

No. S 7

**SUPREME COURT ACT
(CHAPTER 5)**

BRUNEI RULES OF THE HIGH COURT (AMENDMENT) RULES, 1999

In exercise of the power conferred by section 12 of the Supreme Court Act, the Judges of the Supreme Court, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby make the following Rules of Court :-

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| 1. (1) These Rules may be cited as the Brunei Rules of the High Court (Amendment) Rules, 1999. | Citation and commencement. |
| (2) These Rules shall come into force on 1st day of June, 1999. | |
| 2. These Rules shall apply to every action in the Court on or after the date of commencement of these Rules, whether or not such action was instituted before that date. | Application. |
| 3. The Brunei Rules of the High Court, 1990 (hereinafter called the principal Rules) are amended by the addition of the following after Order 14 - | Addition of Order 14A. |

"ORDER 14A

Question of law.
(O. 14A, r. 1).

1. (1) The Court may upon the application of a party or 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.

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| 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." |
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| Amendment of
Order 18. | 4. Order 18 of the principal Rules is amended by the addition of the following, after rule 7 – |
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| "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 or by a Court-Martial there or elsewhere, he must include in his pleading a statement of his intention with particulars of – <ul style="list-style-type: none">(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. |
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| | (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 or has been adjudged to be the father of a child in affiliation proceedings before a Court in Brunei, he must include in his pleading a statement of his intention with particulars of – <ul style="list-style-type: none">(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. |
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| | (3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2) then if the opposite party – <ul style="list-style-type: none">(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."

5. Order 24 of the principal Rules is amended by –

Amendment of
Order 24.

(a) the addition of the following after rule 11 –

"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 seven 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." ; and

(b) the addition of the following after rule 14 –

"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."

6. Order 28 of the principal Rules is amended by the addition of the following after rule 1 –

Amendment of
Order 28.

"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 four 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."

7. Order 29 of the principal Rules is amended by –

Amendment of
Order 29.

- (a) the addition of the following after rule 1 –

“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.” ; and

- (b) the addition of the following after rule 7 –

“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.

(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."

Amendment of
Order 33.

8. Order 33 of the principal Rules is amended by the addition of the following after rule 4 –

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

4A. (1) This rule applies where an order is made under rule 4{2} for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded if liability is established.

(2) After the making of an order to which paragraph (1) applies, any party against whom a finding of liability is sought may (without prejudice to his defence) make a written offer to the other party to accept liability up to a specified proportion.

(3) Any offer made under the preceding paragraph may be brought to the attention of the Judge after the issue of liability has been decided, but not before."

9. Order 34 of the principal Rules is amended by the addition of the following after rule 8 –

Amendment of
Order 34.

"The 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 three 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 two 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
 - (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."

Amendment of Order 38. 10. Order 38 of the principal Rules is amended by the addition of the following after rule 2 –

"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}.

{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), (8) and (11) to (16) and to give such alternative directions as it thinks fit."

11. Order 39 of the principal Rules is amended by the addition of the following after rule 3 –

Amendment of
Order 39.

	"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."
Amendment of Order 50.	12. Order 50 of the principal Rules is amended by the addition of the following after rule 9 – "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."
Amendment of Order 70.	13. Order 70 of the principal Rules is amended by – (a) the addition of the following after rule 22 – "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." (b) the addition of the following after rule 36 – "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).

(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."

14. The principal Rules are amended by the addition of the following after Order 87 –

Addition of
Order 88.

"ORDER 88

Summary proceedings for possession of land. (O. 88).	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.	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.	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.	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.	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 a party.

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.

Order for
possession.

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 five clear days after the date of service of the summons ; and

- (b) in the case of other land, less than two 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.

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 three 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.

9. The Court may, on such terms as it thinks just, set aside or vary any order made in proceedings under this Order."

Made this 27th day of February, 1999.

BY COMMAND

DATO SERI PADUKA SIR DENYS ROBERTS
CHIEF JUSTICE
BRUNEI DARUSSALAM