is required by any provision of these Rules to notify or to deliver or furnish any document to any person who is a registered user, the Registrar may do so by using the electronic filing service.

[Subsidiary]**Mode of amendment of electronic documents (O. 63A, r. 13)**

13. Amendments to documents shall be effected in the manner provided in any practice directions.

Affidavits in electronic form (O. 63A, r. 14)

14. (1) Affidavits which are filed in Court using the electronic filing service may be used in all proceedings to the same extent and for the same purposes as paper affidavits filed in Court.

(2) Where an affidavit is to be filed in Court using the electronic filing service, it shall comply with the following requirements —

(a) the affidavit must be sworn in the usual way in which the deponent signs the original paper affidavit;

(b) a true and complete electronic image of the original paper affidavit must be created; and

(c) the original paper affidavit must be retained by the party who filed it for a period of 7 years after it is filed.

(3) Notwithstanding paragraph (2)(c), if the original paper affidavit subsequently becomes unavailable within 7 years after it was filed, the Court may grant leave for the electronic image of the original paper affidavit filed in Court using the electronic filing service to be used in the proceedings for which it was filed, or in any other proceedings.

Discrepancy (O. 63A, r. 15)

15. Where a document was filed using the electronic filing service and there is any inconsistency between —

(a) the information entered into the electronic template of the document or of the transmission containing the document; and

(b) the information contained in the document,

the information contained in the document shall prevail where that document is remotely composed on the computer system of the Registrar or electronic filing service provider, as the case may be, and in all other cases the information entered into the electronic template of the document shall prevail.

ORDER 64

CHANGE OF SOLICITOR

Notice of change of solicitor (O. 64, r. 1)

1. (1) A party to any cause or matter who sues or defends by a solicitor may change his solicitor without an order for that purpose but, unless and until notice of the change is filed and served in accordance with this rule, the former solicitor shall, subject to rules 4 and 5, be considered the solicitor of the party until the final conclusion of the cause or matter, in the High Court.

(2) Notice of a change of solicitor in Form 138 must be filed in the Registry.

(3) The party giving the notice must serve on every other party to the cause or matter (not being a party in default as to entry of appearance) and on the former solicitor a copy of the notice.

(4) The party giving the notice may perform the duties prescribed by this rule in person or by his new solicitor.

Notice of appointment of solicitor (O. 64, r. 2)

2. Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter on his behalf, the change may be made without an order for that purpose and rule 1(2), (3) and (4) shall, with the necessary modifications, apply in relation to a notice of appointment of a solicitor in Form 138 as they apply in relation to a notice of change of solicitor.

Notice of intention to act in person (O. 64, r. 3)

3. Where a party, after having sued or defended by a solicitor, 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 solicitor except that the notice of intention to act in person in Form 139 must contain an address for service of the party giving it.

Removal of solicitor from record at instance of another party (O. 64, r. 4)

4. (1) Where —

(a) a solicitor who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of solicitors or has been suspended from practising or has for any other reason ceased to practise; and

[Subsidiary]

(b) the party has not given notice of change of solicitor 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 or, if an appeal to the Court of Appeal is pending in the cause or matter, to the Court of Appeal for an order declaring that the solicitor has ceased to be the solicitor 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 in Form 140 and the summons or notice of motion must unless the Court or the Court of Appeal, as the case may be, otherwise directs, be served on the party to whose solicitor the application relates. The application must be supported by an affidavit stating the grounds of the application.

(3) Where an order in Form 141 is made under this rule the party on whose application it was made must serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order.

(4) An order made under this rule shall not affect the right of the solicitor and the party for whom he acted as between themselves.

Withdrawal of solicitor who has ceased to act for party (O. 64, r. 5)

5. (1) Where a solicitor 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 3, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court or the Court of Appeal, as the case may be, may make an order accordingly, but unless and until the solicitor serves on every party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, he shall, subject to the foregoing provisions of this Order, be considered the solicitor of the party till the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal.

(2) An application for an order under this rule must be made by summons in Form 142 or, in the case of an application to the Court of Appeal by motion, and the summons or notice of motion must, unless the Court or the Court of Appeal, as the case may be, otherwise directs, be served on the party for whom the solicitor acted.

The application must be supported by an affidavit stating the grounds of the application.

(3) An order in Form 143 made under this rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.

(4) Notwithstanding anything in paragraph (1), where the legal aid certificate of an assisted person is revoked or discharged, the solicitor who acted for the assisted

person shall cease to be the solicitor acting in the cause or matter; and if the assisted person whose certificate has been revoked or discharged desires to proceed with the cause or matter without legal aid and appoints that solicitor or another solicitor to act on his behalf, the provisions of rule 2 shall apply as if that party had previously sued or defended in person.

Address for service of party whose solicitor is removed etc. (O. 64, r. 6)

6. Where —

(a) an order is made under rule 4; or

(b) an order is made under rule 5, and the applicant for that order has complied with rule 5(1); or

(c) the legal aid certificate of an assisted person is revoked or discharged,

then unless and until the party to whose solicitor or to whom, as the case may be, the order or certificate relates either appoints another solicitor and complies with rule 2, or being entitled to act in person, gives notice of his intention to do so and complies with rule 3, 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.

ORDER 65

SERVICE OF FOREIGN PROCESS

Definition (O. 65, r. 1)

1. In this Order “process” includes a citation.

Service of foreign legal process (O. 65, r. 2)

2. (1) This rule applies in relation to the service of any process required in connection with civil proceedings pending before a court or other tribunal of a foreign country where a letter of request from such a tribunal requesting service on a person in Brunei Darussalam of any such process sent with the letter is received by the Minister and is sent by him to the High Court with an intimation that it is desirable that effect should be given to the request.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a translation thereof in English, by two copies of the process to be served and by two copies of a translation of the process in English.

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(3) Subject to paragraph (4) and to any written law which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served.

Service shall be effected by the process server.

(4) Where an application in that behalf is made by the Attorney General, the Court may make an order for substituted service of the process, and, where such an order is made, service of the process shall be effected by taking such steps as the Court may direct to bring the process to the notice of the person to be served.

(5) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall file a copy of the process, an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, a copy of that affidavit and a statement of the costs incurred in effecting, or attempting to effect, service.

(6) The Registrar shall give a certificate in Form 144 —

(a) identifying the documents annexed thereto, the letter of request for service, a copy of the process received with the letter and a copy of the affidavit referred to in paragraph (5);

(b) certifying that the method of service of the process and the proof of service are such as are required by the rules of the High Court regulating the service of process of that Court in Brunei Darussalam or, if such be the case, that service of the process could not be effected for the reason specified in the certificate; and

(c) certifying that the cost of effecting, or attempting to effect, service is the amount so specified.

(7) The certificate given under paragraph (6) shall be sealed with the seal of the High Court for use out of the jurisdiction and shall be sent to the Permanent Secretary to the Minister.

Service of foreign legal process under Civil Procedure Convention (O. 65, r. 3)

3. (1) This rule applies in relation to the service of any process required in connection with civil proceedings pending before a court or other tribunal of a foreign country, being a country with which there subsists a Civil Procedure Convention providing for service in Brunei Darussalam of process of the tribunals of that country, where a letter of request from a consular or other authority of that country requesting service on a person in Brunei Darussalam of any such process sent with the letter is received by the Registrar.

(2) In order that service of the process may be effected in accordance with this rule the letter or request must be accompanied by a copy of a translation to the process to be served in English.

(3) Subject to any written law which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the relevant Civil Procedure Convention, service of the process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served.

Service shall be effected by the process server.

(4) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall file an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, and a statement of the costs incurred in effecting, or attempting to effect, service.

(5) The Registrar shall give a certificate certifying —

(a) that the process or a copy thereof, as the case may be, was served on the person, at the time, and in the manner, specified in the certificate or, if such be the case, that service of the process could not be effected for the reason so specified; and

(b) that the cost of effecting, or attempting to effect, service is the amount so specified.

(6) The certificate given under paragraph (5) shall be sealed with the seal of the High Court for use out of jurisdiction and shall be sent to the consular or other authority by whom the request for service was made.

Costs of service etc. to be certified by Registrar (O. 65, r. 4)

4. A statement of the costs incurred in effecting, or attempting to effect, service under rule 2 or 3 shall be submitted to the Registrar who shall certify the amount properly payable in respect of those costs.

ORDER 66

OBTAINING EVIDENCE FOR FOREIGN COURTS ETC.

Jurisdiction of Registrar to make order (O. 66, r. 1)

1. (1) Subject to paragraph (2), the power of the High Court or a Judge thereof to make, in relation to a matter pending before a court or tribunal in a place outside the

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jurisdiction, orders for the examination of witnesses and for attendance and for production of documents and to give directions may be exercised by the Registrar.

(2) The Registrar may not make such an order if the matter in question is a criminal matter.

Application for order (O. 66, r. 2)

2. (1) Subject to paragraph (3) and rule 3, an application for an order under rule 1 must be made *ex parte* by a person duly authorised to make the application on behalf of the court or tribunal in question and must be supported by affidavit.

(2) There must be exhibited to the affidavit in support the letter of request, certificate or other document evidencing the desire of the court or tribunal to obtain for the purpose of a matter pending before it the evidence of the witness to whom the application relates or the production of any documents and, if that document is not in the English language, a translation thereof in that language.

(3) After an application for such an order as is mentioned in paragraph (1) has been made in relation to a matter pending before a court or tribunal, an application for a further order or directions in relation to the same matter must be made by summons.

Application by Attorney General in certain cases (O. 66, r. 3)

3. Where a letter of request, certificate or other document requesting that the evidence of a witness within the jurisdiction in relation to a matter pending before a court or tribunal in a foreign country be obtained —

(a) is received by the Minister and sent by him to the Registrar 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 Brunei Darussalam of any party to the matter pending before the court or tribunal; or

(b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Brunei Darussalam 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 party,

the Registrar shall send the document to the Attorney General and the Attorney General may make an application for an order and take such other steps as may be necessary, to give effect to the request.

Person to take and manner of taking examination (O. 66, 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 the Registrar or before such other qualified person as the Court seems fit.

(2) Subject 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 the 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. 66, 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 Registrar and the Registrar shall —

(a) give a certificate sealed with the seal of the High Court for use out of the jurisdiction identifying the documents annexed thereto, the letter of request, certificate, or other document from the court or tribunal out of the jurisdiction requesting the examination, 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 Minister, or, where the letter of request, certificate or other document was sent to the Registrar by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to that court or tribunal.

ORDER 67

RECIPROCAL ENFORCEMENT OF JUDGMENTS

Powers under relevant acts exercisable by Judge or Registrar (O. 67, r. 1)

1. The powers conferred on the High Court by the Reciprocal Enforcement of Foreign Judgments Act (Chapter 177) (hereinafter referred to as the Act), may be exercised by a Judge in Chambers and the Registrar.

[S 34/2008]

Application for registration (O. 67 r. 2)

2. (1) An application under section 3 of the Act in respect of a judgment obtained in a superior court of a country referred to in sections 3 and 5 of the Act to have the judgment registered in the High Court must be made by an originating summons.

(2) No appearance need be entered to an originating summons under this rule.

[Subsidiary]**Evidence in support of application (O. 67 r. 3)**

3. (1) An application for registration must be supported by an affidavit —

(a) exhibiting the judgment or a certified 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) where the application is made under the Act, that the judgment does not fall within any of the case in which a judgment may not be ordered to be registered under section 3 of the Act;
- (iv) where the application is made under the Act, that at the date of the application the judgment can be enforced by execution in the country of the original court and that, if it were registered, the registration would not be, or be liable to be, set aside under Rules of Court made under section 6 of that Act;

(d) specifying where the application is made under the Act, the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration.

(2) Where the sum payable under a judgment sought to be registered is expressed in a currency other than the currency of Brunei Darussalam, the affidavit must also state the amount which that sum represents in the currency of Brunei Darussalam calculated at the rate of exchange prevailing at the date of the judgment.

(3) Where a judgment sought to be registered under the Act is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit must state the provisions in respect of which it is sought to register the judgment.

(4) In the case of an application under the Act, the affidavit must be accompanied by such other evidence with respect to the enforceability of the judgment

by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order under the Act extending that Act to that country.

Security for costs (O. 67 r. 4)

4. Save as otherwise provided by any notification made pursuant to Rules of Court made under section 6 of the Act or any relevant Order under the Act, the Court may order the judgment creditor to give security for the cost of the application for registration and of any proceedings which may be brought to set aside the registration.

Order for registration (O. 67, r. 5)

5. (1) An order in Form 145 giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor and served on the judgment debtor.

(2) 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.

(3) 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.

Register of judgments (O. 67, r. 6)

6. (1) There shall be kept in the Registry a register of the judgments ordered to be registered under the Act.

(2) There shall be included in such register particulars of any execution issued on a judgment ordered to be so registered.

Notice of registration (O. 67, r. 7)

7. (1) Notice of the registration of a judgment must be served on the judgment debtor and, subject to paragraph (2), must be served personally unless the Court otherwise orders.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such a notice as they apply in relation to notice of a writ.

(3) The notice of registration must state —

(a) full particulars of the judgment registered and the order for registration;

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(b) the name and address of the judgment creditor or of his solicitor 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.

Indorsement of service (O. 67, r. 8)

8. (1) Within 3 days after service of the notice of registration or within such longer period as the Court may, in special circumstances allow, the notice or a copy thereof must be indorsed by the person who served it with the day of the week and date on which it was served; and, if the notice is not so indorsed within the period aforesaid the judgment creditor may not issue execution on the judgment to which the notice relates without the leave of the Court.

(2) Every affidavit of service of any such notice must state the date on which the notice was indorsed under this rule.

Application to set aside registration (O. 67, 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 such 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.

(3) Where the Court hearing an application to set aside the registration of a judgment registered under the Act is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under section 3(2) of that Act or that it is not just or convenient that the judgment should be enforced in Brunei Darussalam or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

Issue of execution (O. 67, r. 10)

10. (1) Execution shall not issue on a judgment registered under the Act until after the expiration of 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 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 Act must produce to the sheriff an affidavit of service of the notice of registration of the judgment and any order made by the Court in relation to the judgment.

Determination of certain questions (O. 67, r. 11)

11. If, in any case under the Act, any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, that question shall be determined in accordance with the provisions in that behalf contained in the Order extending that Act to that country.

Rules to have effect subject to orders of Government (O. 67, r. 12)

12. The foregoing rules shall, in relation to any judgment registered or sought to be registered under the Act, have effect subject to any such provisions contained in the Order extending that Act to the country of the original court as are declared by the Order to be necessary for giving effect to the agreement made between the Government and that country in relation to matters with respect to which there is power to make those rules.

Certified copy of High Court judgment (O. 67, r. 13)

13. (1) An application under the Act for a certified copy of a judgment entered in the High Court must be made *ex parte* by summons to the Registrar supported by affidavit.

(2) The affidavit in support of the application under the Act must give particulars of the judgment, show that the judgment debtor is resident in the territory to which that Act extends and state the name, trade or business and the usual or last known place of abode of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

(3) The affidavit in support of the application under the Act must —

(a) give particulars of the proceedings in which the judgment was obtained;

(b) have annexed to it a copy of the writ or originating summons by which the proceedings were begun, the evidence of service thereof on, or appearance by, the defendant, copies of the pleadings, if any, and a statement of the grounds on which the judgment was based;

(c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;

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(d) show that the judgment is not subject to any stay of execution;

(e) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been entered; and

(f) state the rate at which the judgment carries interest.

(4) The certified copy of the judgment shall be an office copy sealed with the seal of the High Court and indorsed with a certificate in Form 146 signed by the Registrar certifying that the copy is a true copy of a judgment obtained in the High Court in Brunei Darussalam and that it is issued in accordance with the Act.

(5) Where the application is made under the Act, there shall also be issued a certificate in Form 147 (signed by the Registrar and sealed with the seal of the High Court) having annexed to it a copy of the writ or originating summons by which the proceedings were begun, and stating —

(a) the manner in which the writ or such summons was served on the defendant or that the defendant appeared thereto;

(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 entered; and

(g) such other particulars as it 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 68

(No Order)

ORDER 69

ARBITRATION PROCEEDINGS

Interpretation (O. 69, r. 1)

1. In this Order, “Order” means the Arbitration Order, 2009 (S 34/2009).
[S 63/2015]

Matters for Judge in Court (O. 69, r. 2)

2. (1) Every application to the Court —

(a) to remit an award under the Order; or
[S 63/2015]

(b) to remove an arbitrator or umpire under that Order; or
[S 63/2015]

(c) to set aside an award under the Order, must be made by originating motion to a single Judge in Court.
[S 63/2015]

- (2) A special case for the decision of the High Court by an arbitrator or umpire under the Order shall be heard and determined by a single Judge.
[S 63/2015]

(3) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by originating motion to a single Judge in Court, but the foregoing provision shall not be taken as affecting the Judge’s power to refuse to make such a declaration in proceedings begun by motion.

Matters for Judge in Chambers or Registrar (O. 69, r. 3)

3. (1) Subject to the foregoing provisions of this Order, the jurisdiction of the High Court or a Judge thereof under the Order may be exercised by a Judge in Chambers or the Registrar.
[S 63/2015]

(2) An application for an order under the Order directing an arbitrator or umpire to state a case must be made by originating summons and the summons must be served on the arbitrator or umpire and the other party to the reference.
[S 63/2015]

(3) No appearance need be entered to an originating summons by which an application under the said Order is made.
[S 63/2015]

[Subsidiary]

Special provisions as to applications to remit or set aside award (O. 69, r. 4)

4. (1) An application to the Court —

(a) to remit an award under the Order; or

[S 63/2015]

(b) to set aside an award under the Order or otherwise,

[S 63/2015]

may be made at any time within 6 weeks after the award has been made and published to the parties.

(2) In the case of every such application, the notice of motion must state in general terms the grounds of the application; and, where the motion is founded on evidence by affidavit, a copy of every affidavit intended to be used must be served with that notice.

Appeals (O. 69, r. 4A)

4A. (1) A notice of originating motion by way of appeal must state —

(a) the award from which the appeal is brought;

(b) whether the appeal is from the whole or part only of the award and if so, what part of the award;

(c) the question of law arising out of the award;

(d) concisely the grounds of the appeal; and

(e) whether the appeal is brought with the consent of the parties to the arbitration agreement.

(2) A copy of every affidavit intended to be used in the appeal, and of every consent given in writing (where applicable), must be served with the notice.

Service out of jurisdiction of summons, notice etc. (O. 69, r. 5)

5. (1) Service out of the jurisdiction —

(a) of an originating summons for the appointment of an arbitrator or umpire or for leave to enforce an award; or

(b) of notice of an originating motion to remove an arbitrator or umpire or to remit or set aside an award; or

(c) of any order made on such a summons or motion as aforesaid,

is permissible with the leave of the Court provided that the arbitration to which the summons, motion or order relates is to be, or has been held within the jurisdiction.

(2) An application for the grant of leave under this rule must be supported by an affidavit stating the ground 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.

(3) 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 notice of a writ.

Registration in High Court of foreign awards (O. 69, r. 6)

6. Where an award is made in proceedings on an arbitration in any part of the British Commonwealth or other territory to which the Reciprocal Enforcement of Foreign Judgments Act (Chapter 177) extends, shall in relation to that part of the British Commonwealth have effect, then, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a Court in that place, Order 67 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject, however, to the following modifications —

[S 34/2008]

(a) for references to the country of the original court there shall be substituted references to the place where the award was made; and

(b) the affidavit required by rule 3 of the said Order must state (in addition to the other matters required by that rule) that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

Enforcement (O. 69, r. 7)

7. (1) An application for leave to enforce an award on an arbitration agreement in the same manner as a judgment or order may be made *ex parte* but the Court hearing the application may direct a summons to be issued.

(2) If the Court directs a summons to be issued, the summons must be by originating summons.

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(3) An application for leave must be supported by affidavit —

(a) exhibiting the arbitration agreement and the original award or, in either case, a copy thereof;

(b) stating the name and the usual or last known place of abode or business of the applicant (referred to in this rule as the creditor) and the person against whom it is sought to enforce the award (referred to in this rule as the debtor) respectively; and

(c) as the case may require, stating 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.

(4) 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.

(5) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 3, 4 and 6, shall apply in relation to such an order as they apply in relation to a writ.

(6) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, 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 that period to set aside the order, until after the application is finally disposed of.

(7) The copy of that order served on the debtor must state the effect of paragraph (6).

(8) 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 or principal address of the body corporate; so, however, 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.

ORDER 70

ADMIRALTY PROCEEDINGS

Application and interpretation (O. 70, r. 1)

1. (1) This Order applies to Admiralty 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 this Order —

“action *in rem*” means an Admiralty action *in rem*;

“caveat against arrest” means a caveat entered in the caveat book under rule 5;

“caveat against release and payment” means a caveat entered in the caveat book under rule 13;

“caveat book” means the book kept in the Registry in which caveats issued under this Order are entered;

“limitation action” means an action by shipowners or other persons under the Merchant Shipping Order, 2002 (S 27/2002) for the limitation of the amount of their liability in connection with a ship or other property;
[S 34/2008]

“ship” includes any description of vessel used in navigation.

Issue of writ and entry of appearance (O. 70, r. 2)

2. (1) An action *in rem* must be begun by writ; and the writ must be in Form 155.

(2) Order 6, rule 6, and Order 12 shall apply in relation to such an action.

Service out of jurisdiction of notice of writ (O. 70, r. 3)

3. (1) Subject to the following provisions of this rule, service out of the jurisdiction of a notice of a writ, containing any such claim as is mentioned in Order 11, rule 1(1)(i), (ii) and (iii) is permissible with the leave of the Court if, but only if —

(a) the defendant has his habitual residence or a place of business in Brunei Darussalam; or

(b) the cause of action arose within inland waters of or within the limits of a port in Brunei Darussalam; or

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(c) an action arising out of the same incident or series of incidents is proceeding in the High Court or has been heard and determined in the High Court; or

(d) the defendant has submitted or agreed to submit to the jurisdiction of the High Court.

(2) Order 11, rule 4, shall apply in relation to an application for the grant of leave under this rule as it applies in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(3) Paragraph (1) shall not apply to an action *in rem*.

(4) The proviso to rule 6(1) of Order 6 and Order 11, rule 1, does not apply to a writ by which any Admiralty action is begun or to notice of any such writ.

Warrant of arrest (O. 70, r. 4)

4. (1) After a writ has been issued in an action *in rem* a warrant in Form 156 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 Registry 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 a praecipe in Form 157 requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (6), (7) and (8) so, however, that the Court may, if it thinks fit, allow the warrant to issue 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 Brunei Darussalam, being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action *in rem* in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(6) Every affidavit must state —

- (a) the name, address and occupation of the applicant for the warrant;
- (b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied; and
- (c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

(7) Every affidavit in an action *in rem* brought against a ship must state —

- (a) whether the ship against which the action is brought is the ship in connection with which the claim in action arose;
- (b) that in the belief of the deponent the person who would, be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer, or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the action is brought; and
- (c) the grounds of the deponent's belief.

(8) Every affidavit in an action *in rem* for possession of a ship or for wages must state the nationality of the ship against which the action is brought and that the notice (if any) required by paragraph (4) has been sent.

A copy of any such notice must be annexed to the affidavit.

(9) An affidavit in such an action as is referred to in paragraph (5), must have annexed thereto a certified copy of the bottomry bond, or of the translation thereof.

Caveat against arrest (O. 70, r. 5)

5. (1) A person who desires to prevent the arrest of any property must file in the Registry a praecipe, in Form 158, signed by him or his solicitor undertaking —

- (a) to enter an appearance 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,

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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. 70, r. 6)

6. 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. 70, r. 7)

7. (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 the property has been sold and the proceeds of sale paid into Court, in which case it must be served on the Registrar.

(2) A writ need not be served on the property or Registrar mentioned in paragraph (1) 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 must leave the writ and a copy thereof at the Registry and file therein a praecipe in Form 159; and where he does so the sheriff or his officer shall serve the writ on the property described in the praecipe.

The expenses incurred by the sheriff or his officer in affecting service shall be paid to the sheriff on demand by him.

(4) Where the plaintiff in an action *in rem*, or his solicitor, 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 defendant who has entered an appearance in the action or, if no defendant has entered an appearance therein, on the property or Registrar mentioned in paragraph (1) of this rule.

Committal of solicitor failing to comply with undertaking (O. 70, r. 8)

8. Where the solicitor of a party to an action *in rem* fails to comply with a written undertaking by him to any other party or his solicitor 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. 70, r. 9)

9. (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 sheriff or his officer.

(3) A warrant of arrest shall not be executed until an undertaking to pay on demand the fees of the sheriff and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the sheriff's office or, where the action is proceeding in a district registry, in that registry.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the sheriff.

(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) No instrument except a warrant of arrest shall be served on a weekly holiday.

(8) Within 7 days after the service of a warrant of arrest, the warrant must be filed by the sheriff.

Service on ships etc.: How effected (O. 70, r. 10)

10. (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 —

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(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 warrant) in its place or (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 transhipped, 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.

Applications with respect to property under arrest (O. 70, r. 11)

11. (1) The sheriff 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 to every action against the property.

(2) The sheriff shall send a copy of any order made under paragraph (1) to all the parties to every action against the property to which the order relates.

Release of property under arrest (O. 70 r. 12)

12. (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 only be released under the authority of an instrument of release (in this rule referred to as a release), in Form 160, issued out of the Registry.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (5), be issued with respect to that property.

(3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) 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 (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Before a release is issued the party entitled to issue must —

(a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his solicitor requiring the caveat to be withdrawn; and

(b) file a praecipe in Form 161 requesting issue of a release.

(6) 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 sheriff, either pay the costs, charges and expenses due in connection with the care and custody of the property while under arrest or give a written undertaking to do so.

(7) The Court, on the application of any party who objects to directions given to him by the sheriff under paragraph (6), may vary or revoke the directions.

Caveat against release and payment (O. 70, r. 13)

13. (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 Registry a praecipe in Form 162, and on the filing of 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. 70 r. 14)

14. (1) Every caveat entered in the caveat book is valid for 6 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 163.

(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. 70, r. 15)

15. (1) Bail on behalf of a party to an action *in rem* must be given by bond in Form 164; and the sureties to the bond must enter into the bond before a Commissioner for Oaths, not being a Commissioner, who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given, or before the Registrar.

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(2) Subject to paragraph (3) a surety to a 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 Commissioner or Registrar 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. 70, r. 16)

16. (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 summons supported by an 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 must enter an appearance therein in the Registry within the period specified in the order granting leave; and Order 12, rules 1 to 4, shall, with the necessary modifications, apply in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.

(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. 70, r. 17)

17. (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 entering an appearance in the action, and before any pleading is served lodge in the Registry a document (in these Rules referred to as a preliminary act) containing a statement of the following particulars —

- (i) the names of the ships which came into collision and their ports of registry;
- (ii) the date and time of the collision;
- (iii) the place of the collision;
- (iv) the direction and force of the wind;
- (v) the state of the weather;
- (vi) the state, direction and force of the tidal or other current;
- (vii) 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;
- (viii) the lights (if any) carried by the ship;
- (ix) (a) the distance and bearing of the other ship if and when her echo was first observed by radar;
(b) the distance, bearing and approximate heading of the other ship when first seen;
- (x) what light or combination of lights (if any) of the other ship was first seen;
- (xi) what other lights or combination of lights (if any) of the other ship were subsequently seen before the collision, and when;
- (xii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (vii) 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;
- (xiii) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
- (xiv) what sound signals (if any) were given, and when;
- (xv) what sound signals (if any) were heard from the other ship, and when.

(2) Every preliminary act shall be sealed by the Registrar 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

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closed and a consent signed by each of the parties or his solicitor to the opening of the preliminary acts is filed with the Registrar.

(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 lodge preliminary act: Proceedings against party in default (O. 70, r. 18)

18. (1) Where in such an action as is referred to in rule 17(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons 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.

(2) Where in such an action, being an action *in personam*, a defendant fails to lodge a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these Rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 73, rule 7, accordingly enter judgment against that 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 lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged 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 Registrar 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 be prescribed period shall be construed as references to the period within which by virtue of rule 17(1) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

Special provisions as to pleadings in collision etc. actions (O. 70. r. 19)

19. (1) Notwithstanding anything in Order 18, rule 3, the plaintiff in any such action as is referred to in Order 11, rule 1(i), (ii) and (iii) 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, 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. 70, r. 20)

20. (1) Where a writ is served under rule 7(4) on a party at whose instance a caveat against arrest was issued, then if —

(a) the sum claimed in the action begun by writ does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of the caveat; and

(b) that party or his solicitor 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.

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(3) Where a defendant to an action *in rem* fails to enter an appearance within the time limited for appearing, 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 on the Registrar under rule 7 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 by the Registrar with a statement that he accepts service of the writ must be lodged 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 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 Order 11, rule 1(i), (ii) and (iii).

(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 a reference to the Registrar 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) Orders 13 and 19 (except rule 1) shall not apply to actions *in rem*.

Order for sale of ship: Determination of priority of claims (O. 70, r. 21)

21. (1) Where in an action *in rem* against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains 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 paragraph (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 sale of the ship 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 sheriff shall send for publication in the *Gazette* and such newspaper or publication, if any, as the Court may direct, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(c) must state —

(a) that the ship (naming her) has been sold by order of the High 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

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(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 sheriff must lodge in the Registry a copy of each newspaper or publication in which the notice referred to in paragraph (2)(c) appeared.

(5) The expenses incurred by the sheriff in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (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.

(7) In this rule “Court” means the Judge in person.

Appraisement and sale of property (O. 70, r. 22)

22. (1) A commission for the appraisement 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 165.

(2) Such a commission must, unless the Court otherwise orders, be executed by the sheriff and must be in Form 166.

(3) A commission for appraisement and sale shall not be executed until an undertaking in writing satisfactory to the sheriff to pay the fees and expenses of the sheriff on demand has been lodged in the sheriff’s office.

(4) The sheriff 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 sheriff’s account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decision of a Registrar made in taxation proceedings under Order 59, and rules 34 to 36 of that Order shall apply accordingly with the necessary modifications.

Undertaking as to expenses (O. 70, r. 22A)

22A. (1) Every undertaking under rule 9(3) or 12(6) or 22(3) shall be given in writing to the satisfaction of the sheriff.

(2) Where a party is required by rule 9(3) or 22(3) to give to the sheriff an undertaking to pay any fees or expenses, the sheriff may accept instead of an undertaking the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court or a Judge, may on the application of any party who is dissatisfied with a direction or determination of the sheriff under rule 12(6) or this rule, vary or revoke the direction or determination.

Payment into and out of Court (O. 70, r. 23)

23. (1) Order 22 (except rules 3, 4, 5 and 12) 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 Judge in person.

(3) The Registrar 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 —

(a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in Court in accordance with that decision;

(b) 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;

(c) where in any other case there is no dispute between the parties.

Summons for directions (O. 70, r. 24)

24. (1) Unless a Judge in person otherwise directs, the summons for directions shall be heard by a Judge in person but, subject to that, Order 25 shall apply to the Admiralty actions (other than limitation actions) as it applies to other actions.

On the day on which any party serves on any other party a notice under Order 25, rule 7, he must lodge two copies of the notice in the Registry.

(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, nautical or otherwise.

(3) An order may be made on the summons for directions, or a direction may be given at the trial, limiting the witnesses who may be called at the trial, whether they are expert witnesses or not.

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(4) Any such order or direction as is referred to in paragraphs (2) and (3) including an order made on appeal may be varied or revoked by a subsequent order or direction made or given at or before the trial by the Judge in person or, with the Judge's consent, by the Registrar.

Fixing date for trial etc. (O. 70, r. 25)

25. (1) The Court may at any stage of an action, either on an application made by summons by any party or by order made by virtue of rule 33, fix a date for the trial and vacate or alter any such date.

(2) Not later than 7 days after a date for the trial of the action has been fixed, the action must be set down for trial —

(a) where the date was fixed on an application made under paragraph (1), by the applicant;

(b) where the date was fixed by order made by virtue of rule 33, by the plaintiff.

Where the applicant or plaintiff does not, within the period fixed by this paragraph, set the action down for trial, any other party may set it down or an application may be made 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 make such other order as it thinks just.

(3) Not less than 7 days before the date fixed for the trial, or such other period before that date as may be specified in general direction given by the Chief Justice, the party by whom the action was set down for trial must, unless the Court otherwise orders, file in the Registry —

(a) if trial with one or more assessors has been ordered, a praecipe for his or their attendance; and

(b) three copies or in the case of a trial with one or more assessors, four copies (if with one assessor) and five copies (if with two) of any pleadings, preliminary acts, notices given under rule 17(3) and statements filed under rule 17(4).

(4) If an action which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the Registry of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

(5) Order 21, rule 2(4), Order 33, rule 3, and Order 34 (except rule 6) shall not apply to Admiralty actions.

Stay of proceedings in collision etc. actions until security given (O. 70, r. 26)

26. Where an action *in rem*, being an action to enforce any such claim as is referred to in Order 11, rule 1(i), (ii) and (iii), 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 the security is given to satisfy any judgment given in favour of that party.

Inspection of ship etc. (O. 70, r. 27)

27. Without prejudice to its powers under Order 29, rules 2 and 3, and Order 35, rule 5, 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 movable or immovable, 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.

Shorthand note of oral evidence etc. (O. 70, r. 28)

28. (1) An official shorthand note shall, if the Court so directs be taken of the proceedings in Court of any cause or matter.

The reference in this paragraph to a shorthand note shall be construed as including a reference to a record of the proceedings made by mechanical means.

(2) The Court may appoint official Admiralty shorthand writers who shall be paid such fees as may be fixed by the Court.

Examination of witnesses and other persons (O. 70, r. 29)

29. (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 the cause or matter having been set down for trial or called on for trial.

(2) The power conferred by the said 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

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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 advocate and solicitor, 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 solicitor for the party whose witness was examined, and that solicitor shall file it in the Registry;

(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 counsel 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 17, 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.

(5) Order 39 shall apply in relation to an Admiralty cause or matter.

Issue of writ of subpoena (O. 70, r. 30)

30. Order 38, rule 14, shall apply in relation to the issue of a writ of subpoena *ad testificandum* or subpoena *duces tecum* in an Admiralty cause or matter.

Proceedings for apportionment of salvage (O. 70, r. 31)

31. (1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be begun by originating motion.

(2) The notice of such motion, together with the affidavits in support thereof, must be filed in the Registry 7 days at least 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.

(3) On the hearing of the motion the Judge may exercise any of the jurisdiction conferred by the Merchant Shipping Order, 2002 (S 27/2002).

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Filing and service of notice of motion (O. 70, r. 32)

32. (1) Notice of a motion in any action, together with the affidavits (if any) in support thereof, must be filed in the Registry 3 days at least before the hearing of the motion unless the Court gives leave to the contrary.

(2) A copy of the notice of motion and of the affidavits (if any) in support thereof must be served on all the other parties to the proceedings.

Agreement between solicitors may be made order of Court (O. 70, r. 33)

33. Any agreement in writing between the solicitors of the parties to a cause or matter, dated and signed by these solicitors, may, if the Registrar thinks it reasonable and such as the Judge would under the circumstances allow, be filed in the Registry, and the agreement shall thereupon become an order of Court and have the same effect as if such order had been made by the Judge in person.

Originating summons: Procedure (O. 70, r. 34)

34. (1) Order 12 shall apply in relation to an originating summons in Admiralty proceedings to which appearance is required to be entered.

(2) Order 28, rule 2, shall apply in relation to Admiralty proceedings begun by originating summons.

(3) Rule 25 (except paragraph (3)) shall, with any necessary modifications, apply in relation to an Admiralty cause or matter begun by originating summons, and Order 28, rule 9, shall not apply to such a cause or matter.

Limitation action: Parties (O. 70, r. 35)

35. (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 other 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.

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(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 36, 37 and 38 “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: Summons for decree or directions (O. 70, r. 36)

36. (1) Within 7 days after the entry of appearance by one of the defendants named by their names in the writ, or, if none of them enters an appearance, within 7 days after the time limited for appearing, the plaintiff, without serving a statement of claim, must take out a summons returnable in Chambers before the Registrar 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 clear days before the hearing of the summons, be served on any defendant who has entered an appearance.

(5) On the hearing of the summons the Registrar, if it appears to him that it is not disputed 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 Registrar, 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 Registrar 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.

(8) Any defendant who, after the Registrar 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 Registry, as the case may be, and serve a copy on the plaintiff and on any other defendant who has entered an appearance.

(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 Registrar 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: Payment into Court (O. 70, r. 36A)

36A. (1) The plaintiff may constitute a limitation fund by paying into Court the sterling equivalent of the number of special drawing rights to which he claims to be entitled to limit his liability under any Merchant Shipping law, together with interest thereon from the date of the occurrence giving rise to his liability to the date of payment into Court.

(2) Where the plaintiff does not know the sterling 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 sterling equivalent of a special drawing right as fixed by the International Monetary Fund, and in the event of the sterling 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).

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(3) An application under paragraph (2)(b) may be made *ex parte* and must be supported by evidence proving the sterling equivalent of the appropriate number of special drawing rights on the date of payment into Court.

(4) 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 paragraph (2)(b).

(5) Order 22, rules 10 and 11 shall apply to a limitation action as they apply to an action for a debt or damages, and rule 23(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: Proceedings under decree (O. 70, r. 37)

37. (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 entered an appearance, any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) —

(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 (whether made by the Registrar or on the trial of the action) —

(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 enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which rule 38 applies, take out a summons if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2)(a) shall, unless for special reasons the Registrar or Judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers specified in the decree, identifying the action, the casualty and the relation of 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 amounts fixed thereby as the limits of the plaintiff's

liability and the time allowed 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 paragraph (2)(b) file in the Registry a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.

(4) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the Registrar or 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 appearance may be entered, claim filed or summons taken out to set aside the decree except with the leave of the Registrar or, on an appeal, of the Judge.

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by a Registrar or on the trial of the action) may make any such provisions as is authorised by the Merchant Shipping Order, 2002 (S 27/2002).

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Limitation action: Proceedings to set aside decree (O. 70, r. 38)

38. (1) Where a decree limiting the plaintiff's liability (whether made by a Registrar or on the trial of the action) fixes a time in accordance with rule 37(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 entered an appearance,

may, within that time, after entering an appearance, take out a summons returnable in Chambers before the Registrar 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 entered an appearance.

(4) On the hearing of the summons the Registrar, 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

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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.

References to Registrar (O. 70, r. 39)

39. (1) Any party (hereafter in this rule, referred to as the claimant) making a claim which is referred to the Registrar for decision must, within 2 months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant's claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims, but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by summons for directions as to the proceedings on the reference, and the Registrar shall give such directions, if any, as he thinks fit including, without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant's claim.

(3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order on an application by summons made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than 7 days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the Registry a praecipe requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for the hearing of the reference the claimant must file —

(a) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item; and

(b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed,

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

(7) If the claimant fails to comply with paragraph (1) or (6)(b), the Court may, on the application of any other party to the cause or matter, dismiss the claim.

Hearing of reference (O. 70, r. 40)

40. (1) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(2) At or before the hearing of a reference, the Registrar may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may, on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon, and the evidence may, on the application of either party, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by the official shorthand writer, if any, and in such a transcript of the shorthand writer's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the Registrar's decision.

(4) When the hearing of the reference has been concluded, the Registrar shall —

(a) reduce to writing his decision on the question arising in the reference (including any order as to costs) and cause it to be filed;

(b) cause to be filed either with his decision or subsequently such statement (if any) of the grounds of the decision as he thinks fit; and

(c) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given by the Registrar that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the Registrar to file such a statement.

Objection to decision on reference (O. 70 r. 41)

41. (1) Any party to a reference to the Registrar may, by motion in objection, apply to a Judge in Court to set aside or vary the decision of the Registrar on the reference, but notice of the motion, specifying the points of objection to the decision, must be filed within 14 days after the date on which notice of the filing of the decision was sent to that party under rule 40(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within 14 days after the date on which that notice was sent.

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(2) The decision of the Registrar is deemed to be given on the date on which it is filed, but unless he or the Judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing notice of a motion in objection thereto, or while such a motion is pending or remains undisposed of.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard, by may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 40(4).

Drawing up and entry of judgments and orders (O. 70, r. 42)

42. Every judgment given or order made in an Admiralty cause or matter shall be drawn up and shall be entered by an officer of the Registry in the book kept for the purpose.

Inspection of documents filed in Registry (O. 70, r. 43)

43. (1) Order 60, rule 4, shall apply in relation to documents filed in the Registry.

(2) For the purpose of the said rule 4, as applied by paragraph (1), a decree made in Chambers in a limitation action is deemed to have been made in Court.

ORDER 71

(No Order)

ORDER 72

CONTENTIOUS PROBATE PROCEEDINGS**Application and interpretation (O. 72, 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.

(3) In this Order “will” includes a codicil.

Requirements in connection with issue of writ (O. 72, r. 2)

2. (1) A probate action must be begun by writ, and the writ must be issued out of the Registry.

(2) Before a writ beginning a probate action is issued it must be indorsed with 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.

(3) A writ beginning an action for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person shall not be issued unless a citation under rule 7 has been issued or the probate or letters of administration, as the case may be, has or have been lodged in the Registry.

Service of writ out of jurisdiction (O. 72, r. 3)

3. (1) Subject to paragraph (2), service out of the jurisdiction of notice of a writ, by which a probate action is begun is permissible with the leave of the Court.

(2) Order 11, rules 3 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.

Intervener in probate action (O. 72, r. 4)

4. (1) A person not a party to a probate action may apply to the Court for leave to intervene in a probate action.

(2) An application under this rule must be made by summons supported by an affidavit showing the interest of the applicant in the estate of the deceased.

(3) An applicant who obtains leave to intervene in a probate action shall not be entitled to be heard in the action unless he enters an appearance therein.

(4) Where the Court grants leave under this rule, it may give such directions as to the service of pleadings, the filing of an affidavit of testamentary scripts or other matters as it thinks necessary.

Citation to appear in proceedings (O. 72, r. 5)

5. (1) On the application of the plaintiff, or of any other party who has pleaded in a probate action, a citation may be issued against any person not a party to the action who has an adverse interest to the applicant notifying him that if he does not enter an appearance in the action judgment may be given therein without further notice to him.

(2) Where a person on whom a citation under this rule is served fails to enter an appearance in the action, the party on whose application the citation was issued shall not

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be entitled to be heard at the trial of the action without the leave of the Court unless he has filed an affidavit proving due service of the citation on that person.

Entry of appearance (O. 72, r. 6)

6. (1) The office for entry of appearance in a probate action is in all cases the Registry and Order 12, in its application to such an action, shall have effect accordingly.

(2) Without prejudice to paragraph (1), Order 12, rules 1, 2 and 3, shall apply to the entry of appearance by a person authorised to intervene in a probate action, and by a person cited under rule 5, as if —

(a) that person were a defendant; and

(b) the parties to the action (in the case of an intervener) or the party at whose instance the citation was issued (in the case of a person cited) were the plaintiff.

Citation to bring in grant (O. 72, r. 7)

7. In an action for the revocation of the grant of probate of the will, or letters of administration of the estate of a deceased person, a citation against the person to whom the probate or letters of administration, as the case may be, was or were granted requiring him to bring into and leave at the Registry the probate or letters of administration, as the case may be, may be issued on the application of the plaintiff.

Citations (O. 72, r. 8)

8. (1) A citation under rule 5 or 7 must be issued out of the Registry and must be settled by the Court before it is issued.

(2) Before such a citation is issued an affidavit verifying the statements of fact to be made in the citation must be sworn by the person applying for it to be issued:

Provided that the Court may in special circumstances allow the affidavit to be sworn by that person's solicitor.

(3) Issue of a citation takes place upon its being sealed by an officer of the Registry.

(4) Without prejudice to Order 62, rule 5, a citation under rule 5 or 7 must be served personally on the person cited.

(5) Service out of the jurisdiction of a citation under rule 5 or 7 is permissible but, in the case of a citation under rule 7, only with the leave of the Court.

(6) Order 11, rule 4, shall apply in relation to an application for the grant of leave under paragraph (5) as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(7) An order granting leave to serve a citation under rule 7 out of the jurisdiction must limit a time within which the person to be served with the citation must comply with it.

(8) Order 11, rules 5, 6 and 8, shall apply in relation to a citation under rule 7 as they apply in relation to notice of a writ.

Affidavit of testamentary script (O. 72, r. 9)

9. (1) Unless the Court otherwise directs, the plaintiff and every defendant who has entered an appearance 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; and any such script which is in the possession or under the control of the deponent must be annexed to his affidavit.

(2) An affidavit required by this rule (together with any testamentary script) must be filed within 14 days after the entry of appearance by a defendant to the action or, if no defendant enters an appearance therein and the Court does not otherwise direct, before the action is set down 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 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 under this rule by any other party to the action, or any testamentary script annexed thereto, 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 document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

[Subsidiary]**Default of appearance (O. 72, r. 10)**

10. (1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to enter an appearance, the plaintiff, upon filing an affidavit proving due service of the writ, or notice of the writ, on that defendant may, after the time limited for appearing, proceed with the action as if that defendant had entered an appearance.

(3) Where the defendant, or all the defendants, to a probate action, fails or fail to enter an appearance, and none of the persons (if any) cited under rule 5 has entered an appearance, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for appearing by the defendant apply to the Court for leave to set down the action for trial.

(4) Before making an application for the grant of leave under paragraph (3) the plaintiff must file an affidavit proving due service of writ, or notice of the writ, on the defendant and of the citation, if any.

(5) Where the Court grants leave under paragraph (3), it may order the plaintiff to file an affidavit of testamentary scripts under rule 9.

Service of statement of claim (O. 72, r. 11)

11. The plaintiff in a probate action must, unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who enters an appearance in the action and must do so before the expiration of 6 weeks after entry of appearance by that defendant or of 8 days after the filing by him of an affidavit under rule 9, whichever is the later.

Counterclaim (O. 72, r. 12)

12. Notwithstanding anything in Order 15, 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.

Contents of pleadings (O. 72, r. 13)

13. (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 —

(a) that the will was not dully 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. 72, r. 14)

14. (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, 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 leave to set down the action for trial.

Discontinuance (O. 72, r. 15)

15. (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 entered an appearance therein, order the action to be discontinued 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 summons or by notice under Order 25, rule 7.

Compromise of action (O. 72, r. 16)

16. Where whether before or after service of the defence in a probate action the parties to the action agree to a compromise, the action may, with the leave of the Court, be set down for trial.

[Subsidiary]**Case for motion (O. 72, r. 17)**

17. (1) Where an application in a probate cause or matter is to be made to the Court by motion, the applicant must —

(a) not less than 7 clear days before the day on which the motion is to be heard, file a case for motion in the Registry, together with an affidavit verifying the statements of fact made in the case; and

(b) not less than 5 clear days before that day, serve a copy of the case and of every affidavit in support of the motion on any person entitled to be heard in opposition to the motion.

(2) A case for motion must —

(a) set out the proceedings already had in the cause or matter with the dates thereof;

(b) set out the relevant facts in a summary form; and

(c) state the relief or remedy sought by the motion.

Application to Court by summons (O. 72, r. 18)

18. Except where these Rules otherwise provide, any application to the Court in a probate cause or matter may be made by summons.

Form of judgments and orders (O. 72, r. 19)

19. (1) Every judgment of the Court in a probate cause or matter shall be signed by the Registrar.

(2) Every order made in such a cause or matter shall be entered by an officer of the Registrar in a book kept for the purpose.

Administration *Pendente Lite* (O. 72, r. 20)

20. (1) An application under the Probate and Administration Act (Chapter 11) for the grant of administration may be made to the Registrar by petition.

(2) An administrator to whom a grant is made under the said Act must at the time when he begins proceedings for taxation of his costs, or at such other time as the Registrar may direct, produce at the Registry an account (verified by affidavit) of the moneys and other property received or paid or otherwise dealt with by him in his capacity as such an administrator.

(3) Unless the Court otherwise directs, the account shall be referred to the Registrar for examination and Order 59, rules 21, 22 and 25 shall with the necessary modifications, apply in relation to proceedings for the examination of the administrator's costs.

(4) Except where the remuneration of the administrator has been fixed by a Judge, the Registrar shall, on the completion of the examination of the administrator's account, and taxation of his costs, assess and provide for the administrator's remuneration.

ORDER 73

DISABILITY

Interpretation (O. 73, r. 1)

1. In this Order —

“Act” means any law in force governing mental disorders;

“patient” means a mentally disordered person within the meaning of the Act;

“person under disability” means a person who is an infant or a patient.

Person under disability must sue etc. by next friend or guardian *ad litem* (O. 73, 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 a solicitor.

Appointment of next friend or guardian *ad litem* (O. 73, r. 3)

3. (1) This rule shall not apply in relation to a probate action.

(2) Except as provided by paragraph (4) or (5) or by rule 6, an order appointing a person next friend or guardian *ad litem* of a person under disability is not necessary.

[Subsidiary]

(3) Where a person is authorised under the Act 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 (4) or (5) 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.

(4) 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.

(5) 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.

(6) 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 of a person under disability;

(b) an appearance shall not be entered 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 (7) have been filed in the Registry.

(7) The documents referred to in paragraph (6) are the following —

(a) a written consent in Form 189 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 such friend or guardian of the person under disability, being a patient, is authorised under the Act to conduct the proceedings the cause or matter in question in the name of the patient or on his behalf, an office copy, sealed with the seal of the Court, of the order or other authorisation made or given under the Act by virtue of which he is so authorised; and

(c) except where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised as mentioned in paragraph (b), a certificate in Form 190 made by the solicitor 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 an infant 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.

Probate action: Appointment of next friend or guardian *ad litem* (O. 73, r. 4)

4. (1) This rule applies in relation to a probate action to which a person under disability is a party or in which he intervenes or is cited under Order 72, rule 5.

(2) Where the person under disability is a patient and a person is authorised under the Act to conduct legal proceedings in the name of the patient or on his behalf, the person so authorised shall be entitled to be next friend of the patient in any probate action to which his authority extends.

(3) Where the person under disability is an infant who is not a patient and he has a statutory guardian or a testamentary guardian who is qualified to be his next friend by virtue of paragraph (8), that guardian shall be entitled to be next friend of the infant in a probate action.

(4) Where the person under disability is an infant who has attained the age of 16 years and is not a patient, and there is no person qualified by virtue of paragraph (3) to be his next friend, the infant may appoint as his next friend a person who is qualified to be such friend by virtue of paragraph (8) and who is one of his next of kin or, where the infant is a married woman, one of her next of kin or her husband.

(5) Where an infant appoints a person under paragraph (4) to be his next friend in a probate action, the person so appointed may be next friend of any other infant in that action provided that the other infant is under 16 years of age, is not a patient and his interest in the action is the same as that of the infant making the appointment.

(6) Where there is no person qualified by virtue of paragraph (2) or (3), as the case may be, to be next friend of a person under disability in a probate action and that person is either not entitled under paragraph (4) to appoint a person to be his next friend or, being so entitled, makes no appointment thereunder, the next friend of the person under disability in the action shall be such one of his next of kin or other person as the Court may appoint.

[Subsidiary]

(7) An application under paragraph (6) for the appointment of a next friend of a person under disability may be made *ex parte* by summons and must be supported by an affidavit showing —

(a) that there is no person entitled to be such friend by virtue of paragraph (2) or (3), or appointed as such under paragraph (4), as the circumstances require; and

(b) if such be the case, that the person proposed as next friend is a next of kin of the person under disability.

(c) that the person proposed as next friend is willing and a proper person to act as such and has no interest in the action adverse to that of the person under disability.

(8) A person is qualified to be next friend of a person under disability if he is competent and willing to act as such and has no interest in the action in question adverse to that of the person under disability.

(9) Paragraphs (2) to (8) shall apply for the purpose of determining who shall be guardian *ad litem* of a person under disability in a probate action as they apply for the purpose of determining who shall be next friend of such a person and references in those paragraphs to a next friend shall be construed accordingly:

Provided that a person authorised as mentioned in paragraph (2) shall not be entitled by virtue of that paragraph to be guardian *ad litem* of a patient in a probate action if in a case to which rule 6 applies some other person is appointed by the Court under that rule to be guardian *ad litem* of the patient in that action.

Probate action: Further provisions (O. 73, r. 5)

5. (1) Where a party to a probate action is a person under disability, then, unless the next friend or guardian *ad litem*, as the case may be, of that person has been appointed such friend or guardian by the Court, the writ beginning the action (where that person is a plaintiff) shall not be issued, and an appearance shall not be entered for him in the action (where he is a defendant, intervener, or person cited under Order 72, rule 5) without the consent of the Registrar.

(2) On the making of an application for a consent under paragraph (1) in relation to an infant who is not a patient, there must be produced to the Registrar —

(a) where the next friend or guardian *ad litem* of the infant is his statutory guardian or testamentary guardian, an affidavit deposing to the guardianship and age of the infant and showing that the guardian has no interest in the action adverse to that of the infant;

(b) where the next friend or guardian *ad litem* of the infant is a person appointed under rule 4(4), or under rule 4(4) as applied by rule 4(9) —

- (i) the appointment; and
- (ii) a written consent to act as next friend or guardian *ad litem*, as the case may be, given by the person so appointed; and
- (iii) an affidavit deposing to the age of the infant and containing the evidence which would be required by rule 4(7), or by rule 4(7) as so applied, to be contained in an affidavit in support of an application for the appointment of that person as next friend or guardian *ad litem*, as the case may be, by the Court.

(3) On the making of an application for consent under paragraph (1) in relation to a patient, there must be produced to the Registrar an office copy, sealed with the seal of the Court, of the order or other authorisation made or given under the Act by virtue of which the next friend or guardian *ad litem* of the patient, as the case may be, is authorised to conduct legal proceedings in the probate action in question in the name of the patient or on his behalf.

Appointment of guardian where person under disability does not appear (O. 73, r. 6)

6. (1) Where —

(a) in an action against a person under disability begun by writ, or by originating summons to which an appearance is required to be entered, no appearance is entered 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 appearance is entered 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 appearance is entered for that person to that 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 appearing and before proceeding further with the third party proceedings.

[Subsidiary]

(3) Where in any proceedings against a person under disability begun by petition or motion, or by originating summons to which no appearance need be entered, that person does not appear by a guardian *ad litem*, at the hearing of the petition, motion, or summons, 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 of 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 appearance is entered 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 paragraph (5)(b).

Application to discharge or vary certain orders (O. 73, 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. 73, 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. 73, 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. 73, 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. 73, 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) An appearance need be entered to an originating summons under this rule.

(3) In this rule "settlement" includes a compromise.

Control of money recovered by person under disability (O. 73, 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

[Subsidiary]

(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.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into Court and invested or otherwise dealt with.

(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 moneys 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 solicitor 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, 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 disability, and a claim made by or on behalf of such a person in an action by any other person for relief under the Merchant Shipping Order, 2002 (S 27/2002) as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian *ad litem* respectively

[S 34/2008]

Apportionment by Court (O. 73, r. 13)

13. (1) Where a single sum of money is paid into Court under Order 22, rule 1, in satisfaction of causes of action 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 12 (if that rule applies) or when authorising its payment out of Court.

(2) Where, in an action in which a claim 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, it shall be apportioned between those person 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.

Service of certain documents on person under disability (O. 73, r. 14)

14. (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 16(3) and Order 26, rule 7(3) the document must be served —

(a) in the case of an infant who is not also a patient on his father or guardian or, if he has no father 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 the Act 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 is deemed to be duly served on the person under disability.

(4) A judgment of 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.

ORDER 74

PARTNERS

Actions by and against firms within jurisdiction (O. 74, r. 1)

1. Subject to the provisions of any written law, 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.

[Subsidiary]**Disclosure of partners' names (O. 74, 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 solicitor 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 in Form 191 the plaintiffs or their solicitor 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. 74, 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 is 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 in Form 192 stating whether he is served as a partner or as a person having the control or management of the partnership business or both as a 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.

Entry of appearance in action against firm (O. 74, r. 4)

4. (1) Where persons are sued as partners in the name of their firm, appearance may not be entered 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 enter an appearance in the action and state in the memorandum of appearance 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 appearance entered in accordance with this paragraph shall, unless and until it is set aside, be treated as an appearance for the defendant firm.

(3) Where an appearance has been entered 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 on 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 entered an appearance 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 enter an appearance in the action unless he is a member of the firm sued.

Enforcing judgment or order against firm (O. 74, 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.

[Subsidiary]

(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 paragraph, issue against any person who —

- (a) entered an appearance in the action as a partner; or
- (b) having been served as a partner with the writ of summons, failed to enter an appearance 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 of summons was issued unless he —

- (a) entered an appearance 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 notice of the writ, as a partner,

and, except as provided by paragraph (1) and by the foregoing provisions of 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 in action between partners etc. (O. 74, 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. 74, 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 1 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. 74, 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. 74, 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. 74, r. 10)

10. (1) Every application to the Court by a judgment creditor of a partner of an order which authorises the High Court or a Judge thereof 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.

[Subsidiary]

(2) The Registrar may exercise the powers conferred on a Judge under this rule.

(3) 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.

(4) 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.

(5) 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.

ORDER 75

DEFAMATION ACTIONS

Application (O. 75, r. 1)

1. These Rules apply to actions for libel or slander subject to the following rules of this Order.

Indorsement of claim in libel action (O. 75, 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.

Obligation to give particulars (O. 75, 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 respect of such sense.

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far 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.

(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.

(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.

Provisions as to payment into Court (O. 75, r. 4)

4. 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 the opinion that there was reasonable ground for him to proceed with the action against the other defendant.

Statement in open Court (O. 75, r. 5)

5. (1) Where a party accepts money paid into Court in satisfaction of a cause of action for libel or slander, the plaintiff or defendant, as the case may be, 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 which is settled before trial desires to make a statement in open Court, an application must be made to the Court 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.

[Subsidiary]**Interrogatories not allowed in certain cases (O. 75, 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.

Evidence in mitigation of damages (O. 75, r. 7)

7. In an action for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

ORDER 76

ADMINISTRATION AND SIMILAR ACTIONS

Interpretation (O. 76, 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.

Determination of questions etc. without administration (O. 76, 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.

(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 or trustee;

(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.

Parties (O. 76, 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 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, 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) 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,

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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. 76, 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 administrations (O. 76, 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 or 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 in person.

Conduct of sale of trust property (O. 76, 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.

ORDER 77

ACTIONS FOR SPECIFIC PERFORMANCE ETC. SUMMARY JUDGMENT

Application by plaintiff for summary judgment (O. 77, 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;

(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 entered an appearance in the action.

Manner in which application under rule 1 must be made (O. 77, 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.

(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. 77, r. 3)

3. Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfied 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. 77, 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.

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(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 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. 77, 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 action, and, if the Court so directs, 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 modification apply as if the application under rule 1 were a summons for directions.

Costs (O. 77, 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 a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 59, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

Setting aside judgment (O. 77, 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.

ORDER 78

DEBENTURE HOLDERS' ACTION: RECEIVER'S REGISTER

Receiver's register (O. 78, r. 1)

1. Every receiver appointed by the Court in an action to enforce registered debenture or registered debenture stock shall, if so directed by the Court, keep a register of

transfers of, and other transmissions of title to, such debenture or stock (in this Order referred to as the receiver's register).

Registration of transfers etc. (O. 78, r. 2)

2. (1) Where a receiver is required by rule 1 to keep a receiver's register, then, on the application of any person entitled to any debentures or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address a notice stating —

(a) that an application for the registration of the transfer has been made; and

(b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period so specified has elapsed.

The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the action and to the order appointing him receiver.

Application for rectification of receiver's register (O. 78, r. 3)

3. (1) Any person aggrieved by anything done or omission made by a receiver under rule 2 may apply to the Court for rectification of the receiver's register, the application to be made by summons in the action in which the receiver was appointed.

(2) The summons shall in the first instance be served only on the plaintiff or other party having the conduct of the action but the Court may direct the summons or notice of the application to be served on any other person appearing to be interested.

(3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name

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entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

Receiver's register evidence of transfers etc. (O. 78, r. 4)

4. Any entry made in the receiver's register, if verified by an affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in the action in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the action certifying the holders of the debentures or debenture stock certificates.

Proof of title of holder of bearer debenture etc. (O. 78, r. 5)

5. (1) This rule applies in relation to an action to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.

(2) Notwithstanding that judgment has been given in the action and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall (in the absence of notice of any defect in the title) be sufficiently proved by the production of the debenture or debenture stock certificates, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person giving his name and address who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in the chambers of the Judge, the solicitor of the plaintiff in the action must cause to be indorsed thereon a notice stating —

(a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in the chambers of the Judge as the holder of the debenture or debenture stock certificate, as the case may be; and

(b) that person will on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2); and

(c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.

(4) The solicitor of the plaintiff in the action must preserve any certificate of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by affidavit.

Requirements in connection with payments (O. 78, r. 6)

6. (1) Where in an action to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, the Treasury shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the solicitor of the plaintiff in the action or to such other person as the Court may direct and that solicitor or person must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Treasury.

ORDER 79

CHARGE ACTIONS

Application and interpretation (O. 79, r. 1)

1. (1) This Order applies to any action (whether begun by writ or originating summons) by a chargee or chargor or by any person having the right to foreclose or redeem any charge, being an action in which there is a claim for any of the following reliefs namely —

(a) payment of moneys secured by the charge;

(b) sale of the charged property;

(c) foreclosure;

(d) delivery of possession (whether before or after foreclosure or without foreclosure) to the chargee by the chargor or by any other person who is or is alleged to be in possession of the property;

(e) redemption;

(f) reconveyance of the property or its release from the security;

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(g) delivery of possession by the chargee.

(2) In this Order “charge” includes a legal and an equitable charge.

(3) An action to which this Order applies is referred to in this Order as a charge action.

(4) These Rules apply to charge actions subject to the following provisions by this Order.

Claims for possession: Non-appearance by defendant (O. 79, r. 2)

2. (1) Where in a charge action begun by originating summons, being an action in which the plaintiff is the chargee and claims delivery of possession or payments of moneys secured by the charge or both, any defendant fails to enter an appearance, the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed to any such defendant.

This rule shall not be taken affecting Order 28, rule 3, or rule 5(2), in so far as it requires any document to be served on, or notice given to, a defendant who has entered an appearance in the action.

(2) Not less than 4 clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the affidavit in support of the summons.

(3) Where the plaintiff claims delivery of possession there must be indorsed on the outside fold of the copy of the affidavit served on the defendant a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the charged property and for such other relief (if any) claimed by the originating summons as the plaintiff intends to apply for at the hearing.

(4) Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.

A copy of any affidavit served under this paragraph must be indorsed in accordance with paragraph (3).

(5) Service under paragraph (2) or (4), and the manner in which it was effected, may be proved by a certificate signed by the plaintiff, if he sues in person, and otherwise by his solicitor.

The certificate may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.

(6) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (2) or (4).

(7) Where the plaintiff gives notice to the defendant under Order 3, rule 5, of his intention to proceed, service of the notice, and the manner in which it was effected, may be proved by a certificate signed as mentioned in paragraph (5).

Action for possession or payment (O. 79, r. 3)

3. (1) The affidavit in support of the originating summons by which an action to which this rule applies is begun must comply with the following provisions of this rule.

This rule applies to a charge action begun by originating summons in which the plaintiff is the chargee and claims delivery of possession or payment of moneys secured by the charge or both.

(2) The affidavit must exhibit a true copy of the charge and the original charge or, in the case of a registered charge, the charge certificate must be produced at the hearing of the summons.

(3) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class otherwise directs, the state of the account between the chargor and chargee with particulars of —

(a) the amount of the advance;

(b) the amount of the repayments;

(c) the amount of any interest or instalments in arrear at the date of issue of the originating summons and at the date of the affidavit; and

(d) the amount remaining due under the charge.

(4) Where the plaintiff claims delivery of possession, the affidavit must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the charged property.

(5) If the charge creates a tenancy other than a tenancy at will between the chargor and chargee, the affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.

(6) Where the plaintiff claims payment of moneys secured by the charge, the affidavit must prove that the money is due and payable and give the particulars mentioned in paragraph (3).

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(7) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.

Action by writ: Judgment in default (O. 79, r. 4)

4. (1) Notwithstanding anything in Order 13 or 19, in a charge action begun by writ judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding anything in Order 62, rule 10, be served on the defendant.

(3) Where a summons for leave under this rule is issued, rule 2(2) to (7) shall apply in relation to the action subject to the modification that for references therein to the originating summons, and for the reference in paragraph (2) to the notice of appointment, there shall be substituted references to the summons.

(4) Where a summons for leave under this rule is issued in an action to which rule 3 would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that rule.

Foreclosure in redemption action (O. 79, r. 5)

5. Where foreclosure has taken place by reason of the failure of the plaintiff in a charge action for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply by motion for an order for delivery to him of possession of the charged property, and the Court may make such order thereon as it thinks fit.

ORDER 80

PROCEEDINGS RELATING TO INFANTS

Applications under guardianship legislation (O. 80, r. 1)

1. Where there is pending any action or other proceeding by reason of which an infant is a ward of court, any application under any law in force with respect of the guardianship of infants, with respect to that infant may be made by summons in the proceeding, except in that case any such application must be made by originating summons.

Defendants to summons (O. 80, r. 2).

2. (1) Where the infant with respect to whom an application under the Act is made is not the plaintiff, he shall not, unless the Court otherwise directs, be made a defendant to the summons or, if the application is made by ordinary summons, be served with the

summons, but, subject to paragraph (2), any other person appearing to be interested in, or affected by the application shall be made a defendant or served with the summons, as the case may be.

(2) The Court may dispense with service of the summons (whether originating or ordinary) on any person and may order it to be served on any person not originally served.

Applications as to guardianship maintenance etc. (O. 80, r. 3)

3. (1) Applications as to the guardianship, maintenance or advancement of infants may be disposed of in Chambers.

(2) A guardian's account must be verified and passed in the same manner as that provided by Order 30 in relation to a receiver's account or in such other manner as the Court may direct.

ORDER 81

BILLS OF SALE ACT

Rectification of register (O. 81, r. 1)

1. (1) Every application to the Court under the Bills of Sale Act (Chapter 70) (hereafter in this Order referred to as the Act) for an order —

(a) that any omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by that Act be rectified by extending the time for such registration; or

(b) that any omission or mis-statement of the name, residence or occupation of any person be rectified by the insertion in the register of his true name, residence or occupation,

must be made by summons *ex parte* to the Registrar.

(2) Every application for such an order as is described in paragraph (1) shall be supported by an affidavit setting out particulars of the bill of sale and of the omission or mis-statement in question and stating the grounds on which the application is made.

Entry of satisfaction (O. 81, r. 2)

2. (1) Every application under the Act to the Registrar for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale must —

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(a) if a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale can be obtained, be made *ex parte*;

(b) in all other cases, be made by originating summons.

(2) An *ex parte* application under paragraph (1)(a) must be supported by —

(a) particulars of the consent referred to in that paragraph; and

(b) an affidavit by a witness who attested the consent verifying the signature on it.

(3) An originating summons under paragraph (1)(b) must be served on the person entitled to the benefit of the bill of sale, and must be supported by evidence that the debt (if any) for which the bill of sale was made has been satisfied or discharged.

(4) No appearance need be entered to an originating summons under paragraph (1)(b).

Restraining removal on sale of goods seized (O. 81, r. 3)

3. No appearance need be entered to an originating summons by which an application to the Court under the Act must be made.

Search of register (O. 81, r. 4)

4. The Registrar shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the register of bills of sale and issue a certificate of the result of the search.

ORDER 82

(No Order)

ORDER 83

COMPANIES ACT (CHAPTER 39) AND INSOLVENCY ORDER, 2016 (S 1/2016)
[S 1/2016]

Interpretation (O. 83, r. 1)

1. In this Order “Act” means the Companies Act (Chapter 39).

Applications to be made by originating summons (O. 83, r. 2)

2. (1) Unless otherwise provided in the Act or the Insolvency Order, 2016 (S 1/2016), and except in the case of the applications mentioned in rules 3, 4 and 5, every application under the Act or the Insolvency Order, 2016 (S 1/2016) must, in accordance with Order 5, rule 3, be made by originating summons.

[S 1/2016]

(2) No appearance need be entered to an originating summons under this rule unless the application made by the summons is —

(a) an application under the Act or Insolvency Order, 2016 (S 1/2016) for an order where an order approving the compromise or arrangement to which the application relates has previously been made; or

[S 1/2016]

(b) an application under the Insolvency Order, 2016 (S 1/2016) for an order directing a receiver or manager of a company to make good any such default; or

[S 1/2016]

(c) an application under the Act for an order directing a company and any officer thereof to make good any such default as is mentioned in that section.

(3) An application under the Act or Insolvency Order, 2016 (S 1/2016) may be made by *ex parte* originating summons.

[S 1/2016]

Applications to be made by originating summons or motion (O. 83, r. 3)

3. (1) An application under the Act for rectification of the register of members of a company may be made by originating summons or originating motion.

(2) No appearance need be entered to an originating summons under this rule.

Applications to be made by originating motion (O. 83, r. 4)

4. The following applications under the Act or Insolvency Order, 2016 (S 1/2016) must be made by originating motion, namely, applications —

[S 1/2016]

(a) under the Act for an order that a company be relieved from the consequences of default in complying with conditions constituting the company a private company;

(b) under the Act for an order validating the issue or allotment of shares improperly issued or confirming the terms of issue or allotment thereof;

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(c) under the Act for an order to confirm, set aside or vary a direction of the holders of the interests;

(d) under the Insolvency Order, 2016 (S 1/2016) for an order to confirm a winding up resolution;

[S 1/2016]

(e) under the Act or Insolvency Order, 2016 (S 1/2016) for an inquiry into any such case as is mentioned therein;

[S 1/2016]

(f) under the Insolvency Order, 2016 (S 1/2016) for an order declaring a dissolution of a company which has not been wound up to have been void.

[S 1/2016]

Applications to be made by petition (O. 83, r. 5)

5. The following applications under the Act or Insolvency Order, 2016 (S 1/2016) must be made by petition, namely, applications —

[S 1/2016]

(a) under the Act to cancel the alteration of a company's objects;

(b) under the Act to confirm the issue by a company of shares at a discount;

(c) under the Act to confirm a reduction of the share premium account of a company;

(d) under the Act to confirm a reduction of the capital redemption reserve fund of a company;

(e) under the Act to confirm a reduction of the share capital of a company;

(f) under the Act to cancel any variation or abrogation of the rights attached to any class of shares in a company;

(g) under the Act or Insolvency Order, 2016 (S 1/2016) to approve a compromise or arrangement between a company and its members or any class of them;

[S 1/2016]

(h) under the Act for relief in cases of oppression;

(i) under the Act for an order restoring the name of a company to the Register;

(j) under the Act for relief from liability of an officer of a company or any other person to whom this section applies.

Entitlement of proceedings (O. 83, r. 6)

6. (1) Every originating summons, notice of originating motion and petition to which this Order relates 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 Act or Insolvency Order, 2016 (S 1/2016).

[S 1/2016]

(2) The originating summons by which an application for leave under the Act is made must be entitled in the matter of the company (if any) in relation to which the applicant was convicted and in the matter of the Act or Insolvency Order, 2016 (S 1/2016).

Summons for directions (O. 83, r. 7)

7. (1) After presentation of a petition by which any such application as is mentioned in rule 5 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a summons for directions under this rule.

(2) The application referred to in paragraph (1) are —

(a) an application under the Act to confirm the issue by a company of shares at a discount;

(b) an application under the Act or Insolvency Order, 2016 (S 1/2016) to approve a compromise or arrangement unless there is included in the petition for such approval an application for an order under the Act or Insolvency Order, 2016 (S 1/2016); and

[S 1/2016]

(c) an application under the Act for an order restoring the name of a company to the register.

(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, the share premium account, or the capital redemption reserve fund, of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions —

[Subsidiary]

(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 the power of the Court under the Act or Insolvency Order, 2016 (S 1/2016) to direct that the Act or Order shall not apply as regards any class of creditors may be exercised on any hearing of the summons.

[S 1/2016]

(5) Rules 8 to 13 shall have effect subject to any directions given by the Court under this rule.

Inquiry as to debts: Company to make list of creditors (O. 83, r. 8)

8. (1) Where under rule 7 the Court orders such an inquiry as is mentioned in paragraph (4) thereof, the company in question must, within 7 days after the making of the order, file in the Registry 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.

(3) The list must be left at the Registry not later than one day after the affidavit is filed.

Inspection of list of creditors (O. 83, r. 9)

9. (1) Copies of the list made under rule 8 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 solicitor.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of fifty cents, to inspect the said list at any such office and to take extracts therefrom.

Notice to creditors (O. 83, r. 10)

10. Within 7 days after filing the affidavit required by rule 8 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 solicitor, if any, to the company's solicitor.

Advertisement of petition and list of creditors (O. 83, r. 11)

11. After filling the affidavit required by rule 8 the company must insert, in such newspapers and at such times as the Court directs, a notice stating —

- (a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed;
- (b) the inquiry ordered by the Court under rule 7;
- (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 the solicitor, if any, and particulars of his debt or claim to the company's solicitor.

Affidavit as to claims made by creditors (O. 83, r. 12)

12. Within such time as the Court directs the company must file in the Registry an affidavit made by the company's solicitor and an officer of the company competent to make it —

[Subsidiary]

- (a) proving service of the notices mentioned in rule 10 and advertisement of the notice mentioned in rule 11;
- (b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices 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 8, and which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

Adjudication of disputed claims (O. 83, r. 13)

13. 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 or 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 is 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 list of creditors entitled to object to reduction (O. 83, r. 14)

14. The list of creditors entitled to object to such reduction as is mentioned in rule 7(4), as settled by the Court under the Act or Insolvency Order, 2016 (S 1/2016), shall be certified and filed by the Registrar and his certificate shall —

[S 1/2016]

- (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 the Act and other debts or claims;

(c) specify the total amount of the debts or claims payment of which has been secured by appropriation under the said Act;

(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 13 and state which of such debts or claims were allowed.

Evidence of consent of creditor (O. 83, r. 15)

15. The consent of a creditor to such reduction as is mentioned in rule 7(4) may be proved in such manner as the Court thinks sufficient.

Time etc. of hearing of petition for confirmation of reduction (O.83, r.16)

16. (1) A petition for the confirmation of any such reduction as is mentioned in rule 7(4) 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 14.

(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.

Restriction on taking effect of order (O. 83, r. 17)

17. Unless the Court otherwise directs, an order under the Act confirming the issue of shares at a discount shall direct that an office copy of the order be delivered to the Registrar of Companies within 10 days after the making of the order or such extended time as the Court may allow and that the order shall not take effect until such copy has been so delivered.

ORDER 84

LODGMET IN COURT AND PAYMENT TO SHERIFF

Interpretation (O. 84, r. 1)

1. In this Order —

“bank” means a bank approved by the Treasury;

“Carry over”, in relation to a fund in Court, means to transfer the fund or any part thereof from one account to another in the books of the Treasury;

[Subsidiary]

“funds” means any money, securities, or other investments standing or to be placed to the account of the Treasury, and includes money placed on deposit;

“funds in Court” means any money, securities, or other investments standing or to be placed to the account of the Treasury, and includes money placed on deposit;

“interest” means the dividends and interest on all the funds referred to in the heading thereof;

“ledger credit” means the title of the cause or matter and the separate account opened or to be opened under an order or otherwise in the books of the Treasury to which any funds are credited or to be credited;

“lodge in Court” means pay or transfer into Court, or deposit in Court;

“order” means an order or judgment of the High Court or Court of Appeal whether made in Court or in Chambers.

Lodgment in Court

Payment into court (O. 84, r. 2)

2. (1) Subject to paragraph (2), any trustee wishing to make a payment into Court, must apply by summons supported by an affidavit setting out —

(a) a short description of the trust and of 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 inquiries 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) Where the money or securities represents a legacy, or residue or any share thereof, to which an infant or a person resident outside Brunei Darussalam is absolutely entitled, no affidavit need be filed under paragraph (1).

Notice of lodgment (O. 84, r. 3)

3. Any person who has lodged money or securities in Court must forthwith give notice of the lodgment to every person appearing to be entitled to, or to have an interest in, the money or securities lodged.

Funds how lodged (O. 84, r. 4)

4. (1) Money to be lodged in Court must be lodged by means of a direction to the Treasury in form (a) in Form 131.

(2) Securities issued by a company or by any body corporate constituted under any written law, being fully paid up and free from liability, may be transferred to the Treasury in his official name.

(3) The person lodging under paragraph (2) must execute a transfer thereof, and send such transfer together with the authority in Form 193 to the registered office of the company or body corporate in whose books the securities are to be transferred.

(4) Such company or body corporate must, after registering such transfer, forward the authority to the Treasury with a certificate in Form 193 that the securities have been transferred as therein authorised.

(5) Securities, other than those described in paragraph (2), may be placed in a box or packet and lodged with a direction in form (a) in Form 131 with the Treasury.

(6) After inspecting the contents in the box or packet in the presence of the person lodging the same, and seeing that such box or packet is properly marked and secured, the Treasury shall receive the same and give the person lodging a receipt.

(7) The Treasury must, after receiving the money or securities, send to the Registrar a duplicate of the receipt that had been issued to the person lodging the same, to be filed in the Registry.

Crediting lodgment and dividends (O. 84, r. 5)

5. Any principal money or dividends received by the Treasury in respect of securities in Court must be placed in its books, in the case of principal money, to the credit to which the securities whereon such money arose were standing at the time of the receipt thereof, and in the case of dividends, to the credit to which the securities whereon such dividends accrued were standing at the time of closing of the transfer books of such securities previously to the dividends becoming due.

Interest on money lodged in court (O. 84, r. 6)

6. (1) Money lodged in Court to the credit of any account is deemed to be placed on deposit, and shall be credited with interest at such rate as is from time to time fixed by the Treasury, not being greater than the highest rate of interest which for the time being can be obtained by the Government on current account from any bank in the State except —

(a) when money is paid into Court under Order 14, 22, 23 or 70; or

[Subsidiary]

(b) when the amount is less than \$500.

(2) Money on deposit is deemed to be withdrawn from deposit when the amount is reduced below \$100.

Computation of interest (O. 84, r. 7)

7. (1) Interest upon money on deposit must not be computed on a fraction of one dollar.

(2) Interest upon money on deposit accrues by calendar months, and must not be computed by any less period.

(3) Such interest begins on the first day of the calendar month next succeeding that in which the money is placed on deposit, and ceases from the last day of the calendar month next preceding the day of the withdrawal of the money from deposit.

(4) Interest which has accrued for or during the half-year ending on the 30th day of June and the 31st day of December in every year, on money then on deposit must, on or before the fifteen days of the months respectively following, be placed by the Treasury to the credit to which such money is standing on every such half-yearly day.

(5) When money on deposit is withdrawn from deposit, the interest thereon which has accrued and has not been credited must be placed to the credit to which the money is then standing.

(6) When money on deposit consists of sums which have been placed on deposit at different times, and an order is made dealing with the money, and part of such money has to be withdrawn from deposit for the purpose of executing such order, the part or parts of the money dealt with by such order last placed and remaining on deposit at the time of such withdrawal must, for the purpose of computing interest, be treated as so withdrawn unless the order otherwise directs.

(7) Unless otherwise directed by an order, interest credited on money on deposit must, when or so soon as it amounts to or exceeds one hundred dollars, be placed on deposit and, for the purpose of computing interest upon it, must be treated as having been placed on deposit on the last half-yearly day on which any such interest became due.

Applications with respect to funds in Court (O. 84, r. 8)

8. (1) Where an application to the High 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 the payment to any person of any dividend of or interest on any securities or money comprised in such fund;

(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 written law; or

(d) for the payment or transfer out of Court of any such funds as are mentioned in sub-paragraph (c),

is made, 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 paragraph 1(d) is required to be made by originating summons then, if the funds to which the application relates do not exceed \$10,000 in value, and subject to paragraph (4), the application may be made to the Registrar.

(4) This rule does not apply to any application for an order under Order 22.

Payment out of funds in Court (O. 84, r. 9)

9. (1) Money paid under Order 14, 22 or 23 must be paid out on a direction to the Treasury in form (b) in Form 131.

(2) In all other cases the person entitled to withdraw the funds must lodge with the Treasury a copy of the order authorising withdrawal, and the Treasury must act in accordance with such order.

(3) When an order directs any sums to be ascertained by the certificate of the Registrar, both the order and the certificate in form (c) in Form 131 must be sent to the Treasury.

(4) When an order directs payments out of a fund in Court of any costs directed to be taxed, the Registrar must state in his certificate, the name and address of the person to whom such costs are payable.

Name of payee to be stated in order (O. 84, r. 10)

10. (1) Every order which directs funds in Court to be paid, transferred, or delivered out must state in full the name of every person to whom such payment, transfer, or delivery is to be made, unless the name is to be stated in a certificate of the Registrar.

[Subsidiary]

(2) In the case of payment to a firm it is sufficient to state the business name of such firm.

(3) When money in Court is by an order directed to be paid to any persons described in the order, or in a certificate of the Registrar, as co-partners, such money may be paid to any one or more of such co-partners, or to the survivor of them.

Payment out on death of payee (O. 84, r. 11)

11. (1) When funds in Court are by an order directed to be paid, transferred, or delivered to any person named or described in an order, or in a certificate of the Registrar, except to a person therein expressed to be entitled to such funds as trustee, executor, or administrator, or otherwise than in his own right, or for his own use, such funds, or any portion thereof for the time being remaining unpaid, untransferred, or undelivered, may, unless the order otherwise directs, on proof of the death of such person, whether on or after or, in the case of payment directed to be made to a creditor as such, before the date of such order, be paid, transferred, or delivered to the legal personal representatives of such deceased person, or to the survivors or survivor of them.

(2) If no administration has been taken out to the estate of such deceased person who has died intestate, and whose assets do not exceed the value of \$10,000, including the amount of the funds directed to be so paid, transferred or delivered to him, such funds may be paid, transferred, or delivered to the person who, being widower, widow, child, father, mother, brother or sister of the deceased, would be entitled to take administration to his or her estate, upon a declaration by such person in accordance with Form 194.

(3) When funds in Court are by an order directed to be paid, transferred, or delivered to any persons as legal personal representatives, such funds, or any portion thereof for the time being remaining unpaid, untransferred, or undelivered, may, upon proof of the death of any such representatives, whether on or after the date of such order, be paid, transferred, or delivered to the survivors or survivor of them.

(4) No funds shall under this rule be paid, transferred, or delivered out of Court to the legal personal representatives of any person under any probate or letters of administration purporting to be granted at any time subsequent to the expiration of 2 years from the date of the order directing such payment, transfer, or delivery, or, in case such funds consist of interest or dividends, from the date of the last receipt of such interest or dividends or such order.

(5) When any application for an order such as is referred to in paragraphs (1) and (3) is made, notice thereof must be given to the Collector of Estate Duty who shall be entitled to attend and be heard on the matter.

Transfer or investment of funds in Court (O. 84, r. 12)

12. (1) When funds in Court are by an order directed to be transferred or invested, the party having the carriage of the order must lodge with the Treasury a copy of the order and the Treasury must act in accordance with such order.

(2) When funds in Court are by an order directed to be invested, the party having the carriage of the order must lodge with the Treasury a copy of the order and the Treasury must thereupon invest such funds in the manner directed by the order.

(3) The Court may direct that any money in Court, other than money under Orders 14, 22, 23 and 70, may be invested in any of the securities in which trustees are by law permitted to invest trust money in their hands.

Proof to Treasury before payment (O. 84, r. 13)

13. When any person is entitled under an order or direction to receive any payment from the Treasury, and the Treasury requires evidence of life, or of the fulfilment of any conditions affecting such payment, such evidence may be furnished by a statutory declaration made by a solicitor acting on behalf of such person, or by the person entitled to such payment.

Copy of order or certificate to be sent to Treasury (O. 84, r. 14)

14. An office copy of every order of Court and certificate to be acted upon by the Treasury, and of every direction to the Treasury, must be forwarded by the Registrar to the Auditor General.

Treasury to give certificate of funds in Court (O. 84, r. 15)

15. (1) The Treasury, upon a request signed by or on behalf of a person claiming to be interested in any funds in Court standing to the credit of an account specified in such request, must, unless there is good reason for refusing, issue a certificate of the amount and description of such funds, such certificate shall have reference to the morning of the day of the date thereof, and shall not include the transactions of that day.

(2) The Treasury must notify on such certificate the dates of any orders restraining the transfer, sale, delivery out, or payment or other dealing with the funds in Court to the credit of the account mentioned in such certificate, and whether such orders affect principal or interest, and any charging orders affecting such funds, of which respectively he has received notice and the names of persons to whom notice is to be given, or in whose favour such restraining or charging orders have been made.

(3) The Treasury may re-date any such certificate, provided that no alteration in the amount or description of funds has been made since the certificate was issued.

(4) When a cause or matter has been inserted in the list referred to in rule 16, that fact shall be notified in the certificate relating thereto.

[Subsidiary]**Publication of list of funds in Court (O. 84, r. 16)**

16. In the month of January in every year the Treasury shall cause to be published in the *Gazette* a list of accounts not dealt with for a period of 10 years or more and must give the title and number of the cause or matter and the title of the ledger credit in which funds are outstanding, and the balance of the funds in each account.

Unclaimed funds in Court with Treasury (O. 84, r. 17)

17. (1) The funds in Court appearing from the books and accounts to have been in the custody with the Treasury for a period of 15 years and upwards, without any claim having been made and allowed thereto during that period, must be transferred and paid to the Government for the general purposes of the State.

(2) If any claim is made to any part of the funds in Court which are transferred and paid to the Government under paragraph (1), and if such claim is established to the satisfaction of the Court, the Government must pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as appears to be due to the claimant.

(3) Nothing in this rule shall authorise the transfer of any funds standing to the separate credit of an infant, or held in an infant's account pending the coming of age of such infant, until such infant comes of age or dies.

Payment to Sheriff**Sheriff to keep account book (O. 84, r. 18)**

18. (1) The Sheriff must keep an account of all sums of money paid or deposited with him and of all sums of money paid out by him in an account book in Form 195.

(2) All money paid or deposited with the sheriff must be kept in a bank or with the Treasury.

(3) No interest shall be payable in respect of any money paid or deposited with the sheriff.

How money paid to Sheriff (O. 84, r. 19)

19. Money paid or deposited with the sheriff under these Rules or a judgment or order of a Court must be paid to the proper officer in the Registry who must give a receipt for every sum of money received by him.

Payment in under judgment or order (O. 84, r. 20)

20. Where any payment is made under a judgment or order the person making the payment must produce a copy of the judgment or order and he must give notice to the person entitled to the money.

Money not required for making payments on day of receipt (O. 84, r. 21)

21. Any money paid or deposited with the sheriff that it is not required for making payments on that day must be paid into the bank or to the Treasury, as the case may be:

Provided that where the payment to the bank or to the Treasury, as the case may be, cannot be made on the day of receipt, it must be made on the morning of the next working day.

Treasury to grant imprest (O. 84, r. 22)

22. (1) Where the money is kept by the Treasury, he must grant an imprest to the sheriff and the imprest must be kept by the sheriff in a bank.

(2) All cheques in respect of the bank account must be signed by the sheriff and another officer appointed by the Registrar.

Cash book for imprest (O. 84, r. 23)

23. (1) The sheriff operating the imprest must maintain a Cash Book in which must be entered all sums received under the imprest (including reimbursements from the Treasury) and all payments made from the imprest.

(2) A supervisory officer must be made personally responsible for making (at least once a week) surprise checks of the Cash Book, for comparing all the entries with receipted vouchers and other relevant documents and for ensuring that the balance of cash agrees with the balance shown in the Cash Book, and the officer must also satisfy himself that cash is not drawn from the bank in excess of normal requirements.

(3) A record of all surprise inspections must be made in the Cash Book.

How payments from imprest to be made (O. 84, r. 24)

24. (1) All payments from the imprest must be made by cheques and an acknowledgement received or a receipt obtained from the person to whom the cheque is paid.

(2) When the balance of the imprest reaches a figure sufficient for 7 days anticipated requirements, the Cash Book must be balanced and the sums paid from the imprest recovered from the Treasury.

[Subsidiary]

(3) The receipts must be attached to a bill showing the total amount of payments; if the receipts are numerous, the receipts and a machine-list of the amounts only may be attached to the bill.

(4) This bill and attachments must be sent to the Treasury at least 7 days before the money is actually required.

Proof before payment out (O. 84, r. 25)

25. Before any money is paid out to any person, the sheriff must require proof to his satisfaction that the person applying for payment is the person entitled or authorised to receive it.

Where money due to Government under any law (O. 84, r. 26)

26. Before any money is paid out under any order directing the payment out of any money paid or deposited with the sheriff, the sheriff must satisfy himself that any money due to the Government under any written law of which he has notice has been paid or deducted.

When payment to be made by cheque (O. 84, r. 27)

27. (1) All payments by the sheriff of an amount exceeding \$50 must be made by cheque payable to the person entitled to receive the payment and marked “payable only within 30 days from date”.

(2) If the payment is to be made to —

- (a) any Government department;
- (b) any body corporate;
- (c) an advocate and solicitor; or
- (d) a moneylender,

the cheque must be crossed to the payee’s account and marked “not negotiable”.

(3) Where a cheque has not been cashed within 30 days of its date, a fresh cheque may be issued to replace it.

ORDER 85

COURT FEES

Court fees (O. 85, r. 1)

1. The fees and percentages in Appendix B shall be taken and paid in all causes and matters in the Court of Appeal or in the High Court:

Provided that nothing herein shall affect any fees fixed by any written law not by these Rules expressly or impliedly repealed.

Manner of payment of fees (O. 85, r. 2)

2. The fees and percentages to be taken and paid under this Order shall be collected in such manner as the Chief Justice may from time to time direct.

ORDER 86

MISCELLANEOUS

Language of documents (O. 86, r. 1)

1. Any document required for use in pursuance of these Rules shall be in English or Malay, provided that wherever any such document is in Malay it shall be accompanied by a certified or verified translation thereof in English.

Seal of Court (O. 86, r. 2)

2. Every document issued by the Registry for which a Form marked with the word “seal” as prescribed in Appendix A must bear the seal of the Court.

Rejection of irregular documents (O. 86, r. 3)

3. The Registrar, or any officer charged with the duty of receiving and filing any document, may reject it if it does not substantially comply with these Rules.

Inherent powers of Court (O. 86, r. 4)

4. For the removal of doubts it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

Practice directions (O. 86, r. 5) [S 63/2015]

5. The Chief Justice may issue such practice directions relating to proceedings to which these Rules apply.

ORDER 87

REPEAL

Repeal (O. 87, r. 1)

1. The following rules are repealed —

- (a) the Brunei Darussalam High Court (Civil Procedure) Rules;
- (b) the Probate and Administration (Procedure) Rules; and
- (c) the Brunei High Court (Scale of Costs) Rules, 1961.

ORDER 88

SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

Proceedings to be brought by originating summons (O. 88, 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 provisions of this Order.

Jurisdiction of Registrars (O. 88, r. 2)

2. Proceedings under this Order may be heard and determined by a Registrar, who may refer them to a Judge if he thinks they should properly be decided by the Judge.

Form of originating summons (O. 88, r. 3)

3. (1) The originating summons shall be in Form No. 8 in Appendix A and no acknowledgment of service of it shall be required.

(2) The originating summons shall be endorsed with or contain a statement showing whether possession is claimed in respect of residential premises or in respect of other land.

Affidavit in support (O. 88, r. 4)

4. 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 directs, any such affidavit may contain statements of information or belief with the sources and grounds thereof.

Service of originating summons (O. 88, r. 5)

5. (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 and, if practicable, inserting through the letter-box at the premises a copy of the summons and a copy of the affidavit enclosed in a sealed transparent envelope addressed to “the occupiers”; 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 Supreme Court.

(4) Order 28 shall not apply to proceedings under this Order.

Application by occupier to be made party (O. 88, r. 6)

6. 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.

[Subsidiary]

Order for possession (O. 88, r. 7)

7. (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 service of the summons; and

(b) in the case of other land, less than 2 clear days after the date of service of the summons.

(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. 88, r. 8)

8. (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 the 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. 90.

Setting aside order (O. 88, r. 9)

9. The Court may, on such terms as it thinks just, set aside or vary any order made in proceedings under this Order.

APPENDIX A

FORMS

No. 1

ORDER FOR CONSOLIDATION

O. 4, r. 1

(Title as in action)

Upon the application of the plaintiff (or the defendant) in this action
and upon reading the affidavit of filed the
day of, 20 and upon hearing

It is ordered that summons Nos. be consolidated with summons
Nos. and do proceed as one action and it is further ordered that the title of
Summons No be amended by adding to it the titles of
(state the numbers of the summons which are being consolidated). (State any other orders or
directions given by the Court).

Dated the day of, 20

(Seal)

.....
Registrar

No. 2

WRIT OF SUMMONS

O. 6, r. 1

IN THE HIGH COURT OF BRUNEI DARUSSALAM

Suit No. of 20

(Seal)

Between

..... Plaintiff

and

..... Defendant

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM, IN THE NAME OF HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN

To

[Subsidiary]

We command you that within 8 days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in a cause at the suit of and take notice, that in default of your so doing the plaintiff may proceed therein to judgment and execution.

WITNESS Registrar of the Court, the day of 20

.....
Plaintiff's Solicitors

.....
Registrar, High Court

Memorandum to be Subscribed on the Writ

This writ may not be served more than 12 calendar months after the above date unless renewed by order of court.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by a solicitor at the Registry of the High Court.

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending cash or a cheque for \$ with an addressed envelope to the Registrar, High Court at Bandar Seri Begawan.

Indorsements to be made on writ before issue.

Indorsement of claim

The plaintiff's claim is for (If the plaintiff's claim is for a debt or liquidated demand only, the following indorsement must be added at the foot of that claim:)

An \$ (or such sum as may be allowed on taxation for costs, and also, if the plaintiff obtains an order for substituted service, the further sum of \$ (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff or his solicitor within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

[S 34/2008]

(If the plaintiff sues, or the defendant is sued, in a representative capacity, this must be stated in the indorsement of claim).

Indorsement as to solicitor and address

This writ is issued by of solicitor for the said plaintiff whose address is (or where the plaintiff sues in person). This writ is issued by the said plaintiff who resides at and is (state occupation) and (if the plaintiff does not reside within the jurisdiction) whose address for service is

Indorsement as to service

This Writ was served by by way of personal service (or as may be) (state manner of service or in accordance with the terms of an order for substituted service) on the defendant (who is known to me) (or who was pointed out to me by) (or who admitted to me that he was) at (place) on the day of 20

Indorsed the day of, 20

.....
Process Server

No. 3

WRIT OF SUMMONS NOTICE OF WHICH IS TO BE
SERVED OUT OF JURISDICTION

O. 6, r. 1

(Title as in Form 2)

(Seal)

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM, IN THE NAME AND ON BEHALF
OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN

To

We command you that within (here insert the number of days directed by the Court or other direction of the Court) after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you, in a cause at the suit of; and take notice that, in default of your so doing, the plaintiff may by leave of the Court proceed therein, and judgment may be given in your absence.

WITNESS Registrar of the High Court at Bandar Seri Begawan
the day of, 20

.....
Plaintiff's Solicitors

.....
Registrar, High Court

Memorandum and Indorsements as in Form 2

N.B. — This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction.

[Subsidiary]

No. 4

(Deleted by S 34/2008)

No. 5

NOTICE OF RENEWAL OF WRIT

**O. 6, r. 7,
O. 46, r. 6**

Renewed for months from the day of 20,
by an order of Court dated the day of, 20

Dated the day of, 20

.....
Registrar

No. 6

ORIGINATING SUMMONS

O. 7, r. 2

(Where Appearance Required)

IN THE HIGH COURT OF BRUNEI DARUSSALAM

O.S. No. of 20

(Seal)

(In the matter of)

Between

..... Plaintiff

and

..... Defendant

To

Let the defendant, within 8 days (or if the summons is to be served out of the jurisdiction, insert the time for appearance fixed by the order giving leave to issue the summons and serve it out of the jurisdiction) after service of the summons on him, inclusive of the day of service, caused an appearance to be entered to the summons, which is issued on the application of the plaintiff of

By this summons the plaintiff claims against the defendant (or seeks the determination of the Court on the following questions, namely or as may be).

If the defendant does not enter an appearance, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated the day of, 20

.....
Registrar

Memorandum to be subscribed on the summons

This summons is taken out by of solicitor for the said plaintiff whose address is (or where the plaintiff sues in person). This summons is taken out by the said plaintiff who resides at the abovenamed address or as may be and is (state occupation) and (if the plaintiff does not reside within the jurisdiction whose address for service is

Note — This summons may not be served more than 12 calendar months after the above date unless renewed by order or the Court.

No. 7

ORIGINATING SUMMONS

O. 7, r. 2

(Where Appearance not Required)

IN THE HIGH COURT OF BRUNEI DARUSSALAM

O.S. No. of 20

(Seal)

(In the matter of)

Between

..... Plaintiff

and

..... Defendant

Let of attend before the Judge (or Registrar) in Chambers on the day of, 20, at m., on the hearing of an application by the plaintiff that

Dated the day of, 20

.....
Registrar

[Subsidiary]

Memorandum to be subscribed on the summons

This summons is taken out by of solicitor for the said plaintiff whose address is (or where the plaintiff sues in person). This summons is taken out by the said plaintiff who resides at and is (state occupation) and (if the plaintiff does not reside within the jurisdiction) whose address for service is

Note — This summons may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

If a defendant does not attend personally or by his counsel or solicitor at the time and place abovementioned such order will be made as the Court may think just and expedient.

No. 8

EX PARTE ORIGINATING SUMMONS**O. 7, r. 2**

IN THE HIGH COURT OF BRUNEI DARUSSALAM

O.S. No. of 20

(Seal)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on the day of, 20, at m., on the hearing of an application by that

Dated the day of, 20

.....
Registrar

This summons is taken out by of solicitor for the applicant whose address is

No. 9

NOTICE OF ORIGINATING MOTION

O. 8 r. 3

IN THE HIGH COURT OF BRUNEI DARUSSALAM

O.M. No. of 20

(Seal)

In the matter of

and

In the matter of

Take notice that the Court will be moved at the expiration of days from the service upon you of this notice (or on the day of 20, at the sitting of the Court) or so soon thereafter as counsel can be heard, by counsel on behalf of for an order that (or for the following relief, namely).

And that the costs of and incidental to this application may be paid by

(And further take notice that the grounds of this application are (state the ground)).

Dated the day of, 20

.....
Solicitor for the

..... of
solicitor for the abovenamed applicant whose address is
(or whose address for service is).

To of

No. 10

NOTICE OF MOTION

O. 8, r. 3

(Title as in action)

Take notice that (pursuant to the leave of given on the day of, 20) the Court will be moved on the day of, 20, at m., or so soon thereafter as counsel can be heard, by (Mr of) counsel for the abovenamed plaintiff (or defendant) that and that the costs of the application be

Dated the day of, 20

.....
Solicitor for the

To solicitor for the

No. 10A

[S 14/2017]

MEMORANDUM OF SERVICE

O. 10, r. 1

(Title as in action)

Date:

To: The Registrar.

The writ of summons hereon was served on —

Name of person served:

Capacity in which person is served: (The defendant)

(or as may be).

On: (Day, date and time of service).

At: (Place of service).

Method of service: (State how service affected) .

(Issued by: (Solicitor for the))

No. 11

NOTICE OF WRIT OF SUMMONS TO BE SERVED
OUT OF JURISDICTION

O. 11, r. 3

(Title as in action)

To

Take notice that of has begun an action against you in the High Court of Brunei Darussalam by writ of summons dated the day of, 20, which writ is indorsed as follows (copy the indorsements) and you are required within days after receipt of this notice, inclusive of the day of receipt, to cause an appearance to be entered for you in the said Court to the said action, and in default of your so doing the said may proceed therein and judgment may be given in your absence.

You may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the High Court, or (2) by sending them by post to the Registrar, High Court at Bandar Seri Begawan.

If writ is indorsed with a statement of claim, add:

If you enter an appearance, then, unless a summons for judgment is served on you in the meantime, you must also serve a defence on (the solicitor for) the plaintiff within days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against you without notice.

Dated the day of, 20

By Order of the Court,

(Seal)

.....
Registrar

This notice was served by me at on the defendant
on the

Indorsed the day of, 20

.....
Process server

No. 12

AFFIDAVIT FOR LEAVE TO SERVE WRIT OUT
OF JURISDICTION

O. 11, r. 4

(Title as in action)

I (name, address and description of deponent) do make oath (or affirm) and say as follows:

1. I reside at and am a
2. I verily believe that I have a good cause of action against the abovenamed intended defendant (state the grounds on which the application is founded and where the action arose).
3. The said intended defendant is at present residing (or carrying on business) at in the State of
4. At least days will probably be necessary to effect service on the intended defendant and to enable him to enter an appearance in the Registry of the High Court.
5. I apply for leave to serve the same on the said intended defendant at or elsewhere as he may be found in the State of

Sworn (or affirmed) as in Form 78.

[Subsidiary]

No. 13

ORDER FOR SERVICE OUT OF JURISDICTION **O. 11, r. 4(3)**

(Title as in action)

Upon the application of the intended plaintiff and upon reading the affidavit of filed the day of, 20, and upon hearing

It is ordered that the intended plaintiff have leave to issue a notice of a writ of summons (or originating summons) (or as may be) against the intended defendant and to serve the said notice of writ on him at (address at which intended defendant to be served) or elsewhere in (name of country within which service to be effected).

And it is ordered that the time for entry of an appearance in the action by the intended defendant be days after service on him of the notice of writ.

Dated the day of, 20

(Seal)

.....
Registrar

No. 14

REQUEST FOR SERVICE OF DOCUMENT ABROAD **O. 11, r. 6**

(Title as in action)

I hereby request that the notice of the writ of summons (or as may be describing the document) in this action be sent through the proper channel to (name of the country) for service on the (defendant), at or elsewhere in (name of country) and that it may be served

- (i) through the government of (where the Government is willing to effect service)
- (ii) through the judicial authority of
- (iii) through a Brunei Darussalam (or British) Consular authority at

(delete which methods not desired)

I hereby undertake to be responsible personally for all expenses incurred by the Minister in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the office of the said Minister and to produce a receipt for the

payment to the proper officer in the Registry.

Dated the day of, 20

.....
Solicitor for the

No. 15

MEMORANDUM OF APPEARANCE

O. 12, r. 2

(Title as in action)

To the Registrar,

Enter appearance for (name of defendant) in this action.

Dated the day of, 20

.....
Solicitor for the defendant

The place of business of (name of solicitor for the defendant) is

His address for service is

.....
(or defendant in person)

The address of (name of defendant) is

His address for service is

The said defendant (requires or does not require) a statement of claim to be filed and delivered.

No. 16

MEMORANDUM OF CONDITIONAL APPEARANCE

O. 12, r. 6

(Title as in action)

Enter conditional appearance (or appearance under protest for (name of defendant) without prejudice to an application to set aside the writ (or service of the writ).

[Subsidiary]

Dated the day of, 20

.....
Solicitor for the defendant

The place of business of (name of solicitor for the defendant) is

His address for service is

.....
(or defendant in person)

The address of (name of defendant) is

His address for service is

The said defendant (requires or does not require) a statement of claim to be filed and delivered.

NOTE — Every conditional appearance and duplicate is sealed on entry with the following stipulation:

“This appearance is to stand as unconditional unless the defendant applies within days to set aside the writ, or service thereof, and obtains an order to that effect”.

.....
Registrar

No. 17

CERTIFICATE OF NON-APPEARANCE

O. 13, r. 7

(Title as in action)

An affidavit of service of (describe document) on the (name of person served) at
on the day of, 20,
having been filed this day of, 20

IT IS HEREBY CERTIFIED that no appearance has been entered for the said (name of person served).

Dated the day of, 20

.....
Registrar

No. 18

AFFIDAVIT ON APPLICATION UNDER ORDER 14 **O. 14, r. 2**
 RULE 2, BY OR ON BEHALF OF PLAINTIFF

(Title as in action)

I of (the abovenamed plaintiff, or solicitor for the abovenamed plaintiff, or clerk to the plaintiff's solicitor, or clerk to the plaintiff, (or as may be) do made oath (or affirm) and say as follows:

1. The defendant is, and was at the commencement of this action, justly and truly indebted to (me, or the abovenamed plaintiff) in the sum of \$ for the The particulars of the said claim appear by the indorsement on the writ of summons in this action.

2. It is within my own knowledge that the said debt was incurred and is still due and owing as aforesaid.

or

I am informed by (state source of information) and/or I verily believe (state grounds of belief) that the said debt was incurred and is still due and owing as aforesaid).

3. I verily believe that there is no defence to this action.

4. I am duly authorised by the plaintiff to make this affidavit (delete if sworn by plaintiff).

Sworn (or affirmed) as in Form 78.

No. 19

NOTICE TO BE INDORSED ON COPY
 OF COUNTERCLAIM

O. 15, r. 3

To

Take notice that, if you intend to defend this counterclaim, an appearance must be entered to the counterclaim on your behalf within 8 days (or if the counterclaim is to be served out of the jurisdiction insert here the time fixed by the order giving leave to serve the counterclaim out of the jurisdiction) after the service of this defence and counterclaim on you, inclusive of the day of service, otherwise judgment may be given against you without further notice.

Directions for entering appearance

The person served with this counterclaim may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the High Court, or (2) by sending them by post to the Registrar, High Court at Bandar Seri Begawan.

[Subsidiary]

No. 20

MEMORANDUM OF APPEARANCE
OF COUNTERCLAIM

O. 15, r. 3

(As in Form 15 but substituting for the title of the action the following):

Between

..... Plaintiff

and

..... Defendant

(by original action)

And between
the said

..... Plaintiff

and
the said

..... Defendant

(by counterclaim)

(and substituting for the request to enter appearance the following):

Enter an appearance for (name of defendant to counterclaim wishing to appear) to the counterclaim of the abovenamed defendant in the action.

No. 21

MEMORANDUM OF APPEARANCE OF PERSON
ADDED AS DEFENDANT

O. 15, r. 8

(As in Form 15 but substituting for the title of the action the following):

Between

..... Plaintiff

and

..... Defendant

And between

..... Plaintiff

..... Defendant

(By original writ and by order)

(and substituting for the request to enter appearance the following):

Enter an appearance for (name of added defendant) who has been served with an order dated the day of, 20, making him a defendant to the action.

No. 22

**THIRD PARTY NOTICE CLAIMING CONTRIBUTION O. 16, r. 1
OR INDEMNITY OR OTHER RELIEF OR REMEDY**

IN THE HIGH COURT OF BRUNEI DARUSSALAM

Suit No. of 20

Between

..... Plaintiff,

and

..... Defendant,

and

..... Third Party,

THIRD PARTY NOTICE

(Issued pursuant to the order of (name of Judge) dated the day of, 20)

To of

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant (state the nature of the plaintiff's claim) as appears from the writ of summons (or originating summons) a copy whereof is served herewith (together with a copy of the statement of claim).

The defendant claims against you (state the nature of the claim against the third party as for instance to be indemnified against the plaintiff's claim and the costs of this action or contribution to the extent of (one half) of the plaintiff's claim or the following relief or remedy namely on the grounds that (state the grounds of the claim).

[Subsidiary]

And take notice that if you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, an appearance must be entered on your behalf within 8 days (or if the notice is to be served out of the jurisdiction insert the time for appearance fixed by the order giving leave and the defendant's against you and your liability to (indemnity the defendant to issue the notice and serve it out of the jurisdiction) after the service of this notice on you, inclusive of the day of service, otherwise you will be deemed to admit the plaintiff's claim against the defendant or to contribute to the extent claimed or to (stating the relief or remedy sought) and will be bound by any judgment or decision given in the action, and the judgment may be enforced against you in accordance with Order 16 of the Rules of the Supreme Court.

Dated the day of, 20

.....
Solicitor for the defendant

Directions for entering appearance

The person served with this notice may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the High Court or (2) by sending them by post to the Registrar, High Court at Bandar Seri Begawan.

No. 23

THIRD PARTY NOTICE WHERE QUESTION OR ISSUE TO BE DETERMINED

O. 16, r. 1

(Title etc. as in Form 22 down to end of first paragraph)

The defendant required that the following question or issue, viz., (state the question or issue required to be determined) should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself.

And take notice that if you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant, an appearance must be entered on your behalf within 8 days (or if the notice is to be served out of the jurisdiction, insert the time for appearance fixed by the order giving leave to issue the notice and serve it out of jurisdiction) after the service of this notice on you, inclusive of the day of service, otherwise you will, be bound by any judgment or decision given in the action in so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with Order 16 of the Rules of the Supreme Court.

Dated the day of, 20

.....
Solicitor for the defendant

Directions for entering appearance.
(As in Form 22).

No. 24

SUMMONS FOR LEAVE TO ISSUE
A THIRD PARTY NOTICE

O. 16, r. 2

(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on,
the day of, 20, at m., for
leave to issue a third party notice a copy of which is attached herewith.

Dated the day of, 20

Entered No. of 20
Clerk

(Seal)

.....
Registrar

This summons is taken out by the defendant (or solicitor for the
defendant) of

To

No. 25

MEMORANDUM OF APPEARANCE OF THIRD PARTY **O. 16, r. 4**

(As in Form 15 but substituting for the title of the action, the title on the third party notice and
substituting for the request to enter appearance the following:)

Enter an appearance for (name of third party) to the third party notice issued in this action
on, 20, by the defendant and served on the said
on, 20

[Subsidiary]

No. 26

SUMMONS FOR THIRD PARTY DIRECTIONS

O. 16, r. 4

(Title as in Form 22)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on the day of, 20, at m., on the hearing of an application on the part of for an order for third party directions, as follows:

that the defendant serve a statement of his claim on the said third party within days from this date, who shall plead thereto within days.

(State any other directions that may be required).

And that the said third party be at liberty to appear at the trial of this action, and take such part as the Judge shall direct, and be bound by the result of the trial.

And that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto.

And that the costs of this application be costs in the cause and in the third party proceedings.

Dated the day of, 20

Entered No. of 20

Clerk

(Seal)

.....
Registrar

This summons is taken out by the defendant (or solicitor for the defendant or as maybe of

To

No. 27

ORDER FOR THIRD PARTY DIRECTIONS

O. 16, r. 4

(Title as in Form 22)

Upon the application of and upon hearing
for the plaintiff and for the defendant and

for the third party

It is ordered that the defendant serve a statement of his claim on the said third party within days from this date, who will plead thereto within days.

(State any other directions that had been ordered).

And that the said third party be at liberty to appear at the trial of this action, and taken such part as the Judge shall direct, and be bound by the result of the trial. And that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto.

And that the costs of this application be

Dated the day of, 20

(Seal)

.....
Registrar

No. 28

NOTICE BY CLAIMANT OF PROPERTY
TAKEN IN EXECUTION

O. 17, r. 2

(Title as in action)

And

.....
Claimant

Take notice that I
of claim the following property that has been taken in execution in this
action at (state address) on the day of, 20

(State the money, goods or other movable property claimed and the grounds for the claim).

Dated the day of, 20

.....
Claimant

My address for service is
.....

[Subsidiary]

To the Sheriff and the execution creditor (or solicitor for execution creditor).

No. 29

NOTICE BY SHERIFF OF PROPERTY
TAKEN IN EXECUTION

O. 17, r. 2

(Title as in Form 28)

Take notice that of has claimed the following
property (specify the property claimed)
.....
taken in execution by me under the writ of seizure and sale issued in this action.

If within 4 days after receiving this notice, you give notice to me that you admit the claim
of the said to the said property or request me to withdraw from
possession in Form 30 you will not be liable for any costs incurred after the receipt by me of
your notice.

Dated the day of, 20

.....
Sheriff

To the execution creditor (or solicitor for execution creditor).

No. 30

NOTICE OF EXECUTION CREDITOR OF PROPERTY
TAKEN IN EXECUTION

O. 17, r. 2

(Title as in Form 28)

Take notice that I admit (or dispute) the claim of to the property
seized by you (or I request you to withdraw from possession) under the writ of seizure and
sale issued in this action.

Dated the day of, 20

.....
Execution Creditor (or
solicitor for execution
creditor)

No. 31

APPLICATION FOR AN INTERPLEADER
SUMMONS: BY SHERIFF**O. 17, r. 3**

(Title as in Form 28)

1. On the day of, 20, gave me notice that he claimed the following property (specify the property claimed) taken by me in execution under (the writ of seizure and sale) issued in this action.

2. On the day of, 20, I notified the execution creditor of the said claim. He does not admit the claim and has not requested me to withdraw from possession of the property claimed.

3. I value the property claimed at approximately \$ I claim no interest in the subject matter in dispute other than for commission fees and expenses of execution.

I do not in any manner collude with any of the parties herein.

I apply for an interpleader summons to be issued.

Dated the day of, 20

.....
Sheriff

Interpleader Summons to issue returnable the day of, 20, at m.

Dated the day of, 20

.....
Registrar

No. 32

APPLICATION TO INTERPLEAD BY A PERSON
UNDER LIABILITY**O. 17, r. 3**

(In a pending action application as in Form 62,
in any other case by an originating summons)

Affidavit in support

I, of (if in an action, the abovenamed defendant) do make oath (or affirm) and say as follows:

[Subsidiary]

1. (If in an action). This action is brought to recover (state what) claimed by the plaintiff but I have received a claim adverse to that of the Plaintiff from of (or, if no action), I have received adverse claims from of to (state what) which is of the approximate value of \$

I expect to be used on these claims by the said claimant.

2. I claim no interest in the subject matter in dispute (other than the sum of \$ for costs or charges) (or as the case may be). I do not in any manner collude with either (or any) of the said claimants.

3. I am ready and willing to bring into Court or to pay or dispose of the subject matter in dispute in such manner as the Court may direct.

Sworn (or affirmed) as in Form 78.

No. 33

INTERPLEADER SUMMONS

O. 17, r. 4

(Title as in Form 28)

(a) To Execution Creditor.

Whereas the above claimant has made a claim to certain property taken in execution under process issued out of this Court at your instance:

You are hereby summoned to appear before the High Court, on the day of, 20, at m., when the said claim will be adjudicated upon and such order made thereon as the Court shall think just.

Dated the day of, 20

(Seal)

.....
Registrar

Entered No. of 20
Clerk

To

The Execution Creditor (or Solicitor for Execution Creditor).

(b) To Claimant.

You are hereby summoned to appear before the High Court on the day of, 20, at m., to support a claim made by you to certain property taken in execution under

process issued out of this Court at the instance of the execution creditor and in default of your then establishing such claim the said property will be dealt with under the said process as property of the execution debtor.

Dated the day of, 20

(Seal)

.....
Registrar

Entered No. of 20

Clerk

To

The Claimant (or Solicitor for Claimant).

(c) To a Plaintiff or a claimant in a pending action.

Whereas the defendant in this action has filed an affidavit (a copy of which is hereto annexed) stating that he has received a claim from of to (part of) the subject matter of this action:

You are hereby summoned to appear before the High Court on the day of, 20, at m., when the Court will adjudicate upon the rights and claims of yourself, the defendant and the (In summons to claimant not a plaintiff in the action, add: A copy of the writ of summons and statement of claim in this claim in this action is hereto annexed).

Dated the day of, 20

(Seal)

.....
Registrar

Entered No. of 20

Clerk

To

(State the name and address of the person to be summoned).

[Subsidiary]

No. 34

JUDGMENT (OR ORDER) ON INTERPLEADER
SUMMONS

O. 17, r. 11

(Title and in Form 28)

(Recital)

Upon this Interpleader Summons (or Originating Summons) coming up for hearing before the day of, 20 and upon hearing the evidence adduced and what was alleged by the parties (or their counsel).

(Insert the appropriate Operative Part).

(Operative Parts)

(a) Under execution.

It is adjudged touching the claim of to (specify the property) (or to the proceeds of sale (or value) of (specify the property) taken in execution under process issued out of this court at the instance of execution creditor, that the said (specify the property) (or proceeds of sale) (or value) (or part of the said property) (or proceeds of sale (or value)) namely (specify same) is (or are) not the property of the claimant.

And it is ordered that the said do pay to the said the sum of \$ for costs (and the sum of \$ for extra expenses of execution and keeping possession occasioned by the claim). Insert directions as to disposal of any money in Court.

(b) In a pending action.

It is this day adjudged touching the claims of the plaintiff and the claimant to (part of) the subject matter of this action that the claim of the plaintiff (or claimant) is valid and that the claimant (or plaintiff) has no claim thereto.

(And it is further adjudged that the plaintiff (or claimant) do recover against the defendant the sum of \$ for debt and \$ for costs amounting together to the sum of \$).

(And it is ordered — here insert any order for delivery of the property).

And it is further adjudged that the plaintiff (or claimant) do recover the sum of \$ from the claimant (or plaintiff) for costs (add if any costs awarded to the defendant against the plaintiff or claimant:

And it is further adjudged that the defendant do recover the sum of \$ for costs from the plaintiff (or claimant)).

(If the claimant fails to appear and an order is made barring his claim proceed as follows:

And the claimant not appearing, it is declared that the said and all persons claiming under him be forever barred as against the plaintiff and all person claiming under him).

(c) In any other case.

It is this day adjudged (here set out the judgment determining the claim as between the applicant and any claimant who appears or, if all the claimants appear, the judgment determining the rights and claims of all parties and any order as to payment, or delivery of the property and costs).

(If any claimant fails to appear and an order is made barring his claim proceed as follows:

And the claimant not appearing, it is declared that the said and all persons claiming under him be forever barred as against the applicant and all persons claiming under him).

(Testimonium)

Dated the day of, 20

(Seal)

.....
Registrar

No. 35

PARTICULARS SERVED PURSUANT TO
REQUEST OR ORDER

O. 18, r. 12

(Title as in action)

Further and better particulars of the statement of claim (or defence or as may be).

Served pursuant to request (or order) dated the day of,
20

(Here set out in numbered paragraphs the particulars requested (or ordered) and the answers to them).

Dated the day of, 20

.....
Solicitor for the

[Subsidiary]

No. 36

NOTICE OF DISCONTINUANCE

O. 21, r. 2

(Title as in action)

Take notice that the plaintiff wholly (or specify the part) discontinues this action (or the defendant wholly (or specify the part) withdraws the defence or discontinues his counterclaim) (against the defendant plaintiff).

Dated the day of, 20

.....
Solicitor for the

To the Registrar and the other parties to the action.

No. 37

NOTICE OF PAYMENT INTO COURT

O. 22, r. 1

(Title as in action)

Take notice that —

The defendant has paid \$ into Court.

The said \$ is in satisfaction of (the cause of action) (all the causes of action) in respect of which the plaintiff claims (and after taking into account and satisfying the abovenamed defendant's cause of action for in respect of which he counterclaims).

or

The said \$, is in satisfaction of the following causes of action in respect of which the plaintiff claim, namely,
.....
(and after taking into account as above).

or

Of the said \$, \$ is in satisfaction of the plaintiff's cause(s) of action for (and after taking into account as above) and \$ is in satisfaction of the plaintiff's cause(s) of action for (and after taking into account as above).

Dated the day of, 20

.....
Solicitor for the

To the Registrar, the plaintiff and the other defendants.

Receipt:

Received the above sum of dollars and cents into the Court for the above credit.

Dated the day of, 20

.....
Registrar

No. 38

NOTICE OF ACCEPTANCE OF MONEY PAID
INTO COURT

O. 24, r. 3

(Title as in action)

Take notice that the plaintiff accepts the sum of \$ paid in by the defendant in satisfaction of the cause(s) of action in respect of which it was paid in and in respect of which the plaintiff claims (against that defendant) (and abandons the other causes of action in respect of which he claims in this action).

Dated the day of, 20

.....
Solicitor for the

To the Registrar and the defendant.

[Subsidiary]

No. 39

NOTICE REQUIRING AFFIDAVIT VERIFYING
LIST OF DOCUMENTS**O. 24, r. 2**

(Title as in action)

Take notice that you the abovenamed plaintiff (or defendant) are required within 14 days after the service of this notice on you to make and file an affidavit verifying the list of documents you are required to make under Order 24, rule 2(1).

Dated the day of, 20

.....
Solicitor for the

No. 40

LIST OF DOCUMENTS

O. 24, r. 5

(Title as in action)

The following is a list of the documents relating to the matters in question in this action which are or have been in the possession, custody or power of the abovenamed plaintiff defendant) and which is served in compliance with Order 24, rule 2 (or the order herein) dated the day of, 20

1. The plaintiff (or defendant) has in his possession, custody or power the documents relating to the matters in question in this action enumerated in Schedule 1 hereto.
2. The plaintiff (or defendant) objects to produce the documents enumerated in Part 2 of the said Schedule 1 on the ground that (stating the ground of objection).
3. The plaintiff (or defendant) has had, but has not now, in his possession, custody or power the documents relating to the matters in question in this action enumerated in Schedule 2 hereto.
4. Of the documents in the said Schedule 2, those numbered in the schedule were last in the plaintiff's (or defendant's) possession, custody or power on (stating when) and the remainder on (stating when).

(State what has become of the said documents and in whose possession they now are).

5. Neither the plaintiff (or defendant), nor his solicitor nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description

whatever relating to any matter in question in this section, other than the documents enumerated in Schedules 1 and 2 hereto.

SCHEDULE 1

PART 1

(Enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it).

PART 2

(Enumerate as aforesaid the documents in the possession, custody or power of the party in question which he objects to produce).

SCHEDULE 2

(Enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession custody or power of the party in question).

Dated the day of, 20

Notice to inspect

Take notice that the documents in the above list, other than those listed in Part 2 of Schedule 1 (and Schedule 2), may be inspected at (the office of the solicitor of the above named (plaintiff) (defendant) (insert address) or as may be) on the day of, 20, between the hours of and

.....
Solicitor for the

To the defendant (or plaintiff) and his solicitor.

No. 41

AFFIDAVIT VERIFYING LIST OF DOCUMENTS

O. 24, r. 5

(Title as in action)

I, the abovenamed plaintiff (or defendant) do make oath (or affirm) and say as follows:

1. The Statements made by me in paragraphs 1, 3 and 4 of the list of documents not produced and shown to me marked are true.
2. The Statements of fact made by me in paragraph 2 of the said list are true.
3. The statements made by me in paragraph 5 of the said list are true to the best of my knowledge, information and belief.

This affidavit is filed on behalf of the plaintiff (or defendant).

Sworn (or affirmed) as in Form 78.

No. 42

NOTICE TO INSPECT DOCUMENTS

O. 24, r. 9

(Title as in action)

Take notice that you can inspect the document mentioned in your notice of the day of, 20 (except the deed numbered in that notice) at my office on day next the instant between the between the hours of m.

Dated the day of, 20

.....
Solicitor for the

No. 43

NOTICE TO PRODUCE DOCUMENTS
REFERRED TO IN PLEADINGS OR AFFIDAVITS

O. 24, r. 10

(Title as in action)

Take notice that the plaintiff (or defendant) requires you to produce for his inspection, the following documents referred to in your pleading (or affidavit) namely:

Describe documents required.

Dated the day of, 20

.....
Solicitor for the

To the solicitor for

No. 44

NOTICE WHERE DOCUMENTS
MAY BE INSPECTED

O. 24, r. 10

(Title as in action)

Take notice that the documents mentioned in your notice of the
day of (except the deed numbered in that notice) may be inspected
at (insert place of inspection) on the
day of between the hours of and m.

(Or, that the plaintiff (or defendant) objects to giving inspection of the documents
mentioned in your notice of the day of,
20, on the ground that (state the ground).

Dated the day of, 20

.....
Solicitor for the

[Subsidiary]

No. 45

ORDER FOR PRODUCTION OF
DOCUMENTS AND INSPECTION

O. 24, r. 11

(Title as in action)

Upon the application of and upon reading the affidavit of
filed the day of, 20, and upon hearing.

It is ordered that the do, on reasonable notice, produce
at (insert place of inspection), situate at the following documents,
namely and that the be at liberty to inspect and peruse
the documents so produced, and to make notes of their contents, and be entitled to be supplied
with copies thereof on payment of the proper charges. And it is ordered that in the meantime
all further proceedings be stayed, and that the costs of this application be

Dated the day of, 20

(Seal)

.....
Registrar

No. 46

SUMMONS FOR DIRECTIONS
PURSUANT TO ORDER 25

O. 24, r. 1

N.B. — Applicants to complete the text of any matter required and to strike out the number
opposite any matter not required but not to strike out the text, which must be left for the Judge
(or Registrar).

(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) on
the day of, 20, at m., on
the hearing of an application for directions in this action, that:

1. This action be consolidated with action(s) in Suit No. of 20 and
Suit No. of 20
2. This action be referred to the Registrar and that the costs of this application be costs in
the cause.
3. The action be (or by consent) transferred to the Subordinate Court at
and that the costs of this application be in the discretion of the Subordinate Court.

4. Unless the plaintiff within days gives security for the defendant's costs in the sum of \$ to the satisfaction of the Registrar, the action be transferred to the Subordinate Court at with stay meanwhile, and that the costs of this application be in the discretion of the Subordinate Court (and that if the security be so paid the directions be as follows:—)

5. The plaintiff have leave to amend the writ by and that the service of the writ and the defendant's appearance do stand, and that the costs incurred and thrown away by the amendment be the defendant's in any event.

6. The plaintiff have leave to amend the statement of claim as shown in the document served herewith and to re-serve the amended statement of claim in days, with leave to the defendant to re-serve an amended defence (if so advised) in days thereafter, (and with leave to the plaintiff to re-serve an amended reply (if so advised) in days thereafter) and that the costs incurred thrown away by the amendments be the defendant's in any event.

7. The defendant have leave to amend the defence as shown in (the document served with) the defendant's notice under this summons and to re-serve the amended defence in days (or with leave to the plaintiff to re-serve an amended reply (if so advised) in days thereafter) and that the costs of and the costs thrown away as the result of the amendments be the plaintiff's in any event.

8. The plaintiff serve on the defendant within days the further and better particulars of the statement of claim specified in (the document served with) the defendant's notice under this summons.

9. The defendant serve on the plaintiff within days the further and better particulars of the defence specified in the document served herewith.

10. The plaintiff serve on the defendant within days the further and better particulars of the reply specified in (the document served with) the defendant's notice under this summons.

11. The plaintiff give security for the defendant's costs to the satisfaction of the Registrar in the sum of on the ground and that in the meantime all further proceedings be stayed.

12. The plaintiff within days serve on the defendant a list of documents (and file an affidavit verifying such list) (limited to the documents relating to the —

(special damage claimed)

(plaintiff's industrial injury, industrial disablement; or sickness benefit rights)

(period from to)

(issues raised in paras. of the statement of claim
and paras. of the defence)

(issues of)).

[Subsidiary]

13. The defendant within days serve the plaintiff with a list of documents (and file an affidavit verifying such list) (limited to documents relating to the —

(period from to)

(issues raised in paras. of the statement of claim and paras. of the defence)

(issues of)).

14. There be inspection of documents within days of the service of the lists (filing of the affidavits).

15. The plaintiff have leave to serve on the defendant the interrogatories shown in the document served herewith, and that the defendant answer the interrogatories on affidavit within days.

16. The defendant have leave to serve on the plaintiff the interrogatories shown in the document served with the defendant's notice under this summons, and that the plaintiff answer the interrogatories on affidavit within days.

17. The plaintiff (or defendant) (retain and preserve pending the trial of the action) (upon days notice to give inspection of) (the subject matter of the action, to the defendant (or plaintiff) and to his legal advisers (and experts)).

18. The statements in be admissible in evidence at the trial without calling as a witness the maker of the statements (and, if a copy of that document certified by to be a true copy is produced, without production of the original document).

19. An affidavit of (in the form of the draft affidavit (served herewith) (with the defendant's notice under this summons)) (to be served within days) be admissible in evidence at the trial.

20. Evidence of the following fact(s), namely be received at the trial by statement on oath of information and belief (by the production of the following documents or entries in books or copy documents or copy entries in books, namely).

21. It be recorded that the parties ((plaintiff) (defendant)) refuses to admit for the purposes of this action that the truth of the statements in the document served (herewith) with the defendant's notice under this summons.

22., a witness on behalf of the plaintiff (or defendant) may, upon days notice, be examined before the Registrar (or a special examiner to be agreed upon by the parties or appointed by the Registrar) and that the said witness need not attend at the trial.

23. A medical report be agreed, if possible, and that, if not, the medical evidence be limited to witness for each party.

24. A report by engineers (surveyors) (expert) be agreed if possible, and that, if not, the expert evidence be limited to witnesses for each party.

25. A plan of the *locus in quo* other than a sketch plan be receivable in evidence at the trial.

26. Photographs and a plan of the *locus in quo* be agreed, if possible.
27. By consent, (the right of appeal be excluded) (any appeal be limited to the Court of Appeal (any appeal be limited to questions of law only).
28. Trial. (Estimated length and number of witnesses) To be set down within days (and to be tried immediately after the action in Suit No. of 20).
29. The costs of this application be costs in the cause.

Dated the day of, 20

Entered No. 20

Clerk

(Seal)

.....
Registrar

To the defendant(s) and to his (their) solicitors.

This summons is taken out by of, solicitors for the plaintiff.

No. 47

NOTICE UNDER SUMMONS FOR DIRECTIONS

O. 25, r. 7

(Title as in action)

Take notice that the abovenamed defendant intends to apply at the hearing of the summons for directions herein for an order that (insert directions required — see Form 46).

Dated the day of, 20

Solicitors for

No. 48

SUMMONS FOR INTERROGATORIES

O. 26, r. 1

(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on the day of, 20 at m., on the hearing of an application by for an order that the be at liberty to serve

[Subsidiary]

on be at liberty to serve on the interrogatories in writing and that the said do within days answer the questions in writing by affidavit.

Dated the day of, 20

(Seal)

.....
Registrar

Entered No. 20
Clerk

This summons is taken out by solicitor
for

To

No. 49

INTERROGATORIES

O. 26, r. 1

(Title as in action)

Interrogatories

.....
on behalf of the abovenamed (plaintiff) or (defendant *A.B.*) for the examination of the abovenamed (defendants *A.B.* and *C.D.*) (defendants the X. Co. Ltd.) or (plaintiff) pursuant to the order herein dated the day of, 20

(Here set out the interrogatories in the form of concise questions, each interrogatory to be set out in a separate paragraph and numbered consecutively) .

1. Did you?
2. Did you not?
3. (a) were you?

(b) If any, were you not?

(The defendant *A.B.* is required to answer all the interrogatories numbered).

(The defendant *C.D.* is required to answer interrogatories numbered).

(*E.P.*, a director (or as may be) of the defendants, the X. Co., Ltd., is required to answer the interrogatories numbered).

Served the day of, 20, by of
solicitor for the (plaintiff) (defendant)

To the abovenamed ((defendant *A.B.* and *C.D.*) (plaintiff) and (their) (his) solicitor).

No. 50

ORDER FOR INTERROGATORIES

O. 26, r. 1

(Title as in action)

Upon the application of
and upon reading the affidavit of
filed the day of, 20, and upon hearing

It is ordered that the be at liberty to serve on the
interrogatories in writing as initialled by the Judge and that the said do
answer the interrogatories within days and that costs of this application
be

Dated the day of, 20

(Seal)

.....
Registrar

No. 51

ANSWER TO INTERROGATORIES

O. 26, r. 1

(Title as in action)

The Answer

.....
of the (defendants) or (abovenamed defendant *A.B.*) or (plaintiff) to the interrogatories for
(their) or (his) examination by the abovenamed (plaintiff) (defendants) pursuant to the order
herein dated the day of, 20

In answer to the said interrogatories (we, the said *A.B.* and *C.D.* severally) or (I, the
abovenamed *A.B.* or plaintiff), do make oath (or affirm) and say as follows:

1. To the 1st interrogatory, namely (state in full the interrogatory), that (stating the
answer).

[Subsidiary]

2. To the 2nd interrogatory, namely (state in full the interrogatory), that (stating the answer).

3. To the 3rd interrogatory, namely (state in full the interrogatory), that I object to answer it on the ground that (stating the ground of objection).

Sworn (or affirmed) as in Form 78.

This affidavit is filed on behalf of the (defendants) (plaintiff).

No. 52

NOTICE TO ADMIT FACTS

O. 27, r. 2

(Title as in action)

Take notice that the plaintiff (or defendant) in this action requires the defendant (or plaintiff) to admit, for the purposes of this action only, the several facts respectively hereunder specified; and the defendant (or plaintiff) is hereby required, within 14 days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated the day of, 20

.....
Solicitor for the

To the defendant (or plaintiff) and his solicitor.

The facts, the admission of which is required, are:

(set out admissions required, e.g.)

1. That *A.B.* died on the, 20
2. That he died intestate.
3. That *C.D.* was his only lawful son.
4. That *E.F.* died on the, 20
5. That *E.F.* never was married.

No. 53

ADMISSION OF FACTS, PURSUANT TO NOTICE

O. 27, r. 2

(Title as in action)

The defendant (or plaintiff) in this action, for the purposes of this action only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitation, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any to them, as evidence in this action:

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant (or plaintiff) on any other occasion, or by anyone other than the plaintiff (of defendant, or party requiring the admission).

.....
Solicitor for the

To the plaintiff (or defendant) and his solicitor.

(example)

Facts admitted	Qualification or Limitations if any, subject to which they are admitted
1. That <i>A.B.</i> died on the, 20	1. —
2. That he died intestate.	2. —
3. That <i>C.D.</i> was his lawful son.	3. But not that he was only lawful son.
4. That <i>E.F.</i> died	4. But not that he died on the, 20
5. That <i>E.F.</i> never was married.	5. —

No. 54

NOTICE TO ADMIT DOCUMENTS

O. 27, r. 5

(Title as in action)

Take notice that the plaintiff (or defendant) in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (or plaintiff), his solicitor or agent at on the day of, 20, between the hours of and, and the defendant (or plaintiff) is hereby within 7 days to admit that such of the said documents

[Subsidiary]

as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this action.

And further take notice that if you do not within the afore-mentioned 7 days give notice that you do not admit the said documents (or any of them) and that you require the same to be proved at the trial you shall be deemed to have admitted the said document (or documents) unless the Court shall otherwise order.

Dated the day of, 20

.....
Solicitor for the

(Here describe the documents, the manner of doing which may be as follows):

ORIGINALS

Description of Documents	Date
1.	
2.	
3.	
4.	
5.	

COPIES

Description of Documents	Dates	Original or Duplicate served sent, or delivered, when, how and by whom
1.		
2.		
3.		

No. 55

NOTICE OF NON-ADMISSION OF DOCUMENTS

O. 27, r. 5

(Title as in action)

Take notice that I do not admit Numbers 1, 2 and 5 of the documents (as the case may be) in the Notice to Admit Documents saving all just exceptions to the same as evidence.

Dated the day of, 20

.....
Solicitor for the

To the plaintiff (or defendant) and his solicitor.

No. 56

NOTICE TO PRODUCE

O. 27, r. 5

(Title as in action)

Take notice that you are hereby required to produce and show to the Court on the trial of this all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this and particularly.

Dated the day of, 20

.....
Solicitor for the

To the plaintiff (or defendant) and his solicitor.

No. 57

NOTICE OF APPOINTMENT TO HEAR
ORIGINATING SUMMONS

O. 28, r. 2

(Title as in summons)

To of

[Subsidiary]

Take notice that the originating summons issued herein on the day of, 20, will be heard by the Judge on the day of, 20, at m. You may attend in person or by your counsel. If you fail to attend, such order will be made as the Court may think just and expedient.

Dated the day of, 20

(Seal)

.....
Registrar

No. 58

ORDER FOR INTERIM INJUNCTION

O. 29, r. 1

(Title as in action)

Upon the application of and upon reading the affidavit of filed the day of, 20, and upon hearing and the plaintiff by his said undertaking to abide by any order the Court or a Judge may make as to damages in case the Court or a Judge should hereafter be of opinion that the defendant shall have sustained any by reason of this order which the plaintiff ought to pay. It is ordered and directed that the defendant(s) (a) by himself (themselves) his (their) agents or servants or otherwise be restrained, and an injunction is hereby granted restraining him (them) from until after the hearing of a summons returnable on the day of next (or until after the trial of this action) or until further order.

Dated the day of, 20

(Seal)

.....
Registrar

(a) Where the injunction is against a limited company or a corporate body, the Form should read:

“that the defendants (insert name of company or corporate body) by their agents or servants or otherwise be restrained etc.”.

No. 59

RECEIVER'S SECURITY BY UNDERTAKING

O. 30, r. 2

(Title as in action)

I, of the receiver (and manager) appointed by order dated (or proposed to be appointed) in this action hereby undertake with the Court to duly account for all moneys and property received by me as such receiver (or manager) or for which I may be held liable and to pay the balances from time to time found due from me and to deliver any property received by me as such receiver (or manager) at such times and in such manner in all respects as the Court or a Judge shall direct.

And we hereby jointly and severally (in the case of a Guarantee or other Company strike out ("jointly and severally") undertake with the Court to be answerable for any default by the said as such receiver (or manager) and upon such default to pay to any person or persons or otherwise as the Court or a Judge shall direct any sum or sums not exceeding in the whole \$ that may from time to time be certified by the Registrar to be due from the said receiver and we submit to the jurisdiction of the Court in this action to determine any claim made under this undertaking.

Dated the day of, 20

(Signatures of Receiver and his surety or sureties. In the case of a surety being a guarantee or other company, it must be sealed or otherwise duly executed).

No. 60

AFFIDAVIT VERIFYING RECEIVER'S ACCOUNT

O. 30, r. 4

(Title as in action)

I,, of, the receiver appointed in this cause, do make oath (or affirm) and say as follows:

1. The document now shown to me marked A is, as it purports to be, a full and true account of or the period therein specified.
2. and, my sureties named in the guarantee (or undertaking) dated 20, are both alive and neither of them has become bankrupt or insolvent.

(or)

[Subsidiary]

2. The Co. Ltd., my surety named in the guarantee (or undertaking dated 20, is still carrying on business and no petition or other proceeding for its winding-up is pending).

Sworn (or affirmed) as in Form 78.

No. 61

CERTIFICATE OF RESULTS OF SALE

O. 31, r. 3

(Title as in action)

I,, of
 auctioneer, the person appointed to sell the estate comprised in the particulars hereinafter referred to, hereby certify as follows:

1. I did at the time and place, in the lots, and subject to the conditions specified in the said particulars and conditions of sale hereto annexed and marked A, put up for sale by auction the estate described in the said particulars.

The result of the sale is truly set forth in the bidding paper hereto annexed and marked B.

2. I have received the sums set forth in the fourth column of the schedule hereto as deposits from the respective purchasers whose names are set forth in the second column of the said schedule opposite the said sums in respect of their purchase-money leaving the sums set forth in the fifth column of the said schedule due in respect thereof.

SCHEDULE

(above referred to)

No. of Lot	Name of Purchaser	Amount of Purchase-money	Amount of Deposit received	Amount remaining due

.....
 Auctioneer

Date

(Note — This form can be adapted to meet the requirements of O.31, r.3(1)(b), when Certificate has to be given by a Solicitor).

No. 62

SUMMONS IN CHAMBERS

O. 32, r. 1

(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on, the day of, 20, at m., on the hearing of an application on the part of (state nature of the application).

The grounds of the application are (state the grounds).

Dated the day of, 20

Entered No. of 20
Clerk

(Seal)

.....
Registrar

This summons is taken out by the plaintiff (or as may be) of (state address).

To the defendant (or as may be).

No. 63

REQUEST FOR SETTING DOWN ACTION FOR TRIAL

O. 34, r. 3

(Title as in action)

The Registrar,

We hereby request that the plaintiff (or defendant) be at liberty to set down this action for trial.

The requisite documents pursuant to Order 34, rule 3, are attached herewith.

The duration of trial estimated by the plaintiff is and by the defendant is

Dated the day of, 20

[Subsidiary]

.....
Solicitor for the

No. 64

NOTIFICATION OF SETTING DOWN ACTION

O. 34, r. 5

(Title as in action)

Take notice that we have this day set down the above action for trial.

Dated the day of, 20

.....
Solicitor for the

To the other parties to the action.

No. 65

CERTIFICATE OF OFFICER AFTER TRIAL

O. 35 r. 7

(Title as in action)

I certify that this action was heard before
 on the day of, 20
 (and on the day of, 20) and occupied the
 time of the Court as follows:

On the day of, 20, from to

The total time occupied was hours minutes.

The Judge directed that (state precisely the terms of the judgment or order or directions given).

Dated the day of, 20

.....
Clerk of the Court

No. 66

LIST OF EXHIBITS

O. 35, r. 8

(Title as in action)

Heard on day of, 20, before

Number of Exhibit	Descriptions of Exhibit	Party who put in Exhibit	Witness who proved Exhibit	Notes

Dated the day of, 20

.....
 Clerk of the Court

No. 67

WRIT OF SUBPOENA *AD TESTIFICANDUM*

O. 38, r. 14

(Title as in action)

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM, IN THE NAME OF HIS MAJESTY
 THE SULTAN AND YANG DI-PERTUAN

To

We command you to attend before at, on
 the day of, 20, at m.,
 and so from day to day until the end of the above proceedings, to give evidence on behalf of
 the in the said proceedings.

Dated the day of, 20

Entered No. of 20

Clerk

[Subsidiary]

(Seal)

.....
Registrar

No. 68

WRIT OF SUBPOENA *DUCES TECUM***O. 38, r. 14**

(Title as in action)

(As in Form 67) We command you to attend either in person or by an agent at
 on the day of, 20, at m., and so
 from day to day until the end of the above proceedings to produce the following documents:
 on behalf of the in the said proceedings.

Dated the day of, 20

Entered No. of 20
 Clerk

(Seal)

.....
Registrar

No. 69

WRIT OF SUBPOENA *AD TESTIFICANDUM*
AND *DUCES TECUM***O. 38, r. 14**

(Title as in action)

(As in Form 67) We command you to attend before at
 on the day of 20, at m.,
 and so from day to day until the end of the above proceedings to give evidence and produce
 the following documents:

on behalf of the in the said proceedings.

Dated the day of, 20

Entered No. of 20
 Clerk

(Seal)

.....
Registrar

No. 70

PRAECIPE FOR SUBPOENA

O. 38, r. 21

(Title as in action)

Seal writ of subpoena, on behalf of the
 directed to returnable on day of, 20

Witness's name in full

His (Her) residence or place of business

His (Her) occupation

If documents or books are required to be produced here specify them.

If witness is not required to give evidence but only to produce documents, so
 state.....

Dated the day of, 20

.....
 Solicitor for the

No. 71

AFFIDAVIT FOR AN ORDER FOR THE
PRODUCTION OF A PERSON IN PRISON

O. 38, r. 21

(Title as in action)

I of do make oath (or affirm)
 and say:

1. That the above action is fixed for hearing on the
 day of, 20, and that now a prisoner
 confined in the prison, will be a material witness for me at the hearing
 (or is a party to the action).

[Subsidiary]

2. That I am advised and verily believe that I cannot safely proceed to the hearing of his action without the evidence of the said (or my evidence).

3. I hereby apply for an order under Prisons Act (Chapter 51) that the said may be brought before the Court.

4. I hereby undertake to pay the costs of conveyance of the said in safe custody to and from the Court and of maintenance of him and the officers in charge of him while attending the Court.

Sworn (or affirmed) as in Form 78.

No. 72

ORDER TO PRODUCE PERSON IN PRISON

O. 38, r. 21

(Title as in action)

To the Officer in charge of the

You are hereby required upon tender made to you of a reasonable sum for the conveyance and maintenance of a proper officer and of now a prisoner in the in going to, remaining at and the returning from the High Court at, to bring the said on the day of, 20, at m., to give testimony on behalf of and after the said shall have given his testimony before the Court or the Court shall have dispensed with his further attendance you are required to cause him to be conveyed under safe and sure conduct back to the said

Dated the day of, 20

(Seal)

.....
Registrar

No. 73

ORDER FOR EXAMINATION BEFORE TRIAL

O. 39, r. 1

(Title as in action)

Upon the application of and upon reading the affidavit of filed the day of, and upon hearing

and that the Court is desirous of obtaining the testimony of (name of person).

It is ordered that do attend before the (or Registrar) in Chambers on, the day of, 20, at m., or such other day and time as the Judge (or Registrar) may appoint and do there submit to be examined upon oath or affirmation touching the testimony so required as aforesaid and do then and there produce (description of documents, if any, required to be produced).

And it is further ordered that the Judge (or Registrar) do take down in writing the evidence of the said witness according to the practice of the Court pertaining to the examination and cross-examination of witnesses (or as may be otherwise directed) and do cause the witness to sign his deposition in his, the Judge's (or the Registrar's) presence; and do sign the deposition taken in pursuance of this order and when so completed, do transmit the same to the Court.

Dated the day of, 20

(Seal)

.....
Registrar

No. 74

ORDER FOR ISSUE OF LETTER OF REQUEST TO
JUDICIAL AUTHORITY OUT OF JURISDICTION

O. 39, r. 2

(Title as in action)

Upon the application (as in Form 73).

It is ordered that a letter of request do issue directed to the proper judicial authority for the examination of the following witnesses, namely:

..... of
..... of

And it is ordered that the deposition taken pursuant thereto when received be filed in the registry of the High Court at and that office copies thereof may be read and given in evidence on the trial of this action, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor of the party using the same as to his belief.

And it is ordered that (the trial of this action be stayed until the said depositions have been filed and that) the costs of and incidental to the application for this order and the said letter of request and examination be (costs in the cause).

Dated the day of, 20

[Subsidiary]

(Seal)

.....
Registrar

No. 75

ORDER FOR APPOINTMENT OF EXAMINER TO TAKE **O. 39, r. 2**
EVIDENCE TO WITNESS OUT OF JURISDICTION

(Title as in action)

Upon the application of and upon reading the affidavit of filed the day of, 20, and upon hearing

It is ordered that the Brunei Darussalam (or British) Consul or his deputy at (or Esq.) be appointed as special examiner for the purpose of taking the examination, cross-examination and re-examination *viva voce* on oath or affirmation, of witnesses on the part of at in (name of country). The examiner shall be at liberty to invite the attendance of the witnesses and the production of documents, but shall not exercise any compulsory powers. Otherwise such execution shall be taken in accordance with the Brunei Darussalam procedure. The solicitors to give to the solicitors days notice in writing of the date on which they propose to send out this order to for execution, and that days after the service of such notice the solicitors for the plaintiff and defendant respectively do exchange the names of their agents at to whom notice relating to the examination of the said witnesses may be sent. And that days (exclusive of Sunday) before the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party, unless such notice be dispensed with. And that the depositions when taken, together with any documents referred to therein, or certified copies of such documents or of extracts therefrom be sent by the examiner, under seal, to the Registrar of the High Court (insert address on or before the day of next, or such further or other day as may be ordered there to be filed in the Registry. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action, be stayed until the filing of such depositions. And that the costs of and incidental to the application for this order and such examination be costs in the cause.

Dated the day of, 20

(Seal)

.....
Registrar

No. 76

LETTER OF REQUEST FOR EXAMINATION
OF WITNESS OUT OF JURISDICTION

O. 39, r. 3

To the Competent Judicial Authority of
in the of

Whereas an action is now pending in the High Court of Brunei Darussalam at which
..... is plaintiff and is defendant and in which the
plaintiff claims

And whereas it has been represented to the said Court that it is necessary for the purposes
of justice and for the due determination of the matters in dispute between the parties that the
following persons should be examined as witnesses upon oath touching such matters, namely
..... of and of and it appears that
such witnesses are resident within your jurisdiction.

Now I, the Registrar of the High Court of Brunei Darussalam
hereby request that for the reasons aforesaid and for the assistance of the said Court you will
be pleased to summon the said witnesses (and such other witnesses as the agents to the said
plaintiff and defendant shall humbly request you in writing so to summon) to attend at such
time and place as you shall appoint before you, or such other person as according to your
procedure is competent to take the examination of witnesses, and that you will cause such
witnesses to be examined *viva voce* (or upon the interrogatories which accompany this letter
of request) touching the said matters in question in the presence of the agents of the plaintiff
and defendant or such of them as shall, on due-notice given, attend the examination.

And I further request that you will permit the agents of both the plaintiff and defendant or
such of them as shall be present to examine (upon interrogatories and *viva voce* upon the
subject matter thereof or arising out of the answers thereto) such witnesses as may, after due
notice in writing, be produced on their behalf and the other party to cross-examine the said
witnesses (upon cross-interrogatories and *viva voce*) and the party producing the witness for
examination to re-examine him *viva voce*.

And I further request that you will be pleased to cause the evidence of the said witnesses
(or the answers of the said witnesses and all additional *viva voce* questions, whether on
examination, cross-examination or re-examination) to be reduced into writing and all books,
letters, papers and documents produced on such examination to be duly marked for
identification, and that you will be further pleased to authenticate such examination by the
seal of your tribunal or in such other way as is in accordance with your procedure and to return
it together with (the interrogatories and cross-interrogatories and) a note of the charges and
expenses payable in respect of the execution of this request through the Brunei Darussalam
(or British) Consul from whom the same was received (or the Minister for Foreign Affairs
and Trade) for transmission to the High Court of Brunei Darussalam at Bandar Seri Begawan.

And I further request that you will cause me, or the agents of the parties if appointed, to
be informed of the date and place where the examination is to take place.

Dated the day of, 20

[Subsidiary]

(Seal)

.....
Registrar

[S 34/2008]

No. 77

SOLICITOR'S UNDERTAKING AS TO EXPENSES

O. 39, r. 3

(Title as in action)

I (We) hereby undertake to be responsible for all expenses incurred by the Minister for Foreign Affairs and Trade in respect of the letter of request issued herein on the, and on receiving due notification of the amount of such expenses undertake to pay the same as directed by the Registrar of the High Court, at

The following have been appointed as agents for the parties in connection with the execution of the above letter of request.

Plaintiff's Agent:

.....

of

Defendant's Agent:

.....

of

Dated the day of, 20

.....
Solicitor for the

[S 34/2008]

No. 78

FORMS OF JURAT

O. 41, r. 1

(Title as in action)

(a) To an affidavit by one deponent Sworn (on affirmed) on the day of, 20, at (Through the interpretation of).

Before me

.....
Commissioner for Oaths

(b) To an affidavit by two or more deponents Sworn (or affirmed) by the deponents and (or by both or all) of the above named deponents) on the day of, 20, at (Through the interpretation of).

Before me

.....
Commissioner for Oaths

(c) To an affidavit by an illiterate or blind person Sworn (or affirmed) on the day of, 20, at

I, having truly, distinctly and audibly read over the contents of the above affidavit (add if exhibits are referred to in the affidavit “and explained the nature and effect of the exhibits therein referred to”) to the said deponent who seemed perfectly to understand the same and who made his mark thereto in my presence (Through the interpretation of).

Before me

.....
Commissioner for Oaths

(d) To an affidavit by a person who does not understand English. Sworn (or affirmed) on the day of, 20, at, thorough the interpretation of (if the interpreter is not a Court Interpreter, add the following:

“the said having been first sworn that he had truly, distinctly, and audibly translated the contents of his affidavit to the deponent and that he would truly and faithfully interpret the oath (or affirmation) about to be administered unto him the said”).

[Subsidiary]

Before me

.....
Commissioner for Oaths

No. 79

JUDGMENTS

O. 42, r. 5

(Title as in action)

(O. 13, r. 1; O. 19, r. 2; O. 42, r. 5)*(a)* Default judgment in action for liquidated demand.

No appearance having been entered (or no defence having been served) by the defendant herein. It is this day adjudged that defendant do pay the plaintiff \$ and \$ costs (or costs to be taxed).

(The above costs have been taxed and allowed at \$ as appears by the Registrar's certificate dated the day of, 20).

Dated the day of, 20

(Seal)

.....
Registrar**(O. 13, r. 2; O. 19, r. 3; O. 42, r. 5)***(b)* Default judgment in action for unliquidated damages.

No appearance having been entered (or no defence having been served) by the defendant herein. It is this day adjudged that the defendant do pay the plaintiff damages to be assessed.

The amount found due to the plaintiff under this judgment having been certified at \$ as appears by the Registrar's certificate filed the day of, 20

It is adjudged that the defendant do pay the plaintiff \$ and costs to be taxed.

The above costs etc. (as in *(a)* above).

(Note — This form is a combined form of interlocutory and final judgment. The plaintiff may at his option enter interlocutory judgment by omitting the words below the line in the form and enter a separate final judgment in *(f)* below).

(O. 13, r. 3; O. 19, r. 4; O. 42, r. 5)**(c)** Default judgment in action relating to detention of movable property.

No appearance having been entered (or no defence having been served) by the defendant herein.

It is this day adjudged that the defendant do deliver to the plaintiff the movable property described in the writ of summons (or statement of claim) as (description of movable property) or pay the plaintiff the value of the said property to be assessed (and also damages for their detention to be assessed).

or

It is this day adjudged that the defendant do pay the plaintiff the value of the movable property described in the writ of summons (or statement of claim) to be assessed (and also damages for their detention to be assessed).

The value of the said movable property having been assessed at \$ (and damages at \$) as appears by the Registrar's certificate filed the day of, 20

It is adjudged that the defendant to pay the plaintiff \$ and costs to be taxed.

The above costs etc. (as in (a) above).

(Note — See the note to (b) above).

(O. 13, r. 4; O. 19, r. 5; O. 42, r. 5)**(d)** Default judgment in action for possession of immovable property.

No appearance having been entered (or to defence having been served) by the defendant herein. It is this day adjudged that the defendant do give the plaintiff possession of the immovable property described in the writ of summons (or statement of claim) as and pay the plaintiff \$ costs (or costs to be taxed).

The above costs etc. (as in (a) above).

(O. 13, r. 4)**(e)** Judgment in default in action for possession of immovable property, damages and cost.

No appearance having been entered (or no defence having been served) by the defendant herein. It is this day adjudged that the defendant do give the plaintiff possession of the immovable property described in the writ of summons (or statement of claim) as

And it is further adjudged that the defendant to pay the plaintiff (mesne profits) (damages) to be assessed.

The amount found due to the plaintiff under this judgment having been certified at the sum of \$ as appears by the Registrar's finding filed the day of

[Subsidiary]

....., 20

It is adjudged that the defendant do pay the plaintiff \$ and costs to be taxed.

The above costs etc. (as in (a) above).

(Note — See the note (b) above).

(O. 42, r. 5)

(f) Final judgment after assessment of damages etc.

The day of, 20

The plaintiff having on the day of, 20 obtained interlocutory judgment herein against the defendant for damages (or as may be) to be assessed, and the amount found due to the plaintiff having been certified at \$ as appears by the Registrar's certificate filed the day of, 20

It is this day adjudged that the defendant do pay the plaintiff \$ and costs, to be taxed.

The above costs etc. (as in (a) above).

(O. 14, r. 3; O. 42, r. 5)

(g) Judgment under Order 14.

The day of, 20

The defendant having entered appearance herein and the Court having under Order 14, rule 3 ordered that judgment as hereinafter provided be entered for the plaintiff against the defendant.

It is this day adjudged that the defendant do pay the plaintiff \$ and \$ costs (or costs to be taxed).

or

pay the plaintiff damages to be assessed and costs to be taxed.

or

deliver to the plaintiff the movable property described in the writ of summons (or statement of claim) as (or pay the plaintiff the value of the said movable property to be assessed) (and also damages for their detention to be assessed) and costs to be taxed.

or

Give the plaintiff possession of the immovable property described in the writ of summons (or statement of claim) as and cost to be taxed.

The above costs etc. (as in (a) above).

(O. 14, r. 5; O. 42, r. 5)

(h) Judgment for the Defendant under Order 14.

The day of, 20

The Court having under Order 14, rule 5 ordered that judgment be entered for the defendant against the plaintiff on the counterclaim for \$ and costs of the counterclaim.

“It is this day adjudged that plaintiff do pay the defendant \$ and costs of the counterclaim to be taxed”.

The above costs etc. (as in (a) above).

(O. 42, r. 5)

(i) Judgment after trial before Judge.

The day of, 20

This action having been tried before on the day of, 20

It is adjudged that the defendant do pay the plaintiff \$ and his costs of action to be taxed (or that this action be dismissed and that the plaintiff do pay the defendant his costs to be taxed) (or as may be according to the Judge’s order).

(It is further adjudged that execution be stayed for days) (and if within that time the gives notice of appeal, execution be further stayed until the determination of the appeal or as may be according to the Judge’s direction).

The above costs etc. (as in (a) above).

(O. 42, r. 5)

(j) Judgment upon Motion for Judgment.

The day of, 20 (date of order of Court).

This action having on the day of, 20, come in before the Court on motion for judgment on behalf of the (party moving the Court) and the Court after hearing counsel for the (plaintiff and defendant, or as may be) having ordered that (recite direction for judgment).

It is this day adjudged that do pay the \$ and costs to be taxed.

The above costs etc. (as in (a) above).

[Subsidiary]

(O. 35, r. 1(2); O. 42, r. 5)*(k)* Judgment of Dismissal.

Dated and entered the day of, 20

This action having on the day of, 20, been called on for hearing before and the plaintiff having failed to appear, and the defendant having thereupon become entitled under Order 35, rule 1(2) to judgment dismissing the action and the said having ordered that judgment be entered accordingly.

Therefore it is adjudged that this action do stand dismissed out of this Court with costs.

And it is further adjudged that the plaintiff do pay the defendant his costs to be taxed.

The above costs etc. (as in *(a)* above).

(O. 42, r. 5)*(l)* Judgment in pursuance of Order.

Pursuant to the Order of dated the day of, 20, whereby it was ordered and default having been made.

It is this day adjudged that the defendant do pay the plaintiff \$ and costs, to be taxed.

The above costs etc. (as in *(a)* above).

(O. 42, r. 5)*(m)* Judgment after trial before Registrar.

Dated and entered the day of, 20

This action by an order dated the day of, 20, having been ordered to be tried before, Registrar of the High Court and the said Registrar having tried the said action and having by his certificate dated the day of, 20, directed that judgment as hereinafter provided be entered for the plaintiff (or defendant).

It is adjudged that (as in *(i)* above according to the Registrar's certificate).

(O. 33, r. 5; O. 42, r. 5)*(n)* Judgment after decision of preliminary issue.

Dated and entered the day of, 20

The issue (or question) arising in this cause (or matter) by the order dated the day of, 20, ordered to

be tried before having on the day of ,
 20 , been tried before the said and the said
 having found and having ordered that
 judgment as hereinafter provided be entered for the (or having dismissed the
 cause or matter).

It is adjudged that (the defendant do pay the plaintiff \$ and his costs
 of action to be taxed) (the plaintiff do pay the defendant his costs of defence to be taxed) (or
 as may be according to the order made).

Dated the day of , 20

(Seal)

.....
 Registrar

(O. 42, r. 5)

(o) Judgment for liquidated sum against personal representative.

Dated and entered the day of , 20

(Recital as in (a) or (f) to (n) according to the circumstances in which judgment was
 obtained).

It is adjudged that the defendant as executor (or administrator) of the abovenamed
 deceased do pay the plaintiff \$ and costs, to be
 taxed, the said sum and costs to be levied of the real and personal estate within the meaning
 of the Probate and Administration Act (Chapter 11) of the deceased at the time of his death
 come to the hands of the defendant as such executor (or administrator) to be administered, if
 he has or shall hereafter have so much thereof in his hands to be administered, and if he has
 not so much thereof, in his hands to be administered, then, as to the costs aforesaid, to be
 levied of the movable property of the defendant authorised by law to be seized in execution
 (or as may be according to the order made).

The above costs etc. (as in (a) above).

(O. 59, r. 10(1))

(p) Judgment for defendant's costs on discontinuance.

The day of , 20

The plaintiff having by a notice in writing dated the day of ,
 20 , discontinued this action (or withdrawn his claim in this action for)
 and the defendant's costs of the action (or of the claim withdrawn) having been taxed and
 allowed at \$ as appears by the Registrar's certificate dated the
 day of , 20 , and the plaintiff not having paid the sum within
 4 days after taxation.

[Subsidiary]

It is this day adjudged that the plaintiff do pay the defendant \$ the said taxed costs.

Dated the day of, 20

(Seal)

.....
Registrar

(O. 59, r. 10(2) and (3))

(q) Judgment for costs after acceptance of money paid into Court.

The day of, 20

The defendant having paid into Court in this action the sum of \$ in satisfaction of the plaintiff's cause(s) of action (or in satisfaction of the plaintiff's cause of action for), and the plaintiff having by his notice dated the day of, 20, accepted that sum in satisfaction of his cause(s) of action or in satisfaction of his cause of action for and abandoned his other cause(s), of action), and the plaintiff's costs herein having been taxed and allowed at \$ as appears by the Registrar's certificate dated the day of, 20, and the defendant not having paid the sum within 48 hours after taxation.

It is this day adjudged that the defendant do pay the plaintiff \$ the said taxed costs.

Dated the day of, 20

(Seal)

.....
Registrar

No. 80

ORDER FOR ACCOUNTS AND INQUIRIES

O. 43, r. 2

(Title as in action)

Upon the application of the plaintiff (or the defendant) in this action and upon reading the affidavit of filed the day of, 20, and upon hearing

It is ordered that the following accounts and inquiry be taken and made; that is to say,

1. An account of the movable property not specifically bequeathed of, deceased, the testator in the pleadings named, come to the hands of etc.
2. An account of the testator's debts, (or where deceased died more than 6 years before judgment. (An inquiry whether there is any debt of the deceased remaining unpaid)).
3. An account of the testator's funeral expenses.
4. An account of the legacies and annuities (if any), given by the testator's will.
5. An inquiry what parts (if any) of the testator's said movable property are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administering, and then in payment of the legacies and annuities (if any) given by his will.

(if ordered)

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what immovable property the testator was seised of or entitled to at the time of his death.
7. An account of the rents and profits of the testator's immovable property received by etc.
8. An inquiry what incumbrances (if any) affect the testator's immovable property, or any and what parts thereof.

(If sale ordered)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.
10. An inquiry, what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's immovable property be sold with the approbation of the Judges etc., etc.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

Dated the day of, 20

(Seal)

.....
Registrar

No. 81

NOTICE OF JUDGMENT OR ORDER

O. 44, r. 3

(Title as in action)

Take notice that a judgment (or order) if this Court was given (or made) on the day of, 20, by which it was (state substance of judgment or order).

And also take notice that from the time of the service of this notice you (or the infant or the patient as may be) will be bound by the said judgment (or order) to the same extent as you (or he) would have been if you (or he) had originally been made a party.

And also take notice that without entering an appearance you (or the said infant or patient) may within one month after the service of this notice apply to the Court to discharge, vary or add to the said judgment (or order) and that after entering an appearance at the Registry of the High Court at you (or the said infant or patient) may attend the proceedings under the said judgment (or order).

Dated the day of, 20

(Seal)

.....
Registrar

No. 82

FORM OF ADVERTISEMENT FOR CREDITORS

O. 44, r. 10

A.B. DECEASED, By judgment (or order) of the High Court dated, 20, and made in an action in the matter of the estate of *A.B.* deceased, *S.* against *P.*, 20, *B.*, the creditors of *A.B.* late of, of who died on, 20, are to send by post prepaid to of, so as to reach that address on or before, 20, their full names, addresses and description, the full particulars of their claims, a statement of their accounts and the nature of the securities (if any) held by them, or in default thereof they will be excluded from the benefit of the said judgment (or order) unless the Court on application otherwise orders.

Dated the day of, 20

(Signature and address of the solicitor of the party prosecuting the judgment or order stating on whose behalf he is acting).

No. 83

FORM OF ADVERTISEMENT FOR CLAIMANTS
OTHER THAN CREDITORS

O. 44, r. 10

A.B. DECEASED, By judgment (or order) of the High Court dated, 20, and made in an action in the matter of the the estate of *A.B.* deceased (late of, of who died on, 20), S. against *U*, 20, *B* the following inquiry was (or inquiries were) directed, viz:

(Set out inquiry or inquiries)

Notice is hereby given that all persons claiming to be entitled under the said inquiry (or inquiries) are to send by post prepaid to of so as to reach that address on or before, 20, their full names, addresses and descriptions, and full particulars of their claims or in default thereof they will be excluded from the benefit of the said judgment (or order) unless the Court on application otherwise orders.

Dated the day of, 20

(Add name and address of the solicitor of the party prosecuting the judgment or order and state on whose behalf he is acting).

No. 84

AFFIDAVIT VERIFYING LIST OF CREDITOR'S
CLAIMS

O. 44, r. 10

(Title as in action)

We, *C.D.* of and *E.F.* of the abovenamed Plaintiffs (or Defendants or as may be) the executors (or administrations) of the abovenamed *A.B.*, deceased, and *G.H.* of (the person to whom claims are required by the advertisement to be sent), severally do make oath (or affirm) and say as follows:

I, the said *G.H.* for myself say as follows:

1. I have in the paper writing now produced and shown to me and marked A set forth a list of all the claims the particulars of which have been sent to me by persons claiming to be creditors of the said *A.B.*, deceased, pursuant to the advertisement issued in that behalf, dated the day of, 20

And we, the said *C.D.* and *E.F.* for ourselves say as follows:

2. We have in the paper writing now produced and shown to us and marked B set forth a list of all the claims by persons claiming to be creditors of the said *A.B.*, deceased, which

[Subsidiary]

have been received by us or either of us other than claims comprised in the said paper writing marked A.

3. We have in the paper writing now produced and shown to us and marked C set forth a list of all the sums of money which were or may have been due and owing by the said *A.B.*, at the time of his death, and are or may be still due and owing, and which have come to our knowledge or to the knowledge of either of us but in respect of which no claim has been received by us or either of us has been sent in pursuant to the advertisement in that behalf,

And we the said *C.D.*, *E.F.* and *G.H.* for ourselves say as follows:

4. We have examined the particulars of the several claims and sums of money comprised in the said paper writings marked A, B and C and we have compared the same with the books, accounts and documents of the said *A.B.* (or as may be and state any other inquiries or investigations made) in order to ascertain, as far as we are able, to which of such claims and sum of money the estate of the said *A.B.* is justly liable.

5. From such examination (and state any other reasons) we are of opinion and verily believe that the estate of the said *A.B.* is justly liable to the amount set forth, in the sixth columns of the first parts respectively of the said paper writings marked A and B, and in the fifth column of the first part of the said paper writing marked C, and to the best of our knowledge and belief such several amounts are justly due from the estate of the said *A.B.* and proper to be allowed to the respective persons named in the said paper writings.

6. We are of opinion that the estate of the said *A.B.* is not justly liable to the amounts set forth in the second parts respectively of the said paper writing(s) marked A; B and C, and that the same ought not to be allowed without proof by the respective claimants (or we are not able to state whether the estate of the said *A.B.* is justly liable to the amounts set forth in the second parts respectively of the said paper writings marked A, B and C or whether such amounts or any parts thereof respectively are proper to be allowed without further evidence).

7. Except as hereinbefore mentioned, there are not, to the best of our knowledge information and belief, any claims of creditors against the estate of the said *A.B.*, or any sums of money due and owing by the said *A.B.* at the time of his death and still due and owing.

Sworn (or affirmed) as in Form 78.

A

List of claims the particulars of which have been sent in to *G.H.* by persons claiming to be creditors of *A.B.*: deceased, pursuant to the advertisement issued in that behalf, dated the day of, 20

This paper writing marked A was produced and shown etc.

PART 1

CLAIMS PROPER TO BE ALLOWED WITHOUT FURTHER EVIDENCE

Serial Number	Names of Claimants (in alphabetical order)	Addresses of descriptions	Particulars of claims	Amount claimed	Amount proper to be claimed
				\$	\$

PART 2

CLAIMS WHICH OUGHT TO BE PROVED BY CLAIMANTS

Serial Number (in continuation of members in first part)	Names of Claimants (in alphabetical order)	Addresses and descriptions	Particulars of claims	Amount claimed
				\$

[Subsidiary]

B

List of claims by persons claiming to be creditors of *A.B.* deceased other than claims sent in pursuant to the advertisement dated the day of, 20

This paper writing marked B was produced and shown etc.

PART 1**CLAIMS PROPER TO BE ALLOWED WITHOUT FURTHER EVIDENCE**

Serial Number (in continuation of numbers in List A)	Names of Claimants (in alphabetical order)	Addresses and descriptions	Particulars of claims	Amount claimed	Amount proper to be claimed
				\$	\$

PART 2**CLAIMS WHICH OUGHT TO BE PROVED BY CLAIMANTS**

Serial Number (in continuation of members in first part)	Names of Claimants (in alphabetical order)	Addresses and descriptions	Particulars of claims	Amount claimed
				\$

C

List of claims of money which may be due but in respect of which no claim has been received.

This paper writing marked C was produced and shown etc.

Note — This list will include, e.g. mortgage debts where mortgagees have not sent in claims.

PART 1

SUMS ADMITTED TO BE DUE

Serial Number (in continuation of numbers in List B)	Names of claimants (in alphabetical order)	Addresses and descriptions	Particulars of debt	Amount of debt
				\$

PART 2

SUMS WHICH MAY BE DUE BUT IN RESPECT OF
WHICH THE LIABILITY OUGHT TO BE PROVED

Serial Number (in continuation of numbers in first part)	Names of claimants (in alphabetical order)	Addresses and descriptions	Particulars of sums which may be due	Amount in respect of which proof is required
				\$

No. 85

AFFIDAVIT VERIFYING LIST OF CLAIMS OTHER THAN CREDITOR'S CLAIMS O. 44, r. 12

(Title as in action)

We, *C.D.* of and *E.F.* of the abovenamed Plaintiff's (or Defendants, or as may be), the executors (or administrators) of the abovenamed *A.B.*, deceased (or trustees of the Settlement etc.), and *G.H.* of (the person to whom claims are required by the advertisement to be sent), severally do make oath (or affirm) and say as follows:

I, the said *G.H.* for myself say as follows:

1. I have in the paper writing now produced and shown to me and marked D set forth a list of all the claims the particulars of which have been sent to me by persons claiming under the inquiry (or inquiries, numbered and) directed by the judgment (or order) in this action, dated the day of, 20, pursuant to the advertisement issued in that behalf, dated the day of, 20 And we, the said *C.D.* and *E.F.* for ourselves say as follows:

2. We have in the paper writing now produced and shown to us and marked E set forth a list of all the claims by persons claiming to be interested in the subject matter of the said inquiry (or inquiries) which have come to our knowledge or to the knowledge of either of us other than claims contained in the said paper writing marked D. And we, the said *C.D.*, *E.F.*, and *G.H.*, for ourselves say as follows:

3. Except as hereinbefore mentioned there are not to the best of our knowledge information and belief any claims under the said inquiry (or inquiries).

Sworn (or affirmed) as in Form 78.

D

List of claims the particulars of which have been sent in to *G.H.* by persons claiming under the inquiry (or inquiries and) and directed by the judgment (or order) in this action dated etc. pursuant to the advertisement issued in that behalf dated the day of, 20

THIS PAPER WRITING MARKED D WAS PRODUCED AND SHOWN ETC.

Serial Number	Names of Claimants (in alphabetical order)	Addresses and descriptions	Particulars of claim

E

List of claims by persons claiming to be interested in the subject of the inquiry the (or inquiries and) directed by the judgment (or order) in this action, dated etc. other than claims sent in pursuant to the advertisement, dated the day of, 20

THIS PAPER WRITING MARKED E WAS PRODUCED AND SHOWN ETC.

Serial Number (in continuation of numbers in list D)	Names of Claimants (in alphabetical order)	Addresses and descriptions	Particulars of claim

No. 86

CERTIFICATE OF REGISTRAR

O. 44, r. 21

(Title as in action)

I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment (or order) in this cause dated the day of, 20, is as follows:

1. The defendants, the executors of the testator, have received movable property to the amount of \$ and they have paid, or are entitled to be allowed on account thereof sums to the amount of \$, leaving a balance due from (or, to) them of \$ on that account.

The particulars of the above receipts and payments appear in the account marked, verified by the affidavit of filed on the day of, and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums (state the same here or in a schedule), and except that I have disallowed the items of disbursement in the said account numbered, and

2. The debts of the testator which have been allowed, are set forth in the Schedule hereto, and with the interest thereon and costs mentioned in the schedule are due to the persons therein named, and amount altogether to \$

3. The funeral expenses of the testator amounted to the sum of \$, which I have allowed the said executors in the said account of movable property.

4. The legacies given by the testator are set forth in the schedule hereto, and with the interest therein mentioned remained due to the persons therein named, and amount altogether to \$

5. The outstanding movable property of the testator consists of the particulars set forth in the Schedule hereto.

6. The immovable property to which the testator was entitled consists of the particulars set forth in the Schedule hereto.

7. The defendants have received rents and profits of the testator's immovable property, etc. (in a form similar to that provided with respect to the movable property).

8. The incumbrances affecting the said testator's immovable property are specified in the Schedule hereto.

9. The immovable properties of the testator directed to be sold, have been sold and the purchase-moneys amounting altogether to \$ have been paid into Court.

Dated the day of, 20

(Seal)

.....
Registrar

N.B. — The above numbers are to correspond with the numbers in the order after each statement; the evidence produced is to be stated as follows:

The evidence produced on this account (or inquiry) consists of the probate of the testator's will, the affidavit of *A.B.* filed, and paragraph numbered of the affidavit of *C.D.*, filed.

No. 87

NOTICE OF CERTAIN JUDGMENTS

O. 45, r. 7

The indorsement should be in the following words or words to the following effect:

(a) In the case of a judgment or order requiring a person or body corporate to do an act within a specified time —

“If you, the within-named (or)
neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same”.

(b) In the case of a judgment or order requiring a person to abstain from doing an act —

“If you, the within-named disobey this judgment (or order), you will be liable to process of execution for the purpose of compelling you to obey the same”.

(c) In the case of a judgment or order requiring a body corporate to do or to abstain from doing the act, but it is sought to take enforcement proceedings against a director or other officer of that order.

“If neglect to obey this judgment (or order) by the time therein limited (or in the case of an order to abstain from doing an act, if disobey this judgment (or order), you (a director or officer of the said) will be liable to process of execution for the purpose of compelling the said to obey the same”.

No. 88

WRIT OF SEIZURE AND SALE

O. 45, r. 12

(Title as in action)

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM IN THE NAME OF HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN

To the Sheriff,

We command you that you cause to be levied and made out of the property liable to be seized under a writ of seizure and under sale which shall be identified by or on behalf of (name of execution creditor) as belonging to (name of execution debtor) now or late of (address of execution debtor) by seizure and if it be necessary by sale thereof \$ which the said (name of execution creditor) lately in Our High Court recovered against the said (name of execution debtor) by a judgment (or order or as may be) bearing the day of, 20 And in what manner you shall have executed this Our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Dated the day of, 20

Entered No. 20

Clerk

(Seal)

.....
Registrar

Memorandum to be subscribed on the Writ

This writ may not be served more than 12 months after the above date unless renewed by order of Court.

Indorsements to be made on Writ before issue

THIS WRIT is issued by
of Solicitor for the execution creditor
who resides at The execution debtor resides at

\$ ¢

Amount of judgment and costs

Subsequent costs (if any)

Paid to account of judgment

Remaining due
 Costs of this writ
 Interest on \$ at % p.a. from
 to
 Property seized on
 Amount of levy paid on
 Property sold on by for
 Expenses of Execution —
 Lotting and advertising
 Auctioneers commission
 Court commission
 Other Court fees
 Watchmen's wages
 Other legal expenses (specify them)
 Paid into Court —
 Paid to credit of landlord under
 Paid to credit of Writ of Distress
 Paid to credit of execution creditor
 Paid to credit of execution debtor
 Dated the day of, 20

.....
 Sheriff

No. 89

WRIT OF DELIVERY

O. 45, r. 12

(Title as in action)

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM IN THE NAME OF HIS MAJESTY
 THE SULTAN AND YANG DI-PERTUAN

To the Sheriff,

We command you that, without delay, you do seize and deliver, to the abovenamed (name of execution creditor) the following movable property, that is to say (describe the property delivery of which has been adjudged or ordered) (and \$ damages and \$ costs) which the said (name of execution creditor) lately in our High

[Subsidiary]

Court recovered against the said (name of execution debtor) by a judgment (or order or as may be) bearing the day of, 20

(And we further command you that if the said movable property cannot be found within Brunei Darussalam you cause to be levied and made out of the property liable to be seized under a writ of seizure and sale belonging to the said (name of execution debtor) and if necessary by sale thereof \$, being the assessed value of the said property).

And in what manner you have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Dated the day of, 20

Entered No. 20

Clerk

(Seal)

.....
Registrar

Memorandum on Writ (as in Form 88).

Indorsements on Writ (as in Form 88 or as required).

No. 90

WRIT OF POSSESSION

O. 45, r. 12

(Title as in action)

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM IN THE NAME OF HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN

To the Sheriff,

Whereas, lately, by a judgment of our said Court bearing the day of, 20, it was adjudged (or ordered) that the defendant (name of defendant) do give the plaintiff (name of plaintiff) possession of (describe the immovable property delivery of which has been adjudged or ordered) and do pay him \$ and) \$ costs.

We command that you enter the said immovable property and cause (name of plaintiff) to have possession of it.

And we further command that you cause to be levied and made out of the property liable to be seized under a writ of seizure and sale belonging to the said (name of defendant) and if necessary by sale thereof \$ And in what manner you have executed this our writ make appear to us in our said Court immediately after the execution thereof. And

have there then this writ.

Dated the day of, 20

Entered No. 20

Clerk

(Seal)

.....
Registrar

Memorandum on Writ (as in Form 88).

Indorsements on Writ (as in Form 88 or as required).

No. 91

SUMMONS FOR LEAVE TO ISSUE EXECUTION

O. 46, r. 3

(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on the day of, 20 at m., on the hearing of an application on the part of that may be at liberty to issue execution (or writ of seizure and sale, or as may be) against the defendant (or as may be) on the judgment herein dated the day of, 20, (notwithstanding that 6 years have elapsed since such judgment, or as may be) and that the defendant (or as may be) do pay the cost of and occasioned by this application.

Dated the day of, 20

Entered No. 20

Clerk

(Seal)

.....
Registrar

This summons is taken out by the plaintiff (or as may be) or (state address) to the defendant (or as may be).

[Subsidiary]

No. 92

PRAECIPE FOR WRIT OF EXECUTION

O. 46, r. 4

(Title as in action)

(a) Praecipe for writ of seizure and sale.

To the Registrar,

Please issue writ of seizure and sale against (name of execution debtor) of (address of the execution debtor) to levy the sum of \$ (and \$ for interest thereon at the rate of 8 *per cent per annum* from the day of, 20, till the day of, 20), due under the judgment (or order) herein dated the day of, of 20, which remains unsatisfied to the extent of \$

\$ ¢

Amount adjudged

Costs

Interest as per calculation attached

Subsequent costs

Paid to account

Balance still due

The sealed copy of the judgment is attached.

Date of order granting leave to execute

Name and address of execution creditor

His solicitors

Address for service

Dated the day of, 20

.....
Execution Creditor
(or by or) on behalf of
solicitor for

(b) Praecipe for writ of delivery.

To the Registrar,

Please issue writ of delivery against (name of execution debtor) of (address of execution debtor) for delivery of (describe the movable property) under the judgment dated the day of, 20, which has not been delivered to me by the execution debtor in accordance with the said judgment.

(And if the said movable property cannot be found, to levy \$ the value thereof as assessed by the Court in the said judgment (or in an order dated the day of, 20)).

(And further “to levy” (as in (a) above)).

(c) Praecipe for writ of possession.

To the Registrar,

Please issue a writ of possession against (name of defendant) of (address of defendant) to deliver possession of (describe the property) under the judgment herein dated the day of, 20

(And further “to levy” (as in (a) above)).

No. 93

CONSENT TO ENTRY OF SATISFACTION

O. 46, r. 9

(Title as in action)

I, of
being the plaintiff (or as may be) named in, and the sole person entitled to the benefit of the judgment herein, hereby consent to a memorandum of satisfaction of the said judgment being entered in the Cause Book.

Dated the day of, 20

.....
Plaintiff (or as may be)

.....
Advocate and Solicitor
or
Commissioner for Oaths

[Subsidiary]

No. 94

NOTICE OF SEIZURE AND INVENTORY

O. 46, r. 16

O. 75, r. 4

(Title as in action)

Take notice that I have this day seized the movable property found on or upon the premises No. pursuant to a Writ of Seizure and Sale/Writ of Distress No. of 20 , for the sum of \$ and that I value the property seized at \$ approximately.

Unless you pay the amount abovementioned together with costs of this execution within 7 days from the date hereof or obtain an order of the Court to the contrary the same will be sold by public auction on the day of, 20..... .

Amount due under writ		\$
(Rent due for	months from)	
the	day of, 20	
to the	day of, 20	
at \$	a month)	
Costs of writ		\$
Court commission		\$
Lotting and advertising		\$
Auctioneer's commission		\$
Other Court fees		\$
Watchmen wages at \$	a day	\$
Other legal expenses		\$

Dated the day of, 20

.....
Sheriff

(For Inventory see overleaf)

To

and all other whom it may concern.

No. 95

NOTICE OF SALE

O. 46, r. 23

(Title as in action)

Notice is hereby given that the property seized at on the day of, 20, under writ of Distress/Seizure and Sale No. of 20, will be sold by public auction on the day of, 20, at, m., unless the amount to be levied and the fees and expenses of execution be sooner paid.

Dated the day of, 20

.....
Sheriff

No. 96

AFFIDAVIT IN SUPPORT OF APPLICATION FOR
ORDER FOR EXAMINATION OF JUDGMENT DEBTOR

O. 48, r. 1

(Title as in action)

I, of do make oath (or affirm) and say as follows:

1. I am a in the employ of Solicitors for the plaintiff and am duly authorised to make this affidavit on behalf of

2. On the day of, 20, judgment was entered for the plaintiff for \$ and \$ costs (or as may be). The said judgment remains wholly unsatisfied (or unsatisfied as to the total sum of \$, or as may be).

3. In order to enable the plaintiff to decide upon the methods to employ to enforce the said judgment, it is desired to examine the judgment debtor (or, an officer of the judgment debtor company) on the question whether any and if so what debts are owing to him (or the judgment debtor company) and or means of satisfying the judgment debt.

4. In these circumstances, I respectively ask for an order that the said judgment debtor (or) to attend before the Registrar to be examined on the

[Subsidiary]

said questions, and to produce upon such examination all books or documents in his possession relevant to the said questions at the time and place appointed for his examination.

Sworn (or affirmed) as in Form 78.

No. 97

ORDER FOR EXAMINATION OF JUDGMENT
DEBTOR

O. 48, r. 1

(Title as in action)

Upon the application of and upon reading the affidavit of
filed the day of, 20, and upon hearing

It is ordered that the abovenamed judgment debtor
attend and be orally examined as to whether any and what debts are owing to him, and
whether the said judgment debtor has any and what other property or means of satisfying the
judgment signed herein, on the day of, 20,
before the Registrar, and that the said judgment debtor produce any books or documents in
his possession or power relating to the same before the Registrar at the time of the
examination and that the costs of this application and of the examination thereunder be in the
discretion of the Registrar making the order.

Dated the day of, 20

(Seal)

.....
Registrar

Note — This order requires personal service, and the copy served must bear a copy of the appointment of the date for the examination, and be indorsed as prescribed by O.45, r.7(4), when it may be enforced by committal.

No. 98

GARNISHEE ORDER TO SHOW CAUSE

O. 49, r. 1

IN THE HIGH COURT OF BRUNEI DARUSSALAM

Suit No. of 20

Between

..... Judgment creditor,

and

..... Judgment debtor,

and

..... Garnishee.

Upon the application of and upon reading the affidavit of
 sworn to (or affirmed) and filed the day of, 20,
 and upon hearing

It is ordered by the Judge (or Registrar) that all debts due or accruing due from the abovementioned garnishee to the abovementioned judgment debtor (in the sum of \$) be attached to answer a judgment recovered against the said judgment debtor by the abovenamed judgment creditor in the High Court on the day of, 20, for the sum (or to answer an order made in High Court on the day of, 20, ordering payment by the said judgment debtor to the abovenamed judgment creditor of the sum) of \$ (debt and \$ costs) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of \$ remains due and unpaid.

And it is ordered that the said garnishee attend before the Judge (or Registrar) in Chambers, on the day of, 20, at m., on an application by the said judgment creditor that the said garnishee do pay to the said judgment creditor the debt due from the said garnishee to the said judgment debtor, or so much thereof as may be sufficient to satisfy the said judgment (or order), together with the costs of the garnishee proceedings.

Dated the day of, 20

(Seal)

.....
Registrar

To the abovenamed garnishee and judgment debtor

No. 99

AFFIDAVT IN SUPPORT OF GARNISHEE ORDER

O. 49, r. 2

IN THE HIGH COURT OF BRUNEI DARUSSALAM

Suit No. of 20

[Subsidiary]

Between

..... Judgment creditor,

and

..... Judgment debtor.

I,, of, the abovenamed judgment creditor (or state the name, the residence and the occupation or description of the deponent), do make oath (or affirm) and say as follows:

1. By a judgment (or order) of the Court given in this action, and dated day of, 20, it was adjudged (or ordered) that the abovenamed judgment debtor should pay me, or the abovenamed judgment creditor) the sum of \$, and cost \$

2. The said judgment (or order) still remains unsatisfied to the extent of \$ and interest amounting to \$

3. To the best of my information or belief (state the name, address and description of the garnishee) is indebted to the judgment debtor in the sum of \$ or thereabouts, and is within the jurisdiction of this Court. The grounds of my information and belief are (state the sources of the deponent's information or grounds of belief).

4. I am duly authorised by the abovenamed judgment creditor to make this affidavit on his behalf).

Sworn (or affirmed) as in Form 78.

No. 100

GARNISHEE ORDERS

O. 49, r. 4

(Title as in Form 98)

(a) Garnishee order absolute where garnishee owes more than judgment debt.

Upon reading the affidavit of filed the day of, 20, and the order to show cause made herein dated the day of, 20, and upon hearing the solicitors for the judgment creditor and the garnishee, whereby it was ordered that all debts due or accruing due from the abovenamed garnishee to the abovenamed judgment debtor should be attached to answer a judgment recovered against the High Court on the day of, 20, for the sum (or to answer an order made in the High Court dated the day of, 20, ordering payment by the said judgment debtor to the abovenamed judgment creditor of the sum) of \$ (debt and \$ costs) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of \$

remained due and unpaid.

It is ordered that the said garnishee do forthwith pay to the said judgment creditor \$ being so much of the debt due from the said garnishee to the said judgment debtor as is sufficient to satisfy the said judgment debt and costs, together with \$ the costs of the garnishee proceedings, and that the said garnishee be at liberty to retain \$ for his costs of this application out of the balance of the debt due from him to the judgment debtor.

Dated the day of, 20

(Seal)

.....
Registrar

(b) Garnishee order absolute where garnishee owes less than judgment debt.

Upon reading (as above).

It is ordered that the said garnishee (after deducting therefrom \$ for his costs of this application) do forthwith pay to the said judgment creditor \$ the debt due from the said garnishee to the said judgment debtor. And that the sum of \$ the costs of the judgment creditor of this application be added to the judgment debt and be retained out of the money recovered by the said judgment creditor under this order and in priority to the amount of the judgment debt.

Dated the day of, 20

(Seal)

.....
Registrar

[S 34/2008]

No. 101

ORDER FOR ISSUE BETWEEN JUDGMENT
CREDITOR AND GARNISHEE

O. 49, r. 5

(Title as in Form 98)

Upon reading the affidavit of filed the day of, 20....., and the order nisi herein, dated the day of 20, and upon hearing counsel for the judgment creditor, the garnishee and the judgment debtor.

[Subsidiary]

It is ordered that the judgment creditor and the garnishee proceed to the trial of an issue wherein the said judgment creditor shall be plaintiff and the said garnishee shall be defendant, and that the question to be tried shall be whether there was any debt due or accruing due in any and what amount from the Judgment debtor to the said garnishee at the time the said order nisi was served. And it is further ordered that the question of costs and all further questions be reserved to the Judge (or Registrar) trying the same issue.

Dated the day of, 20

(Seal)

.....
Registrar

No. 102

No number

No. 103

No number

No. 104

ORDER ABSOLUTE IMPOSING CHARGE
ON SECURITIES

O. 50, r. 2

(Title as in action)

Upon the application of and upon reading the affidavit of filed the day of, 20, and the order to show cause made herein on the day of, 20, and upon hearing

It is ordered that the interest of the defendant in the sum of \$ stock (or shares in the Co. Ltd., or as may be) now standing in the name of the said defendant (or as may be) stand charged with the payment of \$, the amount due from the said defendant to the plaintiff on the judgment (or order) of the High Court dated the day of, 20, (and interest thereon at the rate of *per cent per annum* from the said date until payment) together with \$ the costs of this application, the said costs to be added to the judgment debt.

Dated the day of, 20

(Seal)

.....
Registrar

No. 105

ORDER IMPOSING CHARGE ON SECURITIES: **O. 50, r. 2**
ORDER TO SHOW CAUSE

(Title as in action)

Upon the application of and upon reading the affidavit of filed the day of, 20, and upon hearing whereby it appears that by a judgment (or order) made in the High Court on the day of, 20, the defendant was the defendant was ordered to pay to the plaintiff the sum of \$ and \$ costs (or as may be), on which judgment (or order) the sum of \$ remains due and unpaid and that there is standing in the books of the Treasury in the (said defendant's name in his own right or as may be) the sum of \$ (describing the stock etc. on which the charge is sought) (or there are ordinary or as may be shares in the Co. Ltd., a public company registered in Brunei Darussalam, now standing in the said defendant's name in his own right or as may be).

It is ordered by the Judge (or Registrar) that unless sufficient cause to the contrary be shown before the Judge (or Registrar) on the day of, 20, at m., the defendant's interest in the said stock (or shares) so standing as aforesaid shall and it is ordered that in the meantime it do, stand charged with the payment of \$ due on the said judgment (or order) together with the costs of this application.

Dated the day of, 20

(Seal)

.....
Registrar

No. 106

AFFIDAVIT AND NOTICE UNDER

O. 50, r. 10

(Title as in action)

and

In the matter of (state the settlement or under document under which the deponent's interest arises giving the date and other particulars sufficient to identify the document)

and

In the matter of Order 50, rule 10 of the Rules of the High Court.

I,, (or
the solicitor of,) of do make
oath(or affirm) and say that according to the best of my knowledge, information and belief
I am (or the said is) beneficially entitled under the abovementioned
settlement (or as may be) to an interest in the securities specified in the notice hereto annexed.

Sworn (or affirmed) as in Form 78.

This affidavit is filed on behalf of
whose address is notice to be annexed to affidavit.

To the Treasury,
Brunei Darussalam.
(or as may be)

Take notice that the securities comprised in and subject to the trusts of the settlement (or
as may be) referred to in the affidavit to which this notice is annexed consist of the following
namely (specify the stock, shares etc., stating the names in which it stands).

This notice is intended to stop the transfer of the said securities and not the payment of
any dividend thereof or interest thereon (or and also the payment of any dividend thereof or
interest thereon).

.....
Deponent
(or solicitor of
deponent if affidavit
sworn by him)

No. 107

ORDER ON ORIGINATING MOTION RESTRAINING
TRANSFER OF STOCK ETC. **O. 50, r. 14**

(Title as in action)

and

In the matter of the trusts of

and

In the matter of Order 50, rule 14, of the Rules of the High Court.

Dated the day of, 20

Upon the hearing of the originating motion for an injunction this day unto this Court by counsel for the applicant.

And the applicant by his counsel undertaking to abide by any order the Court may hereafter make should it decide that the respondents (the Treasury or as may be) have sustained damage by reason of this Order and are entitled to damages which the applicant ought to pay:

It is ordered that the Treasury (or the Co. Ltd., or as may be) be restrained until the day of, 20, or further order from permitting the transfer of (describe stock) standing in the name of (state name of holder of stock) in their books, or any part thereof, and from paying any dividend or interest due or to become due thereon.

Dated the day of, 20

(Seal)

.....
Registrar

No. 108

SUMMONS FOR APPOINTMENT OF RECEIVER **O. 51, r. 3**

(Title as in action)

Let the defendant attend before the Judge (or Registrar) in Chambers on the day of, 20....., at m., on the hearing of an application on the part of the plaintiff for an order that

[Subsidiary]

a receiver be appointed (or that be appointed receiver) in this action to receive the rents, profits and moneys receivable in respect of the interest of the defendant in the following property, namely (describe the property) in or towards satisfaction of the moneys and interest due to the plaintiff under the judgment (or order) in this action dated the day of, 20, and for an order as to the costs of this application.

Dated the day of, 20

Entered No. 20

Clerk

(Seal)

.....
Registrar

This summons is taken out by of
To the abovenamed (and his solicitor).

No. 109

ORDERS FOR APPOINTMENT OF RECEIVER ETC.

O. 51, r. 3

(a) Order directing summons for appointment of receiver and granting injunction meanwhile.

Upon the application of and upon reading the affidavit of
filed the day of, 20, and upon hearing

It is ordered that the defendant do attend before the Judge (or Registrar) on the day of, 20, at m., on the hearing of an application on the part of the plaintiff for the appointment of as receiver in this action, on the usual terms, to receive the rents profits and moneys receivable in respect of the said defendant's interest in the following property, namely (describe the property) toward satisfaction of the sum of \$ debt \$ costs and interest on the said sums at the rate of \$ per cent, per annum from the day of, 20, due under the judgment (or order) in this action dated the day of, 20

And the plaintiff (by his solicitor) hereby undertaking to abide by any order the Court may hereafter make should it decide that the said defendant has sustained damage by reason of this order and is entitled to damages which the plaintiff ought to pay, it is ordered that the said defendant by himself, his agents or servants, or otherwise be restrained, and an injunction is hereby granted restraining him until after the hearing of the above application, from assigning, charging or otherwise dealing with the said property.

Dated the day of, 20

(Seal)

.....
Registrar

(b) Order appointing receiver by way of equitable execution.

Upon the application of and upon reading the affidavit of
filed the day of, 20, and upon hearing

(If security ordered). It is ordered that of on
first giving security to the satisfaction of the Registrar, be and is hereby appointed to receive
the rents, profits and moneys receivable in respect of the abovenamed defendant's interest in
the following property, namely (describe property).

(If no security ordered and receiver is not the plaintiff). The plaintiff being answerable
for the acts and defaults of the receiver, it is ordered the of
be and is hereby appointed to receive (continue as above) but he shall not receive more than
the amount of the judgment debt and allowed costs of obtaining this order without leave of
the Court or first giving (at the plaintiff's cost unless otherwise ordered) the usual security to
the satisfaction of the Registrar.

(If no security ordered and receiver is the plaintiff: as above omitting "The plaintiff being
answerable for the acts and defaults of the receiver" and the words after "the Court").

(In all cases continue as follows:)

That this appointment shall be without prejudice to the rights of any prior incumbrancers
upon the said property who think proper to take possession of or receive the same by virtue
of their respective securities or, if any prior incumbrancer is in possession, then without
prejudice to such possession.

And that the tenants of premises comprised in the said property to attorn and pay their
rents in arrear and growing rents to the receiver.

And that the receiver have liberty, if he shall think proper (but not otherwise), out of the
rents, profits and moneys to be received by him to keep down the interest upon the prior
incumbrances, according to their priorities, and be allowed such payments, if any, in passing
his accounts.

And that the receiver shall on the day of (3 months
after the date of order), and at such further and other times as may be ordered by the
Registrar leave and pass his accounts, and shall on the day of,
(4 months after the date of order), and at such further and other times as may be hereafter
ordered by the Registrar pay the balance or balances appearing due on the accounts so left or
such part thereof as shall be certified as proper to be so paid, such sums to be paid in or
towards satisfaction of what shall for the time being be due in respect of the judgment
signed on the day of for the sum of \$ debt and
\$ costs, making together the sum of \$

[Subsidiary]

And that the costs of the receiver (including his remuneration), the costs of obtaining his appointment, of completing his security (if any), of passing his accounts and of obtaining his discharge shall not exceed 10% of the amount due under the said judgment or the amount recovered by the receiver, whichever is the less, provided that not less than \$100 be allowed unless otherwise ordered. Such costs shall be taxed unless assessed by the Registrar and shall be primarily payable out of the sums received by the receiver, but if there shall be no sums received or the amount shall be insufficient, then upon the certificate of the Registrar being given stating the amount of the deficiency, such certificate to be given after passing the final account, the amount of the deficiency so certified shall be paid by the defendant to the plaintiff.

It is also ordered that the balance (if any) remaining in the hands of the receiver, after making the several payments aforesaid, shall unless otherwise directed by the Registrar forthwith be paid by the receiver into Court to the credit of this action, subject to further order.

And that any of the parties be at liberty to apply to the Registrar in Chambers as there may be occasion.

Dated the day of, 20

(Seal)

.....
Registrar

No. 110

ORDER OF COMMITTAL

O. 52, r. 1

(Title as in action)

Upon motion this day made unto this Court by counsel for the plaintiff and upon reading the affidavit of filed the day of, 20, of service on the defendant of a copy of the order of the Court dated the day of, 20, and of notice of this motion:

And it appearing to the satisfaction of the Court that the defendant has been guilty of contempt of court in (state the contempt):

It is ordered that for his said contempt the defendant do stand committed to prison to be there imprisoned (until further order).

(It is further ordered that this order shall not be executed if the defendant complies with the following terms, namely,).

Dated the day of, 20

(Seal)

.....
Registrar

No. 111

WARRANT FOR COMMITTAL

O. 54, r. 9

(Title as in action)

Whereas by an Order of this Court pronounced this day it was ordered that the abovenamed do stand committed to prison for his contempt in the said Order mentioned.

These are therefore to command you the Sheriff and every Police Officer to apprehend the said and him safely convey to prison there to be detained and kept in safe custody.

Dated the day of, 20

(Seal)

.....
Registrar

No. 112

NOTICE TO BE SERVED THE WRIT OF
HABEAS CORPUS AD SUBJICIENDUM

O. 54, r.6

(Title as in action)

Whereas this Court (.....) has granted a writ of *habeas corpus* directed to (or other person having the custody of if so) commanding him to have the body of before the said Court (or before a judge in Chambers) at the High Court on the day and at the time specified in the notice together with the day and cause of his being taken and detained.

Take notice that you are required by the said writ to have the body of the said before this Court (or before the Judge aforesaid) on the day of, 20, at m., and to make a return to the said writ. In default thereof the said Court will then, or so soon thereafter as counsel can be heard, be

[Subsidiary]

moved to commit you to prison for your contempt in not obeying the said writ (or if in vacation application will then be made to one of the Judges of the said Court for a warrant for your arrest in order that you may be held to bail to answer for your contempt in not obeying the said writ).

Dated the day of, 20

(Seal)

.....
Registrar

To

No. 113

WRIT OF *HABEAS CORPUS AD SUBJICIENDUM* O. 54, r. 9

(Title as in action)

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM, IN THE NAME OF HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN

To the superintendent of prison at

We command you that you have before the Court (or before a Judge in Chambers) at the High Court, on the day at the time specified in the notice served with this writ, the body of being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, that our Court (or Judge) may then and there examine and determine whether such cause is legal, and have you there then this writ.

Dated the day of, 20

(Seal)

.....
Registrar

No. 113A

IN THE HIGH COURT OF BRUNEI
DARUSSALAM

O. 55, r. 2.(1)

Civil Appeal No. of 20

A.B., Appellant

and

C.D., Respondent

(In the matter of No. of 20

between

.....

and

.....).

MEMORANDUM OF APPEAL

A.B., the appellant abovenamed, appeals to the High Court against the whole part of the decision of the Subordinate Court at given on the day of, 20, on the following grounds —

(Set out in numbered paragraphs)

Dated the day of, 20

.....
Appellant.....
Solicitor for the Appellant

To the Registrar and the Respondent.

Note — (1) Insert the number of proceedings in Court below and the names of the parties thereto.

No. 113B

IN THE HIGH COURT OF BRUNEI
DARUSSALAM

O. 55, r. 3

Civil Appeal No. of 20

between

A.B., Appellant

and

C.D., Respondent

(In the matter of No. of 20

between

.....

and

.....) (1)

NOTICE OF CROSS APPEAL

Take notice that, on the hearing of the above appeal the respondent abovenamed, will contend that the decision of the Subordinate Court at given on the day of, 20, ought to be varied to the extent and on the grounds hereinafter set out:

(Set out in numbered paragraphs —

(a) the nature of relief claimed; and

(b) the grounds relied on).

Dated the day of, 20

.....
Respondent

.....
Solicitor for the Respondent

To the Registrar and the Appellant.

Note — (1) Insert the number of proceedings in Court below and the names of the parties thereto.

No. 114

NOTICE OF APPEAL TO JUDGE IN CHAMBERS **O. 56, r. 1**

(Title as in action)

Take notice, that the above named plaintiff (or defendant) intends to appeal against the decision of the Registrar given on the day of, 20, ordering (or refusing to order) (state in full the order appealed against).

Dated the day of, 20

.....
Solicitor for the

And further take notice, that you are required to attend before the Judge in Chambers on the day of, 20, at m., on the hearing of an application by the said plaintiff (or defendant), that (state the order sought to be obtained).

Dated the day of, 20

(Seal)

.....
Registrar

To

No. 115

NOTICE OF APPEAL TO COURT OF APPEAL **O. 57, r. 3**

Civil Appeal No. of 20

between

..... Appellant

and

..... Respondent

[Subsidiary]

In the matter No. of 20,

between

.....

and

.....

NOTICE OF APPEAL

Take notice that being dissatisfied
with the decision of given at on the
day of, 20, appeals to the Court of Appeal against

(the whole of the said decision

(such part only of the said decision

either/or (as decides that

((Set out details)

Dated the day of, 20

.....
(Signed)
Appellant
(or Solicitor for the Appellant)

To the Registrar,
Supreme Court.
and to:

The address for service of the appellant is

No. 116

CERTIFICATE FOR SECURITY FOR COSTS

O. 57, r. 3

(Title as in Form 115)

This is to certify that of the abovenamed
appellant has deposited the sum of \$1,000 by way of security for the respondents costs of the
appeal in the Registry of the Supreme Court.

Dated the day of, 20

(Seal)

.....
Registrar

[S 34/2008]

No. 117

PETITION OF APPEAL

O. 57, r. 6

(Title as in Form 115)

To the Judges of the Court of Appeal.

The Petition of the abovenamed appellant shows as follows —

1. The appeal arises from a claim:
2. By judgment dated the day of, 20, judgment was given for
3. Your petitioner is dissatisfied with the said judgment on the following grounds — (State the particular grounds of appeal on which the appellant relies).
4. Your petitioner prays that such judgment may be reversed (or as may be).

Dated the day of, 20

.....
(Signed)
Appellant
(or Solicitor for the Appellant)

No. 118

RESPONDENT'S NOTICE

O. 57, r. 7

(Title as in Form 115)

Take notice that, on the hearing of the above appeal, the respondent abovenamed, will contend that the decision of given on the day of, 20, ought to be varied and on the grounds hereinafter set out (or affirmed on the grounds additional to those relied upon the trial Court) —

[Subsidiary]

(Set out in numbered paragraphs —

- (a) the nature of the relief claimed; and
- (b) the grounds relied upon).

.....
(Signed)
Respondent,
(or Solicitor for the Respondent).

Dated the day of, 20

To the Registrar,
Supreme Court.
and to:

The address for service of the respondent is

No. 119

CAUSE BOOK

O. 60, r. 2

Serial No. of Writ	Date of Issue	Name of Defendant (His Solicitor, if any, and Address for Service)	Name of Plaintiff (His Solicitor, if any, and Address for Service)	Claim Amount Nature	Set off or Counterclaim Amount Nature	Judgment State the date, and when entered, amount, other particulars and in whose favour	Execution State the date, form and No. of Execution and other particulars	Date of entry of satisfaction	Remarks
				\$ ¢	\$ ¢				

O. 60, r. 2

No. 120

ORIGINATING SUMMONS BOOK

Serial No.	Date of Issue	Name of Plaintiff (His Solicitor, if any, and Address for Service)	Name of Defendant (His Solicitor, if any, and Address for Service)	Nature of Order applied for	Date of Order	Order	Remarks

No. 121

ORIGINATING MOTION BOOK

O. 60, r. 2

Serial No.	Date of Issue	Name of Applicant (His Solicitor, if any, and Address for Service)	Name of Respondent (His Solicitor, if any, and Address for Service)	Nature of Order applied for	Date of Order	Order	Remarks

O. 60, r. 2

No. 122

INTERPLEADER SUMMONS BOOK

Serial No.	Date of Issue	At whose instance issued	His address or if applied for by Sheriff No. and particulars of Writ or Order	Names of each claimant (including an execution creditor) his Solicitor, if any, and Address for Service	Date of Order	Order	Remarks

No. 123

SUMMONS IN CHAMBERS BOOK

O. 60, r. 2

No.	Date of Application	No. and Title of Proceedings	Name of Applicant	Nature of Application	Date of Order	Order	Remarks

No. 124

JUDGMENT BOOK

O. 60, r. 2

(At foot of Judgment add)

Entered the day of, 20, in

Volume Page.

.....
Registrar

NO. 125

WRITS OF EXECUTION BOOK

O. 60, r. 2

1 Serial No.	2 Date of Issue	3 Nature of Writ	4 Number of Proceedings	5 Name of Plaintiff and Address	6 Name of Defendant and Address	7 Amount	8 Property or Premises to be delivered	9 Date Received by Sheriff

10 Date of Execution	11 Where Executed	12 Number of any application for Discharge	13 Order on Application	14 Date of sale or release	15 Gross Amount realised	16 Date Writ returned	17 Remarks

[Subsidiary]

NO. 126

DISTRESS BOOK

O. 60, r. 2

1 Serial No.	2 Date of Issue	3 Originating Application No.	4 Name and Address of Applicant	5 Name of Address of Plaintiff	6 Name and Address of Defendant	7 Monthly rent \$ ¢	8 Period From To	9 Rent Due \$ ¢	10 Date Received by Sheriff

11 Date of Execution	12 Where Executed	13 Number of any application for Discharge or Suspension	14 Order on Application	15 Date of sale or release	16 Gross Amount realised \$ ¢	17 Date Writ returned	18 Remarks

NO. 127

PROBATE BOOK

O. 60, r.2

Serial No.	Date filed	Whether petition or citation under section 4	Name and residence of deceased	Date of Death	Petitioner, his residence Solicitor, if any, and capacity in which he applies for grant	Date of hearing	Caveats filed	Value of estate	Grant	Date of Grant	Names of Grantees	Date of issue	Remarks

O. 60, r. 2

NO. 128

CAVEAT BOOK

[illegible]

NO. 129

SERVICE BOOK

O. 60, r. 2

Date	Time handed to Process Server	No. and Nature of Process	Where to be served	Date of hearing	Served or unsaved	Initial of Process Server	Time retuned to clerk	Initial of clerk	Remarks

O. 60, r. 2

NO. 130

ADOPTION BOOK

Serial No.	Date of Petition	Name of Petitioners (their Solicitors, if any)	Date of Order	Order	Remarks

No. 131

DIRECTIONS TO TREASURY

O. 60, r. 2

(Title as in action)

(a) For Payment In.

Ledger Account (If the same as the cause state “as above”).

The Treasury is hereby directed to receive (the sum of \$) (paid in on behalf of the defendant in satisfaction of the claim of the plaintiff or the funds and securities specified in the schedule hereto or as may be).

Dated the day of, 20

.....
Registrar

Note — Where funds are lodged in Court not being moneys paid in under the provisions of Order 14 or as security for costs or in satisfaction of a judgment or order, but are to be lodged under an order comprising funds of a various natures and directed lodgment by one or more persons, a single direction may be issued, and the particulars stated in a schedule to the direction, e.g.:

SCHEDULE

Particular of fund to be lodged	Person to make the lodgment	Amounts	
		Securities	Money
		\$	\$

(b) For Payments Out.

Ledger Account (If the same as the cause state “as above”).

The Treasury is hereby directed to pay to (insert the name of person to be paid and whether as plaintiff or defendant or as solicitor to plaintiff or defendant) the sum of dollars

[Subsidiary]

(in words at length) \$ lodged in Court in the
above cause or matter on behalf of the defendant in satisfaction of
the claim of the plaintiff (or as may be).

Dated the day of, 20

Registrar

(c) Certificate of Ascertained Sums.

Ledger Account (if the same as the cause state “as above”).

I hereby certify that under Order dated the day of, 20, the sums stated in the schedule subjoined hereto amounting in the whole to \$ have been ascertained to be the sums payable under the said Order to the persons respectively named in respect of (state in what character paid).

Dated the day of, 20

Registrar

SCHEDULE

Name	Address (if ascertained)	Amount to be paid

No. 132

INDEX OF WILLS

O. 60, r. 2

Name of Testator	Date of Will	No. of Petition	Volume and page of Register	Remarks

REGISTER OF APPEALS FROM SUBORDIATE COURTS

O. 60, r. 2

No. of Appeal	Subordinate Court Summons No.	Date of Decision	Name of Judge	Date of filing Notice of Appeal	Date of filing Record of Appeal	Appellant	Respondent	Particulars of Appeal against decision	Decision

[Subsidiary]

No. 135

ORDER FOR SUBSTITUTED SERVICE

O. 62, r. 5

(Title as in action)

Upon the application of the plaintiff in this action and upon reading the affidavit of filed the day of, 20, and upon hearing

It is ordered that service of a copy of this order, and a copy of the writ of summons in this action by sending the same by a prepaid registered post letter addressed to the defendant..... at (or such other substituted service as may be ordered) shall be good and sufficient service of the writ.

Dated the day of, 20

(Seal)

.....
Registrar

No. 136

AFFIDAVIT ON APPLICATION FOR
SUBSTITUTED SERVICE

O. 62, r. 5

(Title as in action)

I, of (the abovenamed plaintiff, or solicitor for the abovenamed plaintiff, or clerk to the plaintiff's solicitor, or clerk to the plaintiff, or as may be) do make oath (or affirm) and say as follows:

1. Having been directed by to serve the abovenamed defendant with a copy of the writ of summons in this action which appeared to me to have been regularly issued out of and under the seal of the High Court by the abovenamed plaintiff against the above named defendant, and dated the day of, 20, which said writ and copy were subscribed and indorsed in the manner and form prescribed by the Rules of Court, 1980, and a true copy of which said writ is now produced and shown to me, marked, I did on day the day of, 20, attend for the purpose of serving a copy of the said writ at (describe efforts to effect service).

I have made all reasonable efforts and used all due means in my power to serve the said writ, but I have not been able to do so.

(Here give a short summary of the efforts made).

Sworn (or affirm) as in Form 78.

Note — The affidavit should also specify the method of substituted service asked for, and state that if such service is ordered it will probably be effectual in bringing the writ (or as may be) to the knowledge of the defendant. If the defendant is evading service the affidavit should so state.

No. 137

AFFIDAVITS OF SERVICE

O. 63, r. 9

(Title as in action)

(a) Affidavit of Personal Service of writ of summons or other process on a person.

I, of do make oath (or affirm) and say as follows:

1. I did on the day of, 20, at (state where) personally serve (the abovenamed defendant) (or one of the abovenamed defendants) (or a partner in the abovenamed defendant firm of & Co.) (or the person (the insertion of the name is not essential) having at the time of such service the control or management of the said partnership business) (or as may be) with a true copy of the writ of summons (or as may be) in this action which appeared to me to have been regularly issued out of the Registry of the High Court against (the abovenamed defendant) (or the abovenamed defendants) (or as may be) at the suit of (the abovenamed plaintiff) (or plaintiffs) (or as may be) and which was dated the day of, 20

2. The defendant (or as may be) (is known to me) (or was pointed out to me by) (or admitted to me that he was).

3. At the time of the said service the said writ (or as may be) and the copy thereof were subscribed (and indorsed) in the manner and form prescribed by the Rules of the High Court.

4. I did on the day of indorse on the said writ the day of the month and the week of the said service on the said defendant.

Sworn (or affirmed) as in Form 78.

(b) Affidavit of Personal Service of writ of summons or other process on a body corporate.

I, of do make oath (or affirm) and say as follows:

1. I did on the day of, 20 date of posting, serve the abovenamed defendant (or as may be) with a true copy of the writ of summons (or as may be) in this action, which appeared to me to have been regularly issued out of the Registry of the High Court against the

[Subsidiary]

abovenamed defendant (or as may be) at the suit of the abovenamed plaintiff (or as may be), and which was dated the day of, 20, by leaving the same at (place of service) (or sending the same on the day of, 20, by prepaid registered post addressed to the abovenamed defendant (or as may be) at (address), which is the registered office of the said defendant (or as may be) (and as in paragraph (3), etc., of (a) above).

Note — This form may be used with necessary alterations for a foreign company registered in Brunei Darussalam under the Companies Act (Chapter 39), but the affidavit must state that the company is a foreign company registered pursuant to the said Act and that service is being effected on the person authorised by registration in Brunei Darussalam to accept service on behalf of the defendant under the said Act.

(c) Affidavit of Substituted Service by Post of writ of Summons or other Process.

I, of do make oath (or affirm) and say as follows:

1. I did on the day of, 20, serve the abovenamed defendant (or as may be) with a true copy of the writ of summons (or as may be) in this action and a true copy of the order for substituted service, by posting at the Post Office at in a prepaid letter or envelope (or 2 prepaid letters or envelopes each) containing a true copy of the said writ (or as may be) and of the said order, and addressed (respectively) to the defendant (or as may be) at (and at) pursuant to the said order.

2. That the said writ of summons (or as may be) appeared to me to have been regularly issued out of the Registry of the High Court against the abovenamed defendant (or as may be) and was dated the day of, 20 (and as in paragraph (4), etc., of (a) above).

(d) Affidavit of Service of Notice of Writ of Summons by Advertisement.

I, of do make oath or affirm and say as follows:

1. I did on the day of, 20, serve the abovenamed defendant with notice of the writ of summons in this action and of the order for service by advertisement dated the day of, 20, by causing to be inserted once in (names of paper or papers as ordered) and advertisement in the words following namely:

(Title, Reference Number etc.)

The abovenamed defendant,

(As in (e) below)

2. The advertisement aforesaid appeared in the (name of paper) on the day of, 20, (and in the (name of paper)) on the day of, 20

Sworn (or affirmed) as in Form 78.

(e) Form of Advertisement.

To of (or late of)

Take notice that an action has been commenced against you in the High Court in Suit No. of 20, by of, in which the plaintiff's claim is for (state very shortly the nature of claim and the amount (if any) claimed in the indorsement on the writ).

And that it has been ordered that service of the writ in the said action on you be effected by this advertisement. If you desire to defend the said action you must within days from the publication of this advertisement, inclusive of the day of such publication, enter an appearance at the Registry of the High Court. In default of such appearance judgment may be entered against you.

Dated the day of, 20

.....
Solicitor for the

(f) Affidavit of Personal Service of Judgment or Order.

I, of do
make oath (or affirm) and say as follows):

1. I did on the day of, 20, at personally serve the abovenamed defendant (or plaintiff) with a true copy of the order (or judgment) dated in this action, now produced and shown to me marked, (or recite operative part of order or judgment).

2. The copy of the said order (or judgment) so served as aforesaid had indorsed thereon when so served the words following, that is to say: "If you the within named neglect to obey this order (or judgment) by the time therein limited you will be liable to process of execution for the purpose of compelling you to obey the same order (or judgment)".

Sworn (or affirmed) as in Form 78.

No. 138

NOTICE OF CHANGE OF SOLICITOR

O. 64, r. 1

O. 64, r. 2

(Title as in action)

To the Registrar,

Take notice that (name of new solicitor), of, has (or have) been appointed to act as the solicitor of the abovenamed ("plaintiff" or "defendant" (if for one or more of several defendants, naming the defendant or defendants)) in this action, in the place

[Subsidiary]

of (name of original solicitor).

The address for service of the abovenamed (new solicitor) is

Dated the day of, 20

.....
Solicitor

To the abovenamed defendant (or plaintiff) or his (or their) solicitor and to (naming the former solicitor of the plaintiff (or defendant)).

No. 139

NOTICE OF INTENTION OF PARTY TO ACT
IN PERSON, IN PLACE OF SOLICITOR

O. 64, r. 3

(Title as in action)

To the Registrar,

Take notice that I, the abovenamed plaintiff (or defendant) intend to act in person in this action in the place of and that my address for service is

Dated the day of, 20

.....
Party

To the abovenamed defendant (or plaintiff) and to (naming the former solicitor of the plaintiff (or defendant)).

No. 140

SUMMONS TO REMOVE SOLICITOR
FROM RECORD

O. 64, r. 4

(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on the day of, 20, at m., on the hearing of an application on the part of (name of party applying) the abovenamed plaintiff (or defendant) for an order declaring that (name of solicitor who has ceased to act) of (address)

..... has ceased to be the solicitor acting for you the abovenamed plaintiff (or defendant) in this action (or matter).

The costs of this application to be

Dated the day of, 20

Entered No. of 20
Clerk

(Seal)

.....
Registrar

This summons is taken out by of solicitor for the in person.

To (named of party whose solicitor has ceased to act).

No. 141

ORDER REMOVING SOLICITOR FROM
RECORD

O. 64, r. 4

(Title as in action)

Mr. Solicitor for in this action (or matter) having (died, become bankrupt or any other reason for removal) and the said (named of party formerly represented by solicitor) having failed to give notice of change of solicitor or notice of intention to act in person and notice of the application having been duly served upon the said (name of party formerly represented by solicitor).

Upon the application of and upon reading the affidavit of filed the day of, 20, and upon reading

It is ordered that the said ceases to be the solicitor acting for the said (name of party formerly represented by solicitor) in this action (for matter).

Dated the day of, 20

(Seal)

.....
Registrar

[Subsidiary]

No. 142

SUMMONS FOR WITHDRAWAL OF SOLICITOR **O. 64, r. 5**

(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on the day of, 20, at m., on the hearing of an application on the part of (name of solicitor withdrawing), the solicitor for the said (name of party represented by solicitor) the abovenamed plaintiff (or defendant) for an order declaring that the said (name of solicitor withdrawing) has ceased to be the solicitor acting for the said plaintiff (or defendant) in the above action (or matter) and that the costs of this application be

Dated the day of, 20

Entered No. of 20
Clerk

(Seal)

.....
Registrar

This summons is taken out by of solicitor for the

To

No. 143

ORDER FOR WITHDRAWAL OF SOLICITOR **O. 64, r. 5**

(Title as in action)

Mr. the Solicitor for a Plaintiff (or a defendant) in this action (or matter) having duly served notice of the application on the said

Upon the application of and upon reading the affidavit of filed the day of 20, and upon hearing

It is ordered that upon compliance with the requirements of Order 64, rule 5(1) of the Rules of the High Court, the said ceases to be the solicitor acting for the said in this action (or matter).

Dated the day of, 20

.....
Registrar

No. 144

CERTIFICATE OF SERVICE OF FOREIGN
PROCESS

O. 65, r. 2

I,, Registrar of the High Court of Brunei Darussalam
hereby certify that the documents annexed hereto are as follows:

- (1) The process received with a Request for Service; and
- (2) A copy of the evidence of service upon the person named in the process.

And I certify that such service so proved, and the proof thereof, are such as are required
by the law and practice of the High Court regulating the service of legal process in Brunei
Darussalam, and the proof thereof.

And I certify that the cost of effecting such service, as duly certified by me amounts to
the sum of \$

Dated the day of, 20

(Seal)

.....
Registrar

No. 145

ORDER FOR REGISTRATION OF FOREIGN
JUDGMENT

O. 67, r. 5

IN THE HIGH COURT OF BRUNEI DARUSSALAM

O.S. No. of 20

Between

..... Judgment Creditor,

and

..... Judgment Debtor,

[Subsidiary]

In the matter of the (state the relevant Ordinance).

And the matter of a judgment of the (describe the Court) obtained in (described the proceedings) and dated the day of, 20

Upon the application of the judgment creditor in this action and upon reading the affidavit of filed the day of, 20, (and upon the judgment creditor giving security in the sum of \$ by payment into Court, or bond to the satisfaction of the Registrar).

It is ordered that the judgment dated the day of, 20, of the (describe the foreign Court) whereby it was adjudged that the abovenamed (name of judgment creditor) of do recover against the abovenamed (name of judgment debtor) of (amount due under the judgment) which is equivalent in Dollars to \$ for debt and \$ for costs (or as may be) be registered as a judgment of the High Court pursuant to the ordinance.

It is further ordered that the abovenamed (name of judgment debtor) be at liberty to apply to set aside the said registration within days after service upon him (within the jurisdiction) (or name of foreign country if to be served abroad) of notice of such registration pursuant to rule 7 of Order 67 if he has grounds for so doing, and execution upon the said judgment will not issue until after the expiration of that period or any extension of the period granted by the Court; or if an application be made to set aside the registration until such application has been disposed of.

It is ordered that the costs of this application be

Dated the day of, 20

(Seal)

.....
Registrar

No. 146

CERTIFICATE UNDER THE RECIPROCAL
ENFORCEMENT OF FOREIGN JUDGMENTS ACT

O. 67, r. 13

(Title as in action)

I, Registrar of the High Court of Brunei Darussalam hereby certify that the judgment obtained by plaintiff (or defendant) against defendant (or plaintiff) in this action on the day of, 20, or payment of the sum of \$ and \$ costs carries interest at the rate of *per cent per annum* calculated on the said sum of \$ and \$ from the date of the said judgment until payment.

Dated the day of, 20

(Seal)

.....
Registrar

[S 34/2008]

No. 147

CERTIFICATE UNDER THE RECIPROCAL
ENFORCEMENT OF FOREIGN JUDGMENTS ACT

O. 67, r. 13

[S 34/2008]

(Title as in action)

I, registrar of the High Court of Brunei Darussalam hereby certify that the writ of summons (or as may be), a copy of which is hereunto annexed, was issued out of the registry of the High Court on the day of, 20, by the abovenamed plaintiff against the abovenamed defendant, for payment of the sum of \$ in respect of (state shortly nature of claim or ground of action).

That the said writ was duly served on the day of, 20, upon the said defendant (state mode of service) (that the said defendant duly appeared to the said writ on the day of, 20).

That the said plaintiff obtained judgment against the said defendant for payment of the sum of \$ in respect of (state shortly nature of claim or terms of judgment), together with the sum of \$ for costs, which judgment was obtained (state grounds on which judgment was based).

That (no) objection has been made to the jurisdiction of the Court (on the grounds that).

That the following pleadings in the action consisted of:

Dated the day of, 20

(Seal)

.....
Registrar

[S 34/2008]

[Subsidiary]

No. 148

No number

No. 149

No number

No. 150

No number

No. 151

No number

No. 152

No number

No. 153

No number

No. 154

No number

No. 155

WRIT OF SUMMONS IN ACTION *IN REM*

O. 70, r. 2

IN THE HIGH COURT OF BRUNEI DARUSSALAM

Admiralty *in Rem* No. of 20Admiralty action *in rem* against:

(The ship or as may be describing the res)

Between

(The owners of the ship or as may be)

..... Plaintiffs,

and

(The owners of the ship or as may be)

..... Defendants

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM IN THE NAME OF HIS MAJESTY
THE SULTAN AND YANG DI-PERTUANTo: The (owners of and other) persons interested in the ship of the port of
(or cargo etc. as may be).

We command you that within 8 days after the service of this writ, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of, and take notice that in default of your so doing the plaintiffs may proceed therein, and judgment may be given in your absence, and if the resdescribed in this writ is then under arrest of the Court it may be sold by order of the Court.

WITNESS Registrar of the High Court at
the day of, 20

.....
Plaintiff's Solicitors

.....
Registrar

High Court,

Memorandum to be subscribed on the Writ

This writ may not be served more than 12 calendar months after the above date unless renewed by order of Court.

[Subsidiary]

The defendants may appear hereto by entering appearances either personally or by Solicitor at the Registry of the High Court.

The defendants appearing personally may, if they desire, enter their appearances by post, and the appropriate forms may be obtained by sending cash or a cheque for \$ with an addressed envelope to the Registrar, High Court

Indorsement to be made on writ before issue
Indorsement of Claim

The plaintiffs' claim is for

(If the Plaintiffs sue, or the defendants are sued, in a representative capacity, this must be stated in the indorsement of claim).

Indorsement as to solicitor and address

This writ is issued by of solicitor for the said plaintiffs whose address is (or where the plaintiffs sue in person. This writ was issued by the said plaintiffs who resides at and is (state occupation) and (if the plaintiffs do not reside within the jurisdiction) whose address for service is).

Indorsement as to service

This writ was served by by way of personal service (or as may be) (state manner of service or in accordance with the terms of an order for substituted service) on the defendant (who is known to me) (or who was pointed out to me by) or who admitted to me that he was) at (place) on the day of, 20

Indorsed the day of, 20

.....
Process server

No. 156

WARRANT OF ARREST

O. 70, r. 4

(Title as in Form 155)

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM IN THE NAME OF HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN

To the Sheriff,

We hereby command you to arrest the ship of the port of (and the cargo now or lately laden therein, together with the freight due for the transportation thereof) or (and the freight due for the transportation of the cargo now or lately laden therein) and to keep the same under safe arrest until you shall receive further orders from us.

Dated the day of, 20

(Seal)

.....
Registrar

The plaintiffs' claim is for (copy from the writ).

Taken out by solicitors for the
Sheriff's indorsement as to service.

No. 157

PRAECIPE FOR WARRANT OF ARREST

O. 70, r. 4

(Title as in Form 155)

We of
..... solicitors for the plaintiffs request a warrant to arrest (description of property giving name, if a ship).

Dated the day of, 20

.....
Solicitors for the plaintiffs

No. 158

PRAECIPE FOR CAVEAT AGAINST ARREST

O. 70, r. 5

(Description of property giving name, if a ship)

We, of
..... solicitors for of request a caveat against the arrest of (description of property giving name, if a ship) and hereby undertake to enter an appearance in any action that may be begun in the High Court against the said and, within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding \$ or to

[Subsidiary]

pay that sum into Court. We consent that the writ of summons and any other document in the action may be left for us at

Dated the day of, 20

.....
Solicitor for the

No. 159

PRAECIPE FOR SERVICE OF WRIT *IN REM*
BY SHERIFF

O. 70, r. 7

(Title as in Form 155)

We, of solicitors for the plaintiffs request that the writ of summons left herewith be duly served on

Dated the day of, 20

.....
Solicitors for the plaintiffs

No. 160

RELEASE

O. 70, r. 12

(Title as in Form 155)

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM IN THE NAME OF HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN

To the Sheriff,

Whereas in this action we did command you to arrest the and to keep the same under safe arrest until you should receive further orders from us. Now we do hereby command you to release the said from the arrest effected by virtue of our warrant in this action.

Dated the day of, 20

Taken out by solicitors
for the

Sheriff's indorsement

On the day of, 20,
the was released from arrest pursuant to this instrument.

.....
Sheriff

No. 161

PRAECIPE FOR ISSUE OF RELEASE

O. 70, r. 12

(Title as in Form 155)

We, of
solicitors for the plaintiffs (or defendants) in this action against (description of property
giving name, if a ship), now under arrest by virtue of a warrant issued out of the High Court
Registry, request the issue of a release with respect to the said

Dated the day of, 20

.....
Solicitor for the

No. 162

PRAECIPE FOR CAVEAT AGAINST RELEASE
AND PAYMENT

O. 70, r. 13

(Title as in Form 155)

We, of
solicitors for of request
a caveat against the issue of a release with respect to (description of property giving name, if
a ship) now under arrest and, should the said property be sold by order of the Court, a caveat
against payment out of Court of the proceeds of sale.

Dated the day of, 20

.....
Solicitor for the

[Subsidiary]

No. 163

PRAECIPE FOR WITHDRAWAL OF CAVEAT

O. 70, r. 14

(Title as in Form 155)

We, of
solicitors for of
request that the caveat (state nature of caveat) entered on the
day of, 20, on behalf of be withdrawn.

Dated the day of, 20

.....
Solicitor for the

No. 164

BAIL BOND

O. 70, r. 15

(Title as in Form 155)

Whereas this Admiralty action *in rem* against the abovementioned property is pending in the High Court and the parties to the said action are the abovementioned plaintiffs and defendants:

Now, therefore, we
of and hereby jointly
and severally submit ourselves to the jurisdiction of the said Court and consent that if they,
the abovementioned defendants (or plaintiffs, in the case of a counterclaim) do not pay what
may be adjudged against them in this action, with costs, or do not pay any sum due to be paid
by them in consequence of any admission of liability therein or under any agreement by
which this action is settled before judgment and which is filed in the said Court, execution
may issue against us, our executors or administrators, movable property, for the amount
unpaid or an amount of dollars whichever is the less.

.....
Solicitor for the

This bail bond was signed by the said and
the sureties, the day of, 20

Before me.

.....
Commissioner for Oaths

No. 165

PRAECIPE FOR COMMISSION FOR
APPRAISEMENT AND SALE

O. 70, r. 22

(Title as in Form 155)

We, of
solicitors for the plaintiffs (or defendants) request a commission for the appraisal and
sale of (description of property giving name, if a ship) which was ordered by the Court on
the day of, 20

Dated the day of, 20

.....
Solicitor for the

No. 166

COMMISSION FOR APPRAISEMENT AND SALE

O. 70, r. 22

(Title as in Form 155)

THE CHIEF JUSTICE OF BRUNEI DARUSSALAM, IN THE NAME OF HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN

To the Sheriff,

Whereas in this action the Court has ordered (description of property giving name, if a
ship) to be appraised and sold.

We hereby authorise and command you to choose one or more experienced persons and
to swear him or them to appraise the said according to
the true value thereof, and such value having been certified in writing by him or them to cause
the said to be sold by (private treaty or public auction) for the highest
price that can be obtained for it, but not for less than the appraised value unless the Court on
your application allows it to be sold for less.

And we further command you, immediately upon the sale being completed, to pay the
proceeds thereof into Court and to file the certificate of appraisal signed by you and the
appraiser or appraisers, and an account of the sale signed by you, together with that
commission. Witness Registrar of the High Court the day
of, 20

[Subsidiary]

Dated the day of, 20

(Seal)

.....
Registrar

Taken out by (solicitors for) the

No. 167

No number

No. 168

No number

No. 169

No number

No. 170

No number

No. 171

No number

No. 172

No number

No. 173

No number

No. 174

No number

No. 175

No number

No. 176

No number

No. 177

No number

No. 178

No number

No. 179

No number

No. 180

No number

No. 181

No number

No. 182

No number

[Subsidiary]

No. 183

No number

No. 184

No number

No. 185

No number

No. 186

No number

No. 187

No number

No. 188

No number

No. 189

CONSENT OF NEXT FRIEND OR GUARDIAN
AD LITEM OF PERSON UNDER DISABILITY

O. 73, r. 3

(Title as in action)

I, of
 consent to be next friend (or guardian *ad litem*) of the abovenamed plaintiff (or defendant),
 an infant (or a patient) in this action, and I authorise
 of Advocates and Solicitors, to act on my behalf.

Dated the day of, 20

Signed by the said, the day of,
20, in the presence of:

.....
Solicitor (or Commissioner
for Oaths)

No. 190

CERTIFICATE BY SOLICITOR FOR PERSON
UNDER DISABILITY

O. 73, r. 3

(Title as in action)

I, of
solicitor for the next friend (or guardian *ad litem*) hereby certify that I know (or believe) that
(name of infant) (or name of patient) is (an infant) (or a patient) (give the grounds of
knowledge or belief) and that the abovenamed (name of next friend) (or name of guardian
ad litem) has no interest in the cause (or matter) in question adverse to that of the infant (or
the patient).

Dated the day of, 20

.....
Solicitor for the

No. 191

ORDER FOR PARTICULARS (PARTNERSHIP)

O. 74, r. 2

(Title as in action)

Upon the application of and upon reading the
affidavit of filed the
day of, 20, and upon hearing

It is ordered that the furnish the
with a statement in writing, verified by affidavit, setting forth the names of the person
constituting the members or co-partners of their firm, pursuant to the Rules of the High Court,
Order 77, rule 2, and that the costs of this application be

[Subsidiary]

Dated the day of, 20

(Seal)

.....
Registrar

No. 192

NOTICE OF SERVICE ON MANAGER OF
PARTNERSHIP

O. 74, r. 3

(Indorsed on Writ of Summons)

Take notice that the writ of summons is served on you as the person having the control or management of the partnership business of the abovenamed defendant firm of
(and also as partner in the said firm (*a*)).

.....
Solicitor for the Plaintiff

Note — (*a*) If the person served with the writ of summons is served in the two capacities of manager and partner, the clause should be left standing. If he is served as manager only, it should be struck out.

No. 193

AUTHORITY TO COMPANY TO REGISTER
TRANSFER

O. 84, r. 4

(Title as in action)

To the Co. Ltd.,
Brunei Darussalam.

Please register transfer of share Nos. from
to the Treasury.

Dated the day of, 20

.....
Accountant General

CERTIFICATE OF TRANSFER

The abovementioned shares have this day been transferred as authorised.

Dated the day of, 20

.....
Secretary of the Co.Ltd.

No. 194

STATUTORY DECLARATION

O. 84, r. 11

(Title as in action)

Ledger Account (if the same as the cause state “as above”). I (name and address of applicant) solemnly and sincerely declare that I am the (degree of relationship) and next or one of the next-of-kin of (name of deceased) and that I am entitled to take out administration to his estate and to receive the sum of \$ directed to be paid to him by the order date the day of, 20, and I further declare that the total value of the assets of the deceased including the above sum does not exceed \$10,000 and I certify that the funeral and other testamentary expenses of the deceased have been paid. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act (Chapter 12).

.....
Applicant

Declared before me this day of, 20

(Name and designation of officer administering oath).

No. 195

ACCOUNT BOOK

O. 84, r. 14

RECEIPTS

Date	From whom received	No of action or proceedings	To whose credit paid	No. of Receipt	Amount received	Amount Banked	Date of payment

PAYMENT

Date	To whom paid	No. of action or proceedings	No. of cheque	Amount paid in cash	Amount paid by cheque	Page and Book No. of Account Bank (Receipts)

APPENDIX B

COURT FEES

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
COMMENCEMENT OF A CAUSE OR MATTER				
		\$	¢.	
1.	On sealing a writ of summons for the commencement of an action	200	00	Praecipe
2.	On sealing an originating summons	160	00	Praecipe
3.	On sealing a concurrent or renewed writ of summons or a concurrent originating summons	20	00	Praecipe
4.	On sealing an amended writ of summons or an amended originating summons	20	00	Praecipe
5.	On presenting an originating petition where no other fee is specifically provided	160	00	Praecipe
6.	On sealing on originating notice of motion ...	160	00	Praecipe
7.	On amending an originating petition or an originating notice of motion on which Fee no. 6 has been paid or is payable	20	00	Praecipe
8.	On any other form of commencement of a Cause or matter where no fee is specifically provided	160	00	Praecipe
9.	On marking the renewal of any writ of summons	20	00	Praecipe
APPEARANCE				
10.	On entering an appearance for each person ...	20	00	Praecipe
11.	On amending the same	20	00	Praecipe
INTERLOCUTORY APPLICATIONS				
12.	On sealing a summons	40	00	Praecipe

[Subsidiary]

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
13.	On sealing a notice for attendance at Chambers on an originating summons to which an appearance is required to be entered	20	00	Praecipe
14.	On filing a notice of motion (except a motion for judgment) or a case on motion where no motion is filed	80	00	Praecipe
15.	On sealing a notice under order 16 rule 1, 8 or 9	80	00	Praecipe
16.	On bespeaking a request for the service of process or notice thereof out of the jurisdiction	80	00	Praecipe
17.	On sealing a commission or letter of request for the examination of witnesses abroad ...	80	00	Praecipe
18.	On every appointment for the examination of a witness by an officer of the Court	40	00	Praecipe
19.	On every witness sworn and examined by an officer of the Court, for each hour or part of an hour	80	00	Praecipe
ENTERING OR SETTING DOWN FOR TRIAL OR HEARING IN COURT				
20.	On setting down a cause or matter including a motion, for hearing or judgment or on a point of law	200	00	Praecipe
21.	On entering or setting down any cause or matter for further consideration	120	00	Praecipe
WRITS				
22.	On sealing a writ of subpoena <i>ad testificandum</i> or <i>duces tecum</i> , other than an <i>instanter subpoena</i> , for each witness ...	8	00	Praecipe
23.	On sealing an <i>instanter subpoena</i> for each witness	24	00	Praecipe

APPENDIX B — (continued)

No.	Items	Fees	Document on which the stamp is to be affixed and remarks
		\$ ¢.	

Note — An *instante subpoena* is one issue less than 3 days before the trial of an action.

- | | | | |
|-----|--|----------|----------|
| 24. | On sealing every writ of execution, order of committal, arrest or attachment of property | 40 00 | Praecipe |
| 25. | No item. | | |

JUDGMENT AND ORDERS

- | | | | |
|-----|---|-----------|----------|
| 26. | On entering or sealing any order made in Chambers | 80 00 | Praecipe |
| 27. | On entering or sealing a judgment or order given, directed or made in the trial hearing or further consideration or a cause or matter in Court | 120 00 | Praecipe |
| 28. | On entering or sealing a judgment pursuant to an order or certificate made in Chambers ... | 40 00 | Praecipe |
| 29. | On entering or sealing any other judgment or order where no other fee is specifically provided for | 80 00 | Praecipe |

MISCELLANEOUS

- | | | | |
|-----|---|-----------|----------|
| 30. | On presenting a petition of course | 80 00 | Praecipe |
| 31. | On adjourning from Chambers into Court — | | |
| | (a) an originating summons | 160 00 | Praecipe |
| | (b) any other summons or matter | 80 00 | Praecipe |

[Subsidiary]

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
32.	On taking an account of moneys received by a receiver, committee or guardian, consignee, bailee, manager, provisional official or voluntary liquidator, or of an executor, administrator or trustee, agent, solicitor, mortgagee, co-tenant, co-partner, execution creditor, or other person liable to account, when the amount found to have been received without deducting any payment shall not exceed \$1,000	40	00	Praecipe
33.	Where such amount shall exceed \$1,000 for every \$500 or fraction of \$500	4	00	Praecipe
	Note — In the case of any such receiver, committee, guardian, consignee, bailee, execution creditor, the fees shall upon payment be allowed in the account unless the Court shall otherwise direct, and in the case of taking the accounts of such other accounting parties the fees shall be paid by the party having the conduct of the order under which such account is taken as part of his costs in the cause or matter, unless the Court shall otherwise direct and in such case shall be taken upon the certificate of the result of any such account, but the fees shall be due and payable although no certificate is required on the account taken or such part thereof as may be taken, and the solicitor or party suing in person shall in such case cause the proper stamps, the amount thereof to be fixed by the Registrar, to be impressed on the account.			
34.	On signing, settling or approving an advertisement	40	00	Praecipe
35.	On settling a lodgment schedule for payment into court of purchase or other money	20	00	Praecipe

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
36.	On settling —			
	(a) a deed or other instrument or			
	(b) particulars and conditions of sale, whether together or separately ...	80	00	Praecipe
37.	On fixing the reserve on a sale out of Court ..	80	00	Praecipe
38.	On every reference to an officer of the Court	120	00	Praecipe
39.	On sealing a notice of appeal from a Registrar to a Judge in Chambers	40	00	Praecipe

PROBATE

40.	On filing petition for Probate or Letters of Administration, or for resealing the same, including the fees for taking and filing the affidavit, verifying the petition, and on answering and settling down the petition for hearing in Court	160	00	Praecipe
41.	On extracting Grant of Probate or Letters of Administration or for resealing the same —			
	Where the net value of the estate assessed by the Collector of Estate Duty does not exceed —			
	\$ ¢.			
	10,000 00	20	00	Praecipe
	20,000 00	40	00	
	30,000 00	60	00	
	40,000 00	80	00	
	50,000 00	100	00	
	60,000 00	120	00	
	70,000 00	140	00	

[Subsidiary]

APPENDIX B — (continued)

No.	Items										Fees		Document on which the stamp is to be affixed and remarks
	\$	¢.									\$	¢	
	80,000	00	...	...	...	...	...	...	...	...	160	00	
	90,000	00	...	...	...	...	...	...	...	...	180	00	
	100,000	00	...	...	...	...	...	...	...	...	200	00	
	110,000	00	...	...	...	...	...	...	...	...	220	00	
	120,000	00	...	...	...	...	...	...	...	...	240	00	
	130,000	00	...	...	...	...	...	...	...	...	260	00	
	140,000	00	...	...	...	...	...	...	...	...	280	00	
	150,000	00	...	...	...	...	...	...	...	...	300	00	
	160,000	00	...	...	...	...	...	...	...	...	320	00	
	170,000	00	...	...	...	...	...	...	...	...	340	00	
	180,000	00	...	...	...	...	...	...	...	...	360	00	
	190,000	00	...	...	...	...	...	...	...	...	380	00	
	200,000	00	...	...	...	...	...	...	...	...	400	00	
	300,000	00	...	...	...	...	...	...	...	...	500	00	
	400,000	00	...	...	...	...	...	...	...	...	600	00	
	500,000	00	...	...	...	...	...	...	...	...	700	00	
	800,000	00	...	...	...	...	...	...	...	...	800	00	
	1,200,000	00	...	...	...	...	...	...	...	...	1,000	00	
	2,000,000	00	...	...	...	...	...	...	...	...	1,200	00	
	On every additional \$1,000,000.00 or any fractional part of \$1,000,000.00 a further and additional fee of										200	00	

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
42.	On engrossing a copy of a will or codicial or of any translation thereof or other document to annex to grant or for ex-emplification	4	00	Praeipie
		plus 2 00 per folio		
43.	If in any other language per folio of the English translation	2	00	Praeipie
44.	On every ex-emplification of a Probate or Letters of Administration, with or without the will annexed in addition to the fees for engrossing	40	00	Praeipie
45.	On entry of every caveat including notice to the other Registries and notice to the petitioner	20	00	Praeipie
46.	On withdrawing a caveat including notice ...	20	00	Praeipie
47.	On settling or sealing a citation where the estate exceeds \$1,000.	40	00	Praeipie

ADMIRALTY

48.	On filing —			
	(a) a consent to release	40	00	Praeipie
	(b) a praecipe under Order 70, rules 4(3), 5(1), 7(3), 12(5)(b), 13(1), 22(1) or a notice under Order 70, rules 12(2)	40	00	Praeipie
	(c) an agreement under Order 70 rule 33	40	00	Praeipie
	(d) an admission of liability	40	00	Praeipie
	(e) a request for the attendance of assessors	40	00	Praeipie
	(f) any other document	20	00	Praeipie
49.	(a) On entering a reference for hearing by the Registrar	240	00	Praeipie

[Subsidiary]

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
	(b) Such further fee for any assessor as the registrar may consider reasonable	—		
50.	On a certificate by the registrar as to a judgment or order	40	00	Praecipe
51.	On lodging with the sheriff a warrant, release, decree, order, Commission or other instrument	160	00	Praecipe
52.	On the appointment and swearing of appraisers including the drawing of the affidavit for the appraiser	120	00	Praecipe
53.	On the delivery of a ship or goods to a purchaser	160	00	To be deducted by Sheriff
54.	On the sale of a ship commission of 5% to be charged on the first \$1,000 and 2½% upon all above that sum, such sum to include the auctioneer's commission	—		To be deducted by Sheriff
	Note — Where the sale is made by private contract, only half of the commission will be payable.			
55.	For attending the discharge of a cargo or the removal of a ship or goods for each day of attendance	200	00	To be deducted by Sheriff
	Note — Day means from 9 a.m. to 4 p.m. For each hour or part thereof before 9 a.m. or after 4 p.m.			
		60	00	To be deducted by Sheriff

APPEAL FROM HIGH COURT

56.	On filing a notice of appeal and cross appeal	400	00	Praecipe
57.	(Deleted)			
58.	Any interlocutory application	80	00	Praecipe
59.	Memorandum of Appeal	80	00	Praecipe

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
60.	Judgment or Order of Court of Appeal —			
	(a) Order on any interlocutory application	80	00	
	(b) Final order on appeal	120	00	
61.	(Deleted)			
	APPEAL FROM SUBORDINATE COURTS AND STATUTORY BODIES			
62.	(Deleted)			
63.	(Deleted)			
63A.	(a) On presentation of memorandum of appeal from Subordinate Court	40	00	Praecipe
	(b) On filing any appeal or reference from any authority or body other than a Subordinate Court, not otherwise provided for	40	00	Praecipe
	(c) On entering or sealing an order on appeal or reference from			
	A Subordinate's court or any other body or authority	20	00	Praecipe
	FILING			
64.	On filing any document in the Registry not provided in this Appendix	16	00	Praecipe
65.	On amending each pleading	16	00	Praecipe
66.	On an application to search for appearance, for each defendant in respect of whom search is made including certificate of the result of such search	16	00	Praecipe

[Subsidiary]

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
67.	On any other search, including inspection, for each half hour or part thereof occupied ...	12	00	Praecipe
68.	On every certificate or report by the registrar not otherwise provided for	40	00	Praecipe

COPIES OF DOCUMENTS

69.	On making a copy or a certified copy for each folio	4	00	
	For every second or subsequent copy if “carbon” or by duplicating process for each folio	2	00	
70.	For examining a plain copy and marking the same as an office copy —			
	(a) in the case of a photographic or xerox copy for each sheet	2	00	Praecipe
	(b) in any other case for each folio	4	00	Praecipe
71.	On an application to be allowed to copy any document filed or lodged in Court, for each document	4	00	Praecipe

TRANSLATIONS

72.	On a certified translation by an Interpreter of the Court	8	00	Praecipe
		plus 4	00	
		per folio		
73.	On checking, correcting and certifying a translation not made by an interpreter of the Court	8	00	Praecipe
		plus 4	00	
		per folio		

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	

Note — On presentation of the praecipe which must be signed and dated, it must bear a stamp for at least the first folio of translation. The folios will be reckoned on the English translation when ready and the fee must be made up to the full amount before the translation can be delivered.

TREASURY

74.	On a certificate of the amount and description of any moneys, funds or securities, including the request therefor	16	00	Praecipe
75.	On a transcript of an account for each opening, including the request thereof	16	00	Praecipe
76.	(a) On paying, lodging, transferring or depositing funds in Court	16	00	Direction
	(b) On paying out of Court any money lodged or deposited in Court	16	00	Direction
77.	On a request to the Treasury for information in writing respecting any moneys, funds or securities in court or any transaction in his office	16	00	Request

TAXATION OF COSTS

78.	On taxing a bill of costs —			
	(a) where the amount allowed does not exceed \$50	20	00	Praecipe
	(b) where the amount allowed exceeds \$50 for every additional \$50 allowed or fraction thereof	8	00	Praecipe

[Subsidiary]

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
	Provided that the registrar may in any case require the bill of costs to be stamped before taxation with the whole or part of the amount of fees which would be payable if the bill was allowed by him at the full amount thereof.			
79.	On certificate or allocatur of the result of the taxation	16	00	Praecipe
	Note — Where a plaintiff is entitled to a lump sum for costs under Appendix 2 the same fees shall be payable as if a bill of costs had been taxed for the amount of such lump sum, and a certificate or allocatur, had been signed.			

COMPANIES

80.	On the withdrawal of a bill of costs which has been lodged for taxation such fee (not exceeding the amount which would have been payable under Fee No. 78 if the bill had been allowed in full) as shall appear to the Registrar to be fair and reasonable.			
81.	On presenting a petition under one or more of the following	300	00	Praecipe
	(a) to confirm the reduction of a share premium account;	—		—
	(b) to approve the issue of shares at a discount;	—		—
	(c) to confirm a reduction of a capital redemption reserve fund;	—		—
	(d) to confirm a reduction of reduction of capital; or	—		—
	(e) to approve a compromise or scheme of arrangement	—		—
82.	On presenting a petition under one or more of the following	300	00	Praecipe

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
	(a) to cancel an alteration of objects;	—	—	—
	(b) to cancel any variation of the rights attached to any class of shares;	—	—	—
	(c) to restore a name to register of companies;	—	—	—
	(d) for relief by officers of a company ...	—	—	—
83.	On presenting a petition for which no fee is specifically provided	300	00	Praecipe
84.	On a certificate as to debts	200	00	Praecipe

COMMISSIONS

85.	On sealing or issuing a Commission to take oaths or affidavits or acknowledgements in the High Court	400	00	Praecipe
86.	Upon an application for the production of records or documents to be given the evidence:			
	(a) Where the records or documents are left in Court	16	00	Praecipe
	(b) Where an officer is required to produce the records or documents in Court	120	00	Praecipe
87.	For the attendance of an officer of the Court as a witness for every half day or part thereof that he is necessarily absent from his office	120	00	Praecipe
88.	On taking or re-taking an affidavit or a declaration <i>in lieu</i> of an affidavit, or a declaration or an acknowledgment for each person making the same	8	00	Praecipe
	And in addition for each exhibit referred to therein and required to be marked	6	00	Praecipe

[Subsidiary]

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
89.	On each document referred to in a deposition and required to be marked	6	00	Praecipe
90.	On taking an affidavit before an Advocate and Solicitor who is appointed as Commissioner for Oaths	8	00	
	Note — The fees under Fee Nos. 90 and 91 shall be payable to the commissioner and shall be <i>in lieu</i> of the Court fees of \$4.00 and \$3.00 chargeable under Fee No. 88.			
91.	For each exhibit referred to in an affidavit sworn before an Advocate and Solicitor who is appointed as a Commissioner for Oaths	8	00	
92.	(a) On approving —			
	(i) a guarantee	40	00	Praecipe
	(ii) an undertaking <i>in lieu</i> of a guarantee	20	00	Praecipe
	(b) (i) on vacating a guarantee	40	00	Praecipe
	(ii) on discharging an undertaking <i>in lieu</i> of a guarantee	20	00	Praecipe
	Provided that, when the vacating or discharged is unconditional, Fee No. 92(b) shall be impressed after the order has been made but before it is perfected.			
93.	On taking a recognisance or bond, whether one or more than one recogniser of obliger, and whether entered into by all at one time or not	80	00	Praecipe
94.	On assignment of a bond	40	00	Praecipe
95.	On vacating a recognisance	32	00	Praecipe
96.	(Deleted)			

APPENDIX B — (continued)

No.	Items	Fees		Document on which the stamp is to be affixed and remarks
		\$	¢.	
97.	On re-registering the same	16	00	Praecipe
98.	On sealing or issuing any document, not being a judgment or order, where no other fee is prescribed by this Appendix: Provided that this fee is not payable on a writ of <i>habeas corpus</i>	20	00	Praecipe
SHERIFF'S OFFICE				
99.	For each attempt at service on each person of any process or proceeding required to be served by the Court or Sheriff	8	00	Praecipe
100.	And if more than 2 miles from the High Court, for every additional mile	4	00	Praecipe
101.	For executing every writ of execution, order or committal, arrest or attachment of property	40	00	Praecipe
102.	On marking a writ of execution for renewal ..	20	00	Praecipe
103.	For releasing property seized by instruction of party issuing the writ of execution, order of attachment arrest or attachment of property	32	00	Praecipe
104.	Commission of 5% to be charged on the first \$1,000 and 2½% upon all above that sum when levied by seizure and sale such sum to include the auctioneer's commission ..			To be deducted by the Sheriff

Note — Where the sale is made by private contract, only half the commission will be payable.

[Subsidiary]

APPENDIX B — (continued)

No.	Items	Fees	Document on which the stamp is to be affixed and remarks
		\$ ¢.	
105.	Commission of 4% to be charged on all money received by the Sheriff under garnishee summons		To be deducted by the Sheriff
106.	Commission of 4% to be charged on all money received by the Sheriff under an Order for the attachment before judgment of money belonging to the debtor in the hands of a third party		To be deducted by the Sheriff
107.	Commission of 2% to be charged on all money received by the Sheriff in satisfaction of a writ of seizure and sale where an execution is withdrawn, satisfied or stopped		To be deducted by the Sheriff
108.	Commission of 2% to be charged on the estimated value of the property seized or the amount stated in the writ whichever is the lesser where the execution is withdrawn, satisfied or stopped		To be paid in cash to the Sheriff by the Execution Creditor
109.	For each man in possession necessarily employed in taking charge of any property under seizure	Actual Cost	Paid in cash to the Sheriff or direct payment on vouchers certified by the Sheriff
110.	For removal of goods or animals to place of safe keeping, when necessary	Actual Cost	Paid in cash to the Sheriff

APPENDIX B — (continued)

No.	Items	Fees	Document on which the stamp is to be affixed and remarks
		\$ ¢.	
111.	Where goods or animals are removed for warehousing and taking charge of the same, including feeding of animals, 6% on the value of the goods or animals removed or the sum indorsed on the writ of execution, whichever is the less. No fees for keeping possession of the goods or animals shall be charged after the goods or animals have been removed	12%	Paid in cash to the Sheriff
112.	For advertising and giving publicity to the sale by auction	Actual Cost	Paid in cash to the Sheriff

Note — (a) In every case where the execution is withdrawn, satisfied or stopped the fees shall be paid by the person at whose instance the sale is stopped, and the amount of any costs or charges payable under this Appendix shall be taxed by the Judge, in case the Sheriff and the party liable to pay such costs and charges differ as to the amount thereof.

[Subsidiary]

APPENDIX B — *(continued)*

No.	Items	Fees	Document on which the stamp is to be affixed and remarks	
		\$ ¢.		
	(b) The charges laid down under items 109, 110, 111 and 112 shall be collected in cash and deposited in Court and the amounts actually incurred for the services specified in the said items shall be paid out of such deposit by the Sheriff to the persons employed to render such services, any balance to be paid out to the person making the deposit.			
113.	For the return of any writ of process and filling same, exclusive of the fee paid on filing.	16 00	Praecipe	