

No. S 77

**SUPREME COURT ACT
(CHAPTER 5)**

**RULES OF THE SUPREME COURT
(AMENDMENT) (NO. 2) RULES, 2000**

In exercise of the powers 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 —

Citation and application.

1. (1) These Rules may be cited as the Rules of the Supreme Court (Amendment) (No. 2) Rules, 2000.

(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.

Amendment of Order 1 of S 5/90.

2. Order 1 of the Rules of the Supreme Court, in these Rules referred to as the principal Rules, is amended —

(a) in rule 4, by adding the following new sub-rule —

"(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.";

(b) by adding the following new rule —

"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."

Amendment of Order 18.

3. Order 18 of the principal Rules is amended in rule 11 by inserting the following three new sub-rules immediately after sub-rule (1) —

"(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.

(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).".

Amendment of Order 20.

4. Order 20 of the principal Rules is amended by adding the following new rule —

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

Amendment of Order 22A.

5. Order 22A of the principal Rules is amended in rule 9(1) by deleting "and costs on the indemnity basis from that date," from the last two lines.

Amendment of Order 30.

6. Order 30 of the principal Rules is amended —

(a) by inserting the following new rule immediately after rule 3 —

"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.";

(b) by adding the following new rule —

"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.".

Amendment of Order 32.

7. Order 32 of the principal Rules is amended by adding the following new rule —

"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.".

Amendment of Order 38.

8. Order 38 of the principal Rules is amended —

(a) by deleting the heading and by substituting the following therefor —

"EVIDENCE

PART I

GENERAL RULES";

(b) by adding the following two new Parts —

"PART II

HEARSAY EVIDENCE

Interpretation.
Chapter 108.
(O. 38, r. 24).

24. (1) In this Part, the "Act" means Chapter XII of the Evidence Act, 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 Part —

"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
- (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.

(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.

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 III

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 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."

Made this 3rd. day of Jamadilakhir, 1421 Hijriah corresponding to the 2nd. day of September, 2000.

DATO SERI PADUKA SIR DENYS ROBERTS
CHIEF JUSTICE
BRUNEI DARUSSALAM.