

Turks and Caicos Islands

## Rules of the Supreme Court 2000

Legal Notice 5 of 2000

Legislation as at 11 February 2000

FRBR URI: /akn/tc/act/ln/2000/5/eng@2000-02-11

There may have been updates since this file was created.

PDF created on 21 February 2024 at 14:39.

[Check for updates](#)



### About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

[www.laws.africa](http://www.laws.africa)  
[info@laws.africa](mailto:info@laws.africa)

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

## Rules of the Supreme Court 2000

### Contents

Order 1 – Citation, commencement, applicationl interpretaion, forms, revocation, saving and transitional .....	2
1. Citation and commencement (O.1, r. 1) .....	2
2. Application (O.1, r. 2) .....	2
3. Application of interpretation Ordinance (O.1, r. 3) .....	2
4. Definitions (O. 1, r. 4) .....	2
5. Construction of references to Orders, rules, etc. (O.1, r. 5) .....	3
6. Construction of references to action, etc. for possession of land (O. 1, r. 6) .....	3
Rule 7. ....	3
Rule 8. ....	3
9. Forms (O . 1, r. 9) .....	3
10. Rules not to exclude conduct of business by post or certain other means (O. 1, r. 10) .....	4
11. Revocation (O. 1, r. 11) .....	4
12. Savings and transitional (O. 1, r. 12) .....	4
Order 2 – Effect of non-compliance .....	4
1 No-compliance with rules (O. 2, r. 1) .....	4
2. Application to set aside for irregularity (O. 2, r. 2) .....	4
Order 3 – Time .....	4
1. "Month" means calendar month (O. 1, r. 1) .....	4
2. Reckoning periods of time (O. 3, r. 2) .....	4
Rule 3. ....	5
4. Time expires on Sunday (O. 3, r. 4) .....	5
5. Extension, etc., of time (O. 3, r. 5) .....	5
5. Notice of intention to proceed after year's delay (O. 3, r. 6) .....	5
Order 4 – Assignment transfer and consolidation of proceedings .....	5
Rule 1-6 .....	5
7. Exercise of one judge's jurisdiction by another (O. 4, r. 7) .....	5
Rule 8. ....	6
9. Consolidation, etc., of causes or matters (O. 4, r. 9) .....	6
Order 5 – Mode of beginning civil proceedings in Supreme Court .....	6
1. Mode of beginning civil proceedings (O. 5, r. 1) .....	6
2. Proceedings which must be begun by writ (O. 5, r. 2) .....	6
3. Proceedings which must be begun by originating summons (O. 5, r. 3) .....	6
4. Proceedings which may be begun by originating summons (O. 5, r. 4) .....	7
5. Proceedings to be begun by motion or petition (O. 5, r. 5) .....	7

6. Right to sue in person (O. 5, r. 6) .....	7
Order 6 – Writs of summons: General provisions .....	7
1. Form of writ (O. 6, r. 1) .....	7
2. Indorsement of claim (O. 6, r. 2) .....	7
3. Indorsement as to capacity (O. 6, r. 3) .....	8
Rule 4. ....	8
5. Indorsement as to attorney and address (O. 6, r. 5) .....	8
6. Concurrent writ (O. 6, r. 6) .....	8
7. Issue of writ (O. 6, r. 7) .....	9
8. Duration and renewal of writ (O. 6, r. 8) .....	9
Order 7 – Originating summonses: General provisions .....	9
1. Application (O. 7, r. 1) .....	9
2. Form of summons (O. 7, r. 2) .....	9
3. Contents of summons (O. 7, r. 3) .....	10
4. Concurrent summons (O. 7, r. 4) .....	10
5. Duration and renewal of summons (O. 7, r. 6) .....	10
6. Ex parte originating summonses (O. 7, r. 7) .....	10
Order 8 – Originating and other motions: General provisions .....	10
1. Application (O. 8, r. 1) .....	10
2. Notice of motion (O. 8, r. 2) .....	10
3. Form and issue of notice of motion (O. 8, r. 3) .....	10
4. Service of notice of motion with writ, etc. (O. 8, r. 4) .....	11
5. Adjournment of the hearing (O. 8, r. 5) .....	11
Order 9 – Petitions: General provisions .....	11
1. Application (O. 9, r. 1) .....	11
2. Contents of petition (O. 9, r. 2) .....	11
3. Presentation of petition (O. 9, r. 3) .....	11
4. Fixing time for hearing petition (O. 9, r. 4) .....	11
5. Certain applications not to be made by petition (O. 9, r. 5) .....	12
Order 10 – Service of originating process: General provisions .....	12
1. General provisions (O. 10, r. 1) .....	12
2. Service of writ on agent of oversea principal (O. 10, r. 2) .....	12
3. Service of writ in pursuance of contract (O. 10, r. 3) .....	13
4. Service of writ in certain actions for possession of land (O. 10, r. 4) .....	13
5. Service of originating summons, notice of motion or petition (O. 10, r. 5) .....	13

Order 11 – Service of process, etc., out of the jurisdiction .....	13
1. Principal cases in which service of writ out of jurisdiction is permissible (O. 11, r. 1) .....	13
Rule 2. ....	15
Rule 3. ....	15
4. Application for, and grant of, leave to serve writ out of jurisdiction (O. 11, r. 4) .....	15
5. Service of writ abroad: general (O. 11, r. 5) .....	15
6. Service of writ abroad through foreign governments, judicial authorities and British consuls (O. 11, r. 6) .....	16
7. Service of writ in certain actions under Acts (O. 11, r. 7) .....	17
8. Undertaking to pay expenses of service by Governor (O. 11, r. 8) .....	18
9. Service of originating summons, petition, notice of motion, etc. (O. 11, r. 9) .....	18
10. Service abroad of Magistrate's Court process (O. 11, r. 10) .....	18
Order 12 – Acknowledgment of service of writ or originating summons .....	18
1. Mode of acknowledging service (O. 12, r. 1) .....	18
Rule 2. ....	19
3. Acknowledgment of service (O. 12, r. 3) .....	19
4. Procedure on receipt of acknowledgment of service (O. 12, r. 4) .....	19
5. Time limited for acknowledging service (O. 12, r. 5) .....	20
6. Late acknowledgment of service (O. 12, r. 6) .....	20
7. Acknowledgment not to constitute waiver (O. 12, r. 7) .....	20
8. Dispute as to jurisdiction (O. 12, r. 8) .....	20
8A. Application by defendant where writ not served (O. 12, r. 8A) .....	21
9. Acknowledgment of service of originating summons (O. 12, r. 9) .....	21
10. Acknowledgment of service to be treated as entry of appearance (O. 12, r. 10) .....	21
Order 13 – Failure to give notice of intention defend .....	22
Claim for liquidated demand (O. 13, r. 1) .....	22
Claim for unliquidated damages (O. 13, r. 2) .....	22
3. Claim for detention of goods (O. 13, r. 3) .....	22
4. Claim for possession of land (O. 13, r. 4) .....	22
5. Mixed claims (O. 13, r. 5) .....	23
6. Other claims (O. 13, r. 6) .....	23
6A. Prescribed time (O. 13, r. 6a) .....	23
7. Proof of service of writ (O. 13, r. 7) .....	23
7A. Judgment against a State (O. 13, r. 7a) .....	24
8. Stay of execution on default judgment (O. 13, r. 8) .....	24
9. Setting aside judgment (O. 13, r. 9) .....	24

Order 14 – Summary judgment .....	25
1. Application by plaintiff for summary judgment (O. 14, r. 1) .....	25
2. Manner in which application under rule 1 must be made (O. 14, r. 2) .....	25
3. Judgment for plaintiff (O. 14, r. 3) .....	25
4. Leave to defend (O. 14, r. 4) .....	25
5. Application for summary judgment on counterclaim (O. 14, r. 5) .....	26
6. Directions (O. 14, r. 6) .....	26
7. Costs (O. 14, r. 7) .....	26
8. Right to proceed with residue of action or counterclaim (O. 14, r. 8) .....	27
9. Judgment for the delivery up of chattel (O. 14, r. 9) .....	27
10. Relief against forfeiture (O. 14, r. 10) .....	27
11. Setting aside judgment (O. 14, r. 11) .....	27
Order 14A – Disposal of case on point of law .....	27
1. Determination of questions of law or construction (O. 14A, r. 1) .....	27
Order 15 – Causes of action, counterclaims and parties .....	28
1. Joinder of causes of action (O. 15, r. 1) .....	28
2. Counterclaim against plaintiff (O. 15, r. 2) .....	28
3. Counterclaim against additional parties (O. 15, r. 3) .....	28
6. Misjoinder and nonjoinder (O. 15, r. 6) .....	29
6A. Proceedings against estates (O. 15, r. 6A) .....	30
7. Change of parties by reason of death, etc. (O. 15, r. 7) .....	31
8. Provisions consequential on making or order under rule 6 or 7 (O. 15, r. 8) .....	32
9. Failure to proceed after death of party (O. 15, r. 9) .....	32
10. Actions for possession of land (O. 15, r. 10) .....	33
11. Relator actions (O. 15, r. 11) .....	33
12. Representative proceedings (O. 15, r. 12) .....	33
12A. Derivative actions (O. 15, r. 12A) .....	33
13. Representation of interested persons who cannot be ascertained, etc. (O. 15, r. 13) .....	35
13A. Notice of action to non-parties (O. 15, r. 13A) .....	35
14. Representation of beneficiaries by trustee, etc. (O. 15, r. 14) .....	36
15. Representation of deceased person interested in proceedings (O. 15, r. 15) .....	36
16. Declaration judgment (O. 15, r. 16) .....	36
17. Conduct of proceedings (O. 15, r. 17) .....	37
Order 16 – Third party and similar proceedings .....	37
1. Third party notice (O. 16, r. 1) .....	37

2. Application for leave to issue third party notice (O. 16, r. 2) .....	37
3. Issue, service and acknowledgment of service, of third party notice (O. 16, r. 3) .....	37
4. Third party directions (O. 16, r. 4) .....	38
5. Default of third party, etc. (O. 16, r. 5) .....	38
6. Setting aside third party proceedings (O. 16, r. 6) .....	39
7. Judgment between and third party (O. 16, r. 6) .....	39
8. Claims and issues between a defendant and some other party (O. 16, r. 8) .....	39
9. Claims by third and subsequent parties (O. 16, r. 9) .....	40
10. Offer of contribution (O. 16, r. 10) .....	40
11. Counterclaim by defendant (O. 16, r. 11) .....	40
Order 17 – Interpleader .....	40
1. Entitlement to relief by way of interpleader (O. 17, r. 1) .....	40
2. Claim to goods, etc., taken in execution (O. 19, r. 2) .....	41
3. Mode of application (O. 17, r. 3) .....	41
4 To whom bailiff may apply for relief (O. 17, r. 4) .....	42
5. Powers of court hearing summons (O. 17, r. 5) .....	42
6. Power to order sale of goods taken in execution (O. 17, r. 6) .....	42
7. Power to stay proceedings (O. 17, r. 7) .....	42
8. Other powers (O. 17, r. 8) .....	42
9. One order in several causes or matters (O. 17, r. 9) .....	43
10. Discovery (O. 17, r. 10) .....	43
11. Trial of interpleader issue (O. 17, r. 11) .....	43
Order 18 – Pleadings .....	43
1. Service of statement of claim (O. 18, r. 1) .....	43
2. Service of defence (O. 18, r. 2) .....	43
3. Service of reply and defence to counterclaim (O. 18, r. 3) .....	43
4. Pleadings subsequent to reply (O. 18, r. 4) .....	44
Rule 5. ....	44
6. Pleadings: Formal requirements (O. 18, r. 6) .....	44
7. Facts, not evidence, to be pleaded (O. 18, r. 7) .....	44
7A. Conviction, etc. to be adduced in evidence: Matters to be planned (O. 18, r. 7A) .....	45
8. Matters which must be specifically pleaded (O. 18, r. 8) .....	45
9. Matter may be pleaded whenever arising (O. 18, r. 9) .....	46
10. Departure (O. 18, r. 10) .....	46
11. Point of law may be pleaded (O. 18, r. 11) .....	46

12. Particulars of pleading (O. 18, r. 12) .....	46
13. Admissions and denials (O. 18, r. 13) .....	47
14. Denial by joinder of issue (O. 18, r. 14) .....	47
15. Statement of claim (O. 18, r. 15) .....	47
16. Defence of tender (O. 18, r. 16) .....	48
17. Defence of set-off (O. 18, r. 17) .....	48
18. Counterclaim and a defence to counterclaim (O. 18, r. 18) .....	48
19. Striking out pleadings and indorsements (O. 18, r. 19) .....	48
20. Close of pleadings (O. 18, r. 20) .....	48
21. Trial without pleadings (O. 18, r. 21) .....	49
Order 19 – Default of pleadings .....	49
1. Default in service of statement of claim (O. 19, r. 1) .....	49
2. Default of defence: Claim for liquidated demand (O. 19, r. 2) .....	49
3. Default of defence: Claim for unliquidated damages (O. 19, r. 3) .....	49
4. Default of defence: Claim for detention of goods (O. 19, r. 4) .....	50
5. Default of defence: Claim for possession of land (O. 19, r. 5) .....	50
6. Default of defence: Mixed claims (O. 19, r. 6) .....	50
7. Default of defence: Other claims (O. 19, r. 7) .....	51
8. Default on defence to counterclaim (O. 19, r. 8) .....	51
9. Setting aside judgment (O. 19, r. 9) .....	51
Order 20 – Amendment .....	51
1. Amendment of writ without leave (O. 20, r. 1) .....	51
2. Amendment of acknowledgment of service (O. 20, r. 2) .....	52
3. Amendment of pleadings without leave (O. 20, r. 3) .....	52
4. Application for disallowance of amendment made without leave (O. 20, r. 4) .....	53
5. Amendment of writ or pleading with leave (O. 20, r. 5) .....	53
Rule 6. ....	53
7. Amendment of other originating process (O. 20, r. 7) .....	53
8. Amendment of certain other documents (O. 20, r. 8) .....	53
9. Failure to amend after order (O. 20, r. 9) .....	54
10. Mode of amendment of writ, etc. (O. 20, r. 10) .....	54
11. Amendment of judgment and orders (O. 20, r. 11) .....	54
12. Amendment of pleadings by agreement (O. 20, r. 12) .....	54
Order 21 – Withdrawal and discontinuance .....	54
1. Withdrawal of acknowledgment of service (O. 21, r. 1) .....	54

2. Discontinuance of action, etc., without leave (O. 21, r. 2) .....	54
3. Discontinuance of action, etc., with leave (O. 21, r. 3) .....	55
4. Effect of discontinuance (O. 21, r. 4) .....	56
5. Stay of subsequent action until costs paid (O. 21, r. 5) .....	56
6. Withdrawal of summons (O. 21, r. 6) .....	56
Order 22 – Payment into and out of court .....	56
1. Payment into court (O. 22, r. 1) .....	56
2. Payment in by defendant who has counterclaimed (O. 22, r. 2) .....	57
3. Acceptance of money paid into court (O. 22, r. 3) .....	57
4. Order for payment out of money accepted required in certain cases (O. 22, r. 4) .....	58
5. Money remaining in court (O. 22, r. 5) .....	58
6. Counterclaim (O. 22, r. 6) .....	58
7. Non-disclosure of payment into court (O. 22, r. 7) .....	58
8. Money paid into court under order (O. 22, r. 8) .....	59
Rule 9. ....	59
10. Person to whom payment to be made (O. 22, r. 10) .....	59
11. Payment out: Small intestate estates (O. 22, r.11) .....	59
Rule 12. ....	59
13. Investment of money in court (O. 22, r. 13) .....	59
14. Written offers "without prejudice save as to costs" (O. 22, r.14) .....	60
Order 23 – Security for costs .....	60
1. Security for costs of action, etc. (O. 23, r. 1) .....	60
2. Manner of giving security (O. 23, r. 2) .....	60
3. Saving for enactments (O. 23, r. 3) .....	60
Order 24 – Discovery and inspection of documents .....	61
1. Mutual discovery of documents (O. 24, r. 1) .....	61
2. Discovery by parties without orders (O. 24, r. 2) .....	61
Subrule (6) .....	61
Subrule (7) .....	61
3. Order for discovery (O. 24, r. 3) .....	62
4. Order for determination of issue, etc., before discovery (O. 24, r. 4) .....	62
5. Form of list and affidavit (O. 24, r. 5) .....	62
6. Defendant entitled to copy of co-defendant's list (O. 24, r. 6) .....	62
7. Order for discovery of particular documents (O. 24, r. 7) .....	63
7A. Application under sections 65B(2) or 65C(2) of the Civil Procedure Ordinance (O. 24, 7A) .....	63



8. Discovery to be ordered only if necessary (O. 24, r. 8) .....	64
9. Inspection of documents referred to in list (O. 24, r. 9) .....	64
10. Inspection of documents referred to in pleadings, affidavits and witness statements (O. 24, r. 10) .....	64
11. Order for production for inspection (O. 24, r. 11) .....	64
11A. Provision of copies of documents (O. 24, r. 11A) .....	65
12. Order for production to court (O. 24, r. 12) .....	65
13. Production to be ordered only if necessary, etc. (O. 24, r. 13) .....	65
14. Production of business books (O. 24, r. 14) .....	65
14A. Use of documents (O. 24, r. 14A) .....	65
15. Document disclosure of which would be injurious to public interest: Saving (O. 24, r. 15) .....	66
16. Failure to comply with requirement for discovery, etc. (O. 24, r. 16) .....	66
17. Revocation and variation of orders (O.24, r.17) .....	66
Order 25 – Summons for direction .....	66
1. Summons for direction (O. 25, r. 1) .....	66
2. Duty to consider all matters (O. 25, r. 2) .....	67
3. Particular matters for consideration (O. 25, r. 3) .....	68
4. Admissions and agreements to be made (O. 25, r. 4) .....	68
5. Limitation of right of appeal (O. 25, r. 5) .....	69
6. Duty to give all information at hearing (O. 25, r. 6) .....	69
7. Duty to make all interlocutory application on summons for directions (O. 25, r. 7) .....	69
8. Automatic directions in personal injury actions (O. 25, r. 8) .....	70
9. Standard directions by consent (O. 25, r. 9) .....	71
Order 26 – Interrogatories .....	71
1. Discovery by interrogatories (O. 26, r.1) .....	71
2. Form and nature of interrogatories (O. 26, r. 2) .....	71
3. Interrogatories without order (O. 26, r. 3) .....	72
4. Ordered interrogatories (O. 26, r. 4) .....	72
5. Objections and insufficient answers (O. 26, r. 5) .....	72
6. Failure to comply without order (O. 26, r. 6) .....	72
7. Use of answers to interrogatories at trial (O. 26, r. 7) .....	73
8. Revocation and variation of orders (O. 26, r. 8) .....	73
Order 27 – Admissions .....	73
1. Admissions of case of other party (O. 27, r. 1) .....	73
2. Notice to admit (O. 27, r. 2) .....	73
3. Judgment on admission (O. 27, r. 3) .....	73

4. Admissions and productions of documents specified in list of documents (O. 27, r. 4) .....	73
5. Notices to admit or produce documents (O. 27, r. 5) .....	74
Order 28 – Originating summons procedure .....	74
1. Application (O. 28, r. 1) .....	74
1A. Affidavit evidence (O. 28, r. 1A) .....	74
2. Fixing time for attendance of parties before the court (O. 28, r. 2) .....	75
3. Notice of hearing (O. 28, r. 3) .....	75
4. Directions, etc., by the Court (O. 28, r. 4) .....	76
5. Adjournment of summons (O. 28, r. 5) .....	76
6. Applications affecting party who has failed to acknowledge service (O. 28, r. 6) .....	76
7. Counterclaim by defendant (O. 28, r. 7) .....	76
8. Continuation of proceedings as if cause or matter begun by writ (O. 28, r. 8) .....	77
9. Order for hearing or trial (O. 28, r. 9) .....	77
10. Failure to comply with rules or Court orders (O. 28, r. 10) .....	77
11. Abatement etc. of action (O. 28, r. 11) .....	78
Order 29 – Interlocutory injunctions, interim preservation of property, interim payments, etc. ....	78
Part I – Interlocutory injunctions, interim preservation of property, etc. ....	78
1. Application for injunction (O. 29, r.1) .....	78
1A. Cross-examination on assets disclosure affidavit (O. 29, r. 1A) .....	78
2. Detention, preservation, etc., of subject-matter of cause or matter (O. 29, r.2) .....	78
3. Power to order samples to be taken, etc. (O. 29, r. 3) .....	79
4. Sale of perishable property, etc. (O. 29, r. 4) .....	79
5. Order for early trial (O. 25, r. 5) .....	79
6. Recovery of personal property subject to lien, etc. (O. 29, r. 6) .....	79
7. Directions (O. 29, r. 7) .....	80
7A. Inspection etc. of property under section 65B(1) or section 65C(3) of the Civil Procedure Ordinance (O. 29, r. 7A) .....	80
8. Allowance of income of property pendente lite (O. 29, r. 8) .....	80
Part II – Interim payments .....	81
9. Interpretation of Part II (O.29, r. 9) .....	81
10. Application for interim payment (O. 29, r. 10) .....	81
11. Order for interim payment in respect of damages (O. 29, r. 11) .....	81
12. Order for interim payment in respect of sums other than damages (O. 29, r. 12) .....	82
13. Manner of payment (O. 29, r. 13) .....	82
14. Directions on application under rule 10 (O. 29, r. 14) .....	82

15. Non-disclosure of interim payment (O. 29, r. 15) .....	82
16. Payment into court in satisfaction (O. 29, r. 16) .....	83
17. Adjustment on final judgment or order or on discontinuance (O. 29, r. 17) .....	83
18. Counterclaims and other proceedings (O. 29, r. 18) .....	83
Order 30 – Receivers .....	83
1. Application for receiver and injunction (O. 30, r. 1) .....	83
2. Giving of security by receiver (O. 30, r. 2) .....	83
3. Remuneration of receiver (O. 30, r. 3) .....	84
4. Service of order and notice (O. 30, r. 4) .....	84
5. Receiver's accounts (O. 30, r. 5) .....	84
6. Payment into court by receiver (O. 30, r. 6) .....	84
7. Default by receiver (O. 30, r. 7) .....	84
8. Directions to receivers (O. 30, r. 8) .....	85
Order 31 – Sales, etc. of land by order of Court: Conveyancing counsel .....	85
Part I – Sales, etc. of land by order of Court .....	85
1. Power to order sale of land (O. 31, r. 1) .....	85
2. Manner or carrying out sale (O. 31, r. 2) .....	85
3. Certifying result of sale (O. 31, r. 3) .....	85
4. Mortgage, exchange or partition under order of the Court (O. 31, r. 4) .....	86
Part II – Conveyancing counsel .....	86
5. Reference of matter to conveyancing counsel (O. 31, r. 5) .....	86
6. Objection to conveyancing counsel's opinion (O. 31, r. 6) .....	86
Rule 7. ....	86
8. Obtaining counsel's opinion on reference (O. 31, r. 8) .....	86
Order 32 – Applications and proceedings in chambers .....	86
1. Mode of making application (O. 32, r. 1) .....	86
2. Issue of summons (O. 32, r. 2) .....	86
3. Service of summons (O. 32, r. 3) .....	87
4. Adjournment of hearing (O. 32, r. 4) .....	87
5. Proceeding in absence of party failing to attend (O. 32, r. 5) .....	87
6. Order made ex parte may be set aside (O. 32, r. 6) .....	87
7. Subpoena for attendance of witness (O. 32, r. 7) .....	87
8. Registrar may administer oaths (O. 32, r. 8) .....	87
Rule 9. ....	88
10. Application to make order of Privy Council order of Supreme Court (O. 32, r. 10) .....	88

11. Jurisdiction of the Registrar (O. 32, r. 11) .....	88
12. Reference of matter to Judge (O. 32, r. 12) .....	88
13. Power to direct hearing in court (O. 32, r. 13) .....	88
Rule 14. ....	88
Rule 15. ....	88
16. Obtaining assistance of experts (O. 32, r. 16) .....	89
17. Notice of filing, etc., of affidavit (O. 32, r. 17) .....	89
Rule 18. ....	89
19. Disposal of matter in chambers (O. 32, r. 19) .....	89
Rule 20. ....	89
Rule 21. ....	89
22. Notes of proceedings in chambers (O. 32, r. 22) .....	89
Order 33 – Place and mode of trial .....	89
1. Place of trial (O. 33, r. 1) .....	89
2. Mode of trial (O. 33, r. 2) .....	89
3. Time, etc. of trial of questions or issues (O. 33, r. 3) .....	90
4. Determining the place and mode of trial (O. 33, r. 4) .....	90
4A. Split trial: Offer on liability (O. 33, r. 4A) .....	90
5. Trial with jury (O. 33, r. 5) .....	90
Rule 6. ....	91
7. Dismissal of action, etc., after decision or preliminary issue (O. 33, r. 7) .....	91
Order 34 – Setting down for trial action begun by writ .....	91
1. Application and interpretation (O. 34, r. 1) .....	91
2. Time for setting down action (O. 34, r. 2) .....	91
3. Lodging documents when setting down (O. 34, r. 3) .....	91
4. Directions relating to lists (O. 34, r. 4) .....	92
5. Further provisions as to lists (O. 34, r. 5) .....	92
Rule 6. ....	92
Rule 7. ....	92
8. Notification of setting down (O. 34, r. 8) .....	93
9. Abatement, etc., of action (O. 34, r. 9) .....	93
10. The court bundle (O. 34, r. 10) .....	93
Order 35 – Proceedings at trial .....	94
1. Failure to appear by both parties or one of them (O. 35, r. 1) .....	94
2. Judgment, etc., given in absence of party may set aside (O. 35, r. 2) .....	94

3. Adjournment of trial (O. 35, r. 3) .....	94
Rule 4. ....	94
Rule 5. ....	94
Rule 6. ....	94
7. Order of speeches (O. 35, r. 7) .....	94
8. Inspection by Judge or jury (O. 35, r. 8) .....	95
9. Death of party before giving of judgment (O. 35, r. 9) .....	95
10. Certificate of Registrar (O. 35, r. 10) .....	95
11. List of exhibits (O. 35, r. 11) .....	96
12. Custody of exhibit after trial (O. 35, r. 12) .....	96
13. Impounded documents (O. 35, r. 13) .....	96
Order 36 – Trials before, and inquiries by referees and masters .....	96
1. Application and interpretation (O. 36, r. 1) .....	96
Rule 2. ....	96
3. Transfer or referees' business (O. 36, r. 3) .....	96
4. Powers, etc., of referees (O. 36, r. 4) .....	97
Rule 5. ....	97
6. Entry of business and application for directions (O. 36, r. 6) .....	97
Rule 7. ....	98
8. Reference to referee of question of fact for inquiry, etc. (O. 36, r. 8) .....	98
9. Report on reference under rule 8 (O. 36, r. 9) .....	98
Rule 10. ....	98
11. Trial before, and inquiry by, Registrar (O. 36, r. 11) .....	98
Order 37 – Damages: Assessment after judgment and orders for provisional damages .....	99
Part I – Assessment of damages after judgment .....	99
1. Assessment of damages by Registrar (O. 37, r. 1) .....	99
2. Certificate of amount of damages (O. 37, r. 2) .....	99
3. Default judgment against some but not all defendants (O. 37, r. 3) .....	99
4. Power to order assessment by Referee, etc. (O. 37, r. 4) .....	99
5. Assessment of values (O. 37, r. 5) .....	100
6. Assessment of damages to time of assessment (O. 37, r. 6) .....	100
Part II – Orders for provisional damages for personal injuries .....	100
7. Application and interpretation (O. 37, r. 7) .....	100
8. Order for provisional damages (O. 37, r. 8) .....	100
9. Offer to submit to an award (O. 37, r. 9) .....	100

10. Application for award of further damages (O. 37, r. 10) .....	101
Order 38 – Evidence .....	101
Part I – General rules .....	101
1. General rule: Witnesses to be examined orally (O. 38, r. 1) .....	101
2. Evidence by affidavit (O. 38, r. 2) .....	101
2A. Exchange of witness statements (O. 38, r. 2A) .....	102
3. Evidence of particulars facts (O. 38, r. 3) .....	104
4. Limitation of expert evidence (O. 38, r. 4) .....	104
5. Limitation of plans, etc. in evidence (O. 38, r. s) .....	104
6. Revocation or variation of orders under rules 2 to 5 (O. 38, r. 6) .....	104
Rule 7. ....	104
8. Applcation to trials of issues, references, etc. (O. 38, r. 8) .....	104
9. Depositions: When receivable in evidence at trial (O. 38, r. 9) .....	105
10. Court documents admissible or receivable in evidence (O. 38, r. 10) .....	105
11. Evidence of consent of new trustee to act (O. 38, r. 11) .....	105
12. Evidence at trial may be used in subsequent proceedings (O. 38, r. 12) .....	105
13. Order to produce document at proceeding other than trial (O. 38, r. 13) .....	105
Part II – Writs of subpoena .....	105
14. Form and issue of writ of subpoena (O. 38, r. 14) .....	105
15. More than one name may be included in one writ of subpoena (O. 38, r. 15) .....	106
16. Amendment of writ of subpoena (O. 38, r. 16) .....	106
17. Service of writ of subpoena (O. 38, r. 17) .....	106
18. Duration of writ of subpoena (O. 38, r. 18) .....	106
18A. Production orders (O. 38, r. 18A) .....	106
Rule 19-34. ....	106
Part IV – Expert evidence .....	106
35. Interpretation (O. 38, r. 35) .....	106
36. Restriction on adducing expert evidence (O. 38, r. 36) .....	106
37. Direction that expert report be disclosed (O. 38, r. 37) .....	107
38. Meeting of experts (O. 38, r. 38) .....	107
39. Disclosure of part of expert evidence (O. 38, r. 39) .....	107
Rule 40. ....	107
Rule 41. ....	107
42. Putting in evidence expert report disclosed by another (O. 38, r. 42) .....	107
43. Time for putting expert report in evidence (O. 38, r. 43) .....	107

44. Revocation and variation of directions (O. 38, r. 44) .....	107
Order 39 – Evidence by deposition: Examiners of the court .....	108
1. Power to order deposition to be taken (O. 39, r. 1) .....	108
2. Where person to be examined is out of the jurisdiction (O. 39, r. 2) .....	108
3. Order for issue or letter or request (O. 39, r. 3) .....	108
3A. Examination otherwise than on oath (O. 39, r. 3A) .....	109
4. Enforcing attendance of witness at examination (O. 39, r. 4) .....	109
5. Refusal of witness, be sworn, etc. (O. 39, r. 5) .....	109
6. Appointment of time and place for examination (O. 39, r. 6) .....	109
7. Examiner to have certain documents (O. 39, r. 7) .....	110
8. Conduct of examination (O. 39, r. 8) .....	110
9. Examination of additional witnesses (O. 39, r. 9) .....	110
10. Objection to questions (O. 39, r. 10) .....	110
11. Taking of depositions (O. 39, r. 11) .....	110
12. Time taken by examination to be indorsed on depositions (O. 39, r. 12) .....	111
13. Special report by examiner (O. 39, r. 13) .....	111
14. Order for payment of examiner's fees (O. 39, r. 14) .....	111
15. Perpetuation of testimony (O. 39, r. 15) .....	111
16. Examiners of the court (O. 39, r. 16) .....	111
17. Assignment of examinations to examiners of the court (O. 39, r. 17) .....	111
18. Obtaining assignment of examiner of the court (O. 39, r. 18) .....	111
19. Fees and expenses of examiners of the court (O. 39, r. 19) .....	112
Order 40 – Court expert .....	112
1. Appointment of expert to report on certain questions (O. 40, r. 1) .....	112
2. Report of Court expert (O. 40, r. 2) .....	112
3. Experiments and tests (O. 40, r. 3) .....	112
4. Cross-examination of court expert (O. 40, r. 4) .....	113
5. Remuneration of Court expert (O. 40, r. 5) .....	113
6. Calling of expert witness (O. 40, r. 6) .....	113
Order 41 – Affidavits .....	113
1. Form of affidavit (O. 41, r. 1) .....	113
2. Affidavit by two or more deponents (O. 41, r. 2) .....	114
3. Affidavit by illiterate or blind person (O. 41, r. 3) .....	114
4. Use of detective affidavit (O. 41, r. 4) .....	114
5. Contents of affidavit (O. 41, r. 5) .....	114

6. Scandalous, etc., matter in affidavit (O. 41, r. 6) .....	114
7. Alterations in affidavit (O. 41, r. 7) .....	114
8. Affidavit not to be sworn before attorney of party, etc. (O. 41, r. 8) .....	115
9. Filing of affidavits (O. 41, r. 9) .....	115
10. Use of original affidavit (O. 41, r. 10) .....	115
11. Document to be used in conjunction with affidavit to be exhibited to it (O. 41, r. 11) .....	115
12. Affidavit taken in Commonwealth country admissible without proof of seal, etc. (O. 41, r. 12) .....	115
Order 42 – Judgments and orders .....	116
1. Form of judgment, etc. (O. 42, r. 1) .....	116
1A. Judgment in favour or reversioner for dentention of goods (O. 42, r. 1A) .....	116
2. Judgment, etc., requiring act to be done: Time for doing it (O. 42, r. 2) .....	116
3. Date from which judgment or order takes effect (O. 42, r. 3) .....	116
3A. Judgment against a State (O. 42, r. 3a) .....	116
4. Orders required to be drawn up (O. 42, r. 4) .....	117
5. Drawing up and entry of judgments and orders (O. 42, r. 5) .....	117
5A. Consent judgments and orders (O. 42, r. 5A) .....	118
Order 43 – Accounts and inquiries .....	119
1. Summary order for account (O. 43, r. 1) .....	119
2. Court may direct taking of accounts, etc. (O. 43, r. 2) .....	119
3. Directions as to manner of taking account or making inquiry (O. 43, r. 3) .....	119
4. Account to be made, verified etc. (O. 43, r. 4) .....	119
5. Notice to be given of alleged omissions, etc., in account (O. 43, r. 5) .....	120
6. Allowances (O. 43, r. 6) .....	120
7. Delay in prosecution of accounts, etc. (O. 43, r. 7) .....	120
8. Distribution of fund before all persons entitled are ascertained (O. 43, r. 8) .....	120
9. Guardian's accounts (O. 43, r. 9) .....	120
Order 44 – Proceedings under judgments and orders: Chancery jurisdiction .....	120
1. Application to orders (O. 44, r. 1) .....	120
2. Service of notice of judgment on person not a party (O. 44, r. 2) .....	120
3. Directions by the Court (O. 44, r. 3) .....	121
4. Application of rules 5 to 8 (O. 44, r. 4) .....	121
5. Advertisements for creditors and other claimants (O. 44, r. 5) .....	122
6. Examination of claims (O. 44, r. 6) .....	122
7. Adjudication on claims (O. 44, r. 7) .....	122
8. Notice of adjudication (O. 44, r. 8) .....	122



9. Interest on debts (O. 44, r. 9) .....	122
10. Interest on legacies (O. 44, r. 10) .....	123
11. Registrar's order (O. 44, r. 11) .....	123
12. Appeal against registrar's order (O. 44, r. 12) .....	123
Order 45 – Enforcement of judgments and orders: General .....	124
1. Enforcement of judgment, etc., for payment of money (O. 45, r. 1) .....	124
Rule 2. ....	124
3. Enforcement of judgment for possession of land (O. 45, r. 3) .....	124
4. Enforcement of judgment for delivery of goods (O. 45, r. 4) .....	125
5. Enforcement of judgment to do or abstain from doing any act (O. 45, r. 5) .....	125
6. Judgment, etc. requiring act to be done: Order fixing time for doing it (O. 45, r. 6) .....	126
7. Service of copy of judgment, etc., prerequisite to enforcement under rule 5 (O. 45, r. 7) .....	126
8. Court may order act to be done at expense of disobedient party (O. 45, r. 8) .....	127
9. Execution by or against person not being a party (O. 45, r. 9) .....	127
10. Conditional judgment: Waiver (O. 45, r. 10) .....	127
11. Matters occurring after judgment: Stay of execution, etc. (O. 45, r. 11) .....	127
12. Forms of writ (O. 45, r. 12) .....	127
13. Enforcement of judgments and orders for recovery of money, etc. (O. 45, r. 13) .....	127
Rule 14. ....	128
15. Signing judgment for costs under deemed order (O. 45, r. 15) .....	128
16. Recording of satisfaction (O. 45, r. 16) .....	128
Order 46 – Writs of execution: General .....	128
1. Definition (O. 46, r. 1) .....	128
2. When leave to issue any writ of execution is necessary (O. 46, r. 2) .....	128
3. Leave required for issue of writ in aid of other writ (O. 46, r. 3) .....	129
4. Application for leave to issue writ (O. 46, r. 4) .....	129
5. Application for leave to issue writ of sequestration (O. 46, r. 5) .....	129
6. Issue of writ of execution (O. 46, r. 6) .....	129
Rule 7. ....	130
8. Duration and renewal of writ of execution (O. 46, r. 8) .....	130
9. Return to writ of execution (O. 46, r. 9) .....	130
Order 47 – Writs of seizure and sale .....	131
1. Power to stay execution by writ of seizure and sale (O. 47, r. 1) .....	131
Rule 2. ....	131
3. Separate writs to enforce payment of costs (O. 47, r. 3) .....	131

Order 48 – Examination of judgment debtor, etc .....	132
1. Order for examination of judgment debtor (O. 48, r. 1) .....	132
2. Examination of party liable to satisfy other judgment (O. 48, r. 2) .....	132
3. Examiner to make record of debtor's statement (O. 48, r. 3) .....	132
Order 49 – Garnishee proceedings .....	132
1. Attachment of debt due to judgment debtor (O. 49, r. 1) .....	132
2. Application for order (O. 49, r. 2) .....	133
3. Service and effect of order to show cause (O. 49, r. 3) .....	133
4. No appearance or dispute of liability by garnishee (O. 49, r. 4) .....	133
5. Dispute of liability by garnishee (O. 49, r. 5) .....	133
6. Claims of third persons (O. 49, r. 6) .....	133
Rule 7. ....	134
8. Discharge of garnishee (O. 49, r. 8) .....	134
9. Money in Court (O. 49, r. 9) .....	134
10. Costs (O. 49, r. 10) .....	134
Order 50 – [blank] .....	134
Order 51 – Receivers: Equitable execution .....	134
1. Appointment of receiver by way of equitable execution (O. 51, r. 1) .....	134
2. Registrar may appoint receiver (O. 51, r. 2) .....	134
3. Application of rules as to appointment of receiver, etc. (O. 51, r. 3) .....	135
Order 52 – Committal .....	135
1. Committal for contempt of court (O. 52, r. 1) .....	135
Rule 2. ....	135
Rule 3. ....	135
4. Application to court (O. 52, r. 4) .....	135
5. Saving for power to commit without application for purpose (O. 52, r. 5) .....	135
6. Provisions as to hearing (O. 52, r. 6) .....	135
7. Power to suspend execution of committal order (O. 52, r. 7) .....	136
8. Discharge of person committed (O. 52, r. 8) .....	136
9. Saving for other powers (O. 52, r. 9) .....	136
Order 53 – Applications for judicial review .....	137
1. Cases appropriate for application for judicial review (O. 53, r. 1) .....	137
2. Joinder of claims for relief (O. 53, r. 2) .....	137
3. Grant of leave to apply for judicial review (O. 53, r. 3) .....	137
4. Delay in applying for relief (O. 53, r. 4) .....	138

5. Mode of applying for judicial review (O. 53, r. 5) .....	138
6. Statements and affidavit (O. 53, r. 6) .....	139
7. Claim for damages (O. 53, ar. 7) .....	139
8. Application for discovery, interrogatories, cross-examination, etc. (O. 53, r. 8) .....	139
9. Hearing of application for judicial review (O. 53, r. 9) .....	139
10. Saving for person acting in obedience to mandamus (O. 53, r. 10) .....	140
Order 54 – Applications for writ of habeas corpus .....	140
1. Application for writ of habeas corpus ad subjiciendum (O. 54, r. 1) .....	140
2. Power of court to whom ex parte application made (O. 54, r. 2) .....	140
3. Copies of affidavits to be supplied (O. 54, r. 3) .....	141
4. Power to order release of person restrained (O. 54, r. 4) .....	141
5. Directions as to return to writ (O. 54, r. 5) .....	141
6. Service of writ and notice (O. 54, r. 6) .....	141
7. Return to the writ (O. 54, r. 7) .....	141
8. Procedure at hearing of writ (O. 54, r. 8) .....	141
9. Bringing up prisoner to give evidence, etc. (O. 54, r. 9) .....	142
10. Form of writ (O. 54, r. 10) .....	142
Order 55 – Appeals to Supreme Court from court, tribunal or person: General .....	142
1. Application (O. 55, r.1) .....	142
2. Court to hear appeal (O. 55, r. 2) .....	142
3. Bringing of appeal (O. 55, r. 3) .....	142
4. Service of notice of motion and entry of appeal (O. 55, r. 4) .....	143
5. Date of hearing of appeal (O. 55, r. 5) .....	143
6. Amendment of grounds of appeal, etc. (O. 55, r. 6) .....	143
7. Powers of Court hearing appeal (O. 55, r. 7) .....	143
8. Right of Minister, etc., to appear and be heard (O. 55, r. 8) .....	144
Order 56-57 – [blank] .....	144
Order 58 – Appeals from the Registrar .....	144
1. Appeals from certain decision of the Registrar, etc. to judge in chambers (O. 58, r. 1) .....	144
2-6. [blank] .....	144
7. Appeal from judgment, etc., of Judge in interpleader proceedings (O. 58, r. 7) .....	145
Order 59-61 – [blank] .....	145
Order 62 – Costs .....	145
Part I – Preliminary .....	145
1 Interpretation (O. 62, r. 1) .....	145

1. Application (O. 62, r. 2) .....	145
Part II – Entitlement to costs .....	146
2. General principles (O. 62, r. 3) .....	146
4. Cases where no order for costs is to be made (O. 62, r. 4) .....	148
5. Cases where order for costs deemed to have been made (O. 62, r. 5) .....	148
6. Cases where costs do not follow the event (O. 62, r. 6) .....	148
7. Special circumstances in which costs shall not or may not be taxed (O. 62, r. 7) .....	149
8. Stage of proceedings at which costs to be taxed (O. 62, r. 8) .....	150
9. Matters to be taken into account in exercising discretion (O. 62, r. 9) .....	150
10. Misconduct or neglect in the conduct of any proceedings (O. 62, r. 10) .....	150
Rule 11. ....	151
Part III – Taxation and assessment of costs .....	151
12. Basis of taxation (O. 62, r. 12) .....	151
Rule 13. ....	151
14. Costs payable to a trustee or personal representative out of any fund (O. 62, r. 14) .....	151
15. Costs payable to an attorney by his own client (O. 62, r. 15) .....	151
16. Costs payable to an attorney where money claimed by or on behalf of a minor or a patient (O. 62, r. 16) .....	152
17. Provisions for ascertaining costs on a taxation (O. 62, r. 17) .....	152
18. Litigants in person (O. 62, r. 18) .....	152
Part IV – Powers of the Registrar .....	153
19. Who may tax costs (O. 62, r. 19) .....	153
20. Supplementary powers of the Registrar (O. 62, r. 20) .....	153
21. Extension of time (O. 62, r. 21) .....	153
22. Certificates (O. 62, r. 22) .....	153
23. Power of Registrar where party liable to be paid and to pay costs (O. 62, r. 23) .....	154
24. Taxation of bill of costs comprised in an account (O. 62, r. 24) .....	154
25. Registrar to fix certain fees payable to conveyancing counsel (O. 62, r. 25) .....	154
26. Powers of Registrar on taxation of costs out of a fund (O. 62, r. 26) .....	154
27. Powers of Registrar in relation to costs of taxation proceedings (O. 62, r. 27) .....	155
28. Powers of Registrar in relation to misconduct, neglect etc. (O. 62, r. 28) .....	155
Part V – Procedure on taxation .....	156
29. Commencement of proceedings (O. 62, r. 29) .....	156
30. Subsequent procedure (O. 62, r. 30) .....	157
31. Provisional taxation (O. 62, r. 31) .....	158

32. Short and urgent taxation (O. 62, r. 32) .....	159
Part VI – Review of taxation .....	159
Rule 33. ....	159
Rule 34. ....	159
35. Review by a judge (O. 62, r. 35) .....	159
Appendix 1 .....	160
Appendix 2 .....	160
Appendix 3 .....	163
Appendix A to the Rules of the Supreme Court (Order 1, rule 9) .....	206
Appendix B To the Rules of the Supreme Court (Ord. 1, rule 12) .....	243



# **Turks and Caicos Islands**

## **Rules of the Supreme Court 2000**

### **Legal Notice 5 of 2000**

Published on 11 February 2000

**Assented to on 11 February 2000**

**Commenced on 1 March 2000**

*[This is the version of this document from 11 February 2000.]*

*[Note: The original publication document is not available and this content could not be verified.]*

The Rules of the Supreme Court 2000 are intended to constitute a comprehensive and up to date set of civil procedure rules for the Supreme Court of the Turks and Caicos Islands. They replace the purely procedural provisions previously contained in the Civil Procedure Ordinance, which have been repealed by the Civil Procedure (Amendment) Ordinance 1999, and the Supreme Court Practice and Procedure Rules of 1971, which are revoked by the new Rules.

The new Rule will facilitate the work of the Court by ensuring consistency and certainly in its practice and procedure. They will also constitute a step by step set of directions for the conduct of civil litigation which will be easier to follow than the previous provisions which were scattered between the Civil Procedure Ordinance, the former Supreme Court Practice and Procedure Rules and the English procedure as applied from time to time to fill in the gaps.

The new Rules are based upon the Rules of the English Supreme Court as they stood at 1<sup>st</sup> January 1999. By virtue of section 3(3) of the Supreme Court Ordinance, those rules have been applied regularly in the Turks and Caicos Islands to supplement the rather bare-bones procedure set out local legislation. However, that has given rise to many difficulties and uncertainties in defining the boundaries between the two codes. It is hoped that the new rules will, by adapting the English rules as necessary to local conditions, dispense with such problems.

The new Rules follow the English model in that they are divided into Orders, which are themselves broken down into rules and sub-rules. Certain of the English Orders and rules were inapplicable to the Turks & Caicos Islands and have been omitted. However, the new Rules have retained the numbering of the English Orders and rules in order to preserve the ability to cross-reference. This means that certain Order and rule numbers are not used, and where this had happened it is indicated by the insertion of "[Blank]" against the number.

This course has been chosen so that users of the new Rules can have ready access to the considered body of interpretative and explanatory material associated with the English Rules. All of that material conveniently and comprehensively contained in two volumes of the Supreme Court Practice, or "White Book" as it is commonly known and that indispensable publication provides a complete companion and guide to the Rules and the case law which has grown up around them. The White Book has in fact been the main reference used in the Turks and Caicos Islands for civil procedure for many years, and practitioners will be very familiar with it.

Practitioners will be aware that the English civil procedure rules were extensively changed in April of 1999. The new Turks and Caicos Islands Rules do not attempt to follow those changes, on the basis that it would be wise to see how they work out in practice before deciding whether it would be a good idea to follow them here. This means that for the immediate future the 1999 edition of the White Book is likely to be one of the most useful as a reference.

However, the law should be a dynamic thing, and I consider it important that all concerned with its administration in the Turks and Caicos Islands should keep the practice and procedure of the Supreme Court under active review, with a view to incorporating such of the English reforms as prove themselves in practice. When the time does come for further reform these new Rules will provide a sound basis on which to build.

Made by the Chief Justice under section 16 of the Supreme Court Ordinance and section 4 of the Civil Procedure (Amendment) Ordinance 1999.

## **Order 1 – Citation, commencement, application, interpretation, forms, revocation, saving and transitional**

### **1. Citation and commencement (O.1, r. 1)**

These rules may be cited as the Rules of the Supreme Court 2000, and shall come into operation on the 1<sup>st</sup> March 2000.

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

- (1) Subject to paragraph (2) these rules shall have effect in relation to all proceedings in the Supreme Court.
- (2) These rules shall not have effect in relation to proceedings in respect of which rules have been made under any other enactment.
- (3) Nothing in this rule shall be taken as affecting any statutory provision whereby the Rules of the Supreme Court, or any provisions of them, are applied to proceedings other than those to which are applied by this rule.

### **3. Application of interpretation Ordinance (O.1, r. 3)**

The interpretation Ordinance shall apply for the interpretation of these rules as it applies to subordinate legislation made after the commencement of that Ordinance.

### **4. Definitions (O. 1, r. 4)**

- (1) In these rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned them namely—

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

**"attorney"** except where the context indicates otherwise, means an attorney as defined in section 2 of the Legal Profession Ordinance 1997;

**"cause book"** means the book or other record kept in the Registry of the Supreme Court in which the letter and number of, and other details relating to, a cause or matter are entered;

**"FAX"** means the making of a facsimile copy of a document by the transmission of electronic signals;

**"folio"** means 72 words, means each figure being counted as one word;

**"judgment book"** the book or other record kept in the registry pursuant to Order 42, rule 5(1);

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

**"officer"** means an officer of the Supreme Court;

**"the Ordinance"** means the Supreme Court Ordinance;

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

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



"**probate action**" has the meaning assigned to it by Order 76;

"**receiver**" includes a manager or consignee;

"**Registrar**" means the Registrar of the Supreme Court, appointed pursuant to section 8 of the Ordinance;

"**Registry**" means the Registry of the Supreme Court;

"**Writ**" means a writ of summons.

- (2) In these rules, unless the context otherwise requires, "the Court" means the Supreme 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 11, by virtue of which the authority and jurisdiction of the Registrar is defined and regulated.
- (3) In these rules unless the context otherwise requires, any reference to acknowledging service of a document or giving notice of intention to defend any proceedings is a reference to lodging in the Registry an acknowledgment of service of that document or, as the case may be, a notice of intention to defend those proceedings.

## **5. Construction of references to Orders, rules, etc. (O.1, r. 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 to these rules to anything done under a rule of these rules includes a reference to the same thing done before the commencement of any corresponding rule of 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 enactment shall be constructed as a reference to that enactment as amended, extended or applied by or under any other enactment.

## **6. Construction of references to action, etc. for possession of land (O. 1, r. 6)**

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

7.

[blank]

8.

[blank]

## **9. Forms (O . 1, r. 9)**

The forms in Appendix A shall be used where applicable with such variations as the circumstances of the particular case require, or, where no form is prescribed, the forms in the Appendices to the Rules of the Supreme Court of England 1965 may be used with such adaptations as the circumstances may require.

**10. Rules not to exclude conduct of business by post or certain other means (O. 1, r. 10)**

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, courier, telephone, video-conferencing or other form of telecommunication.

**11. Revocation (O. 1, r. 11)**

The Supreme Court Practice and Procedure Rules as published in volume 1 of the Revised Edition of the Laws are revoked.

**12. Savings and transitional (O. 1, r. 12)**

The provisions of Appendix B to these rules shall apply in respect of transitional provisions and savings.

**Order 2 – Effect of non-compliance****1 No-compliance with rules (O. 2, r. 1)**

- (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, 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 other 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.

**2. Application to set aside for irregularity (O. 2, r. 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 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****1. "Month" means calendar month (O. 1, r. 1)**

The word "month", where it occurs in any judgment, order, direction or other document forming part of any proceedings in the Supreme Court, means a calendar month unless the context otherwise requires.

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

- (1) Any period of time fixed by these rules or by any judgment, order or direction for doing any act shall be reckoned in accordance with the following provisions of this rule.

- (2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.
- (3) Where the act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.
- (4) Where the act is required to be done a specified number of clear days before or after a specified date, at least that number of days must intervene between the day on which the act is done and that date.
- (5) Where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Saturday, Sunday or public holiday, that day shall be excluded.

In this paragraph "public holiday" means a day which is, or is to be observed as a holiday, under the Public Holidays Ordinance.

### 3.

[blank]

### 4. Time expires on Sunday (O. 3, r. 4)

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

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

- (1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized 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.

### 5. Notice of intention to proceed after year's delay (O. 3, r. 6)

Where a year or more has elapsed since the last proceeding in 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 proceeding for the purpose of this rule.

## Order 4 – Assignment transfer and consolidation of proceedings

### 1-6

[blank]

### 7. Exercise of one judge's jurisdiction by another (O. 4, r. 7)

- (1) [blank]
- (2) Where, by virtue of any of these rules, any application ought to be made to, any jurisdiction exercised by, the judge by whom a cause or matter has been tried, then, if that judge dies or ceases to be judge of the Supreme Court, or if for any other reason it is impossible or inconvenient for that

judge to act in that cause or matter, the Chief Justice or, if there is no Chief Justice for the time being, the President of the Court of Appeal may, either by a special order in any cause or matter, or by a general order applicable to any class of causes or matters, nominate some other judge to whom the application may be made or by whom the jurisdiction may be exercised.

8.

[blank]

**9. Consolidation, etc., of causes or matters (O. 4, r. 9)**

- (1) Where two or more causes or matters are pending and 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 paragraphthe 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) Where the Court makes an order under paragraph (1) that two or more causes or matters are to be tried at the same time but no order is made for those causes or matters to be consolidated, then, a party to one of those causes or matters may be treated as if he were a party to any other of those causes or matters for the purpose of making an order for costs against him or in his favour.

## **Order 5 – Mode of beginning civil proceedings in Supreme Court**

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

Subject to the provisions of any Ordinance and of these rules, civil proceedings in the Supreme Court may be begun by writ, originating summons, originating motion or petition.

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

Subject to any provision of any Ordinance, or of these rules, by virtue of which 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 an allegation of fraud;
- (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under an Ordinance or independently of any contract or any provision) where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property.

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

Proceedings by which an application is to be made to the Supreme Court or to a judge thereof under any Ordinance must be begun by originating summons except where by these rules or by or under any Ordinance the application is expressly required or authorised to be made by some other means.

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

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

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

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

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

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

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

**Order 6 – Writs of summons: General provisions****1. Form of writ (O. 6, r. 1)**

Every writ must be in Form No. 1 in Appendix A.

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

- (1) Before a writ is issued it must 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 relief or remedy required in the action begun thereby;
  - (b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for acknowledging service, the defendant pays the amount so claimed to the plaintiff, his attorney or agent;
  - (c) where the claim made by the plaintiff is for possession of land, with a statement showing—
    - (i) whether the claim relates to a dwelling-house; and
    - (ii) if it does, whether the premises are subject to any statutory restrictions on the recovery of possession for the time being in force, and;

- (iii) in case where the plaintiff knows of any person entitled to claim relief against forfeiture as underlessee (including a mortgagee), under any statutory provision for the time being in force, the name and address of that person.
- (d) where the action is brought to enforce a right to recover possession of goods, with a statement showing the value of the goods.
- (2) Where particulars are given pursuant to paragraph (1)(c)(iii), the plaintiff shall send a copy of the writ to person named.

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

### **4.**

*[blank]*

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

- (1) Before a writ is issued, it must be indorsed—
  - (a) where the plaintiff sues by an attorney, with the plaintiff's address and the attorney's name or firm and a business address of his within the jurisdiction and also (if the attorney is the agent of another) the name or firm and business address of his principal;
  - (b) where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent.
- (2) The address for service of a plaintiff shall be—
  - (a) where he sues by an attorney, the business address (to which may be added a numbered box at a document exchange) of the attorney indorsed on the writ or where there are two such addresses so indorsed, the business address of the attorney, who is acting as agent for the other;
  - (b) Where he sues in person, the address within the jurisdiction indorsed on the writ.
- (3) Where an attorney's name is indorsed on a writ, he must, if any defendant who has been served with or who has acknowledged service of the writ requests him in writing so to do, declare in writing whether the Writ was issued by him or with his authority or privity.
- (4) If an attorney whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity, the Court may on the application of any defendant who has been served with or who acknowledged service of the writ, stay all proceedings in the action begun by the writ.

### **6. Concurrent writ (O. 6, r. 6)**

- (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 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 which is to be served out of the jurisdiction and a writ which

is to be served out of the jurisdiction may be issued as 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.

## **7. Issue of writ (O. 6, r. 7)**

- (1) [blank]
- (2) Except where otherwise expressly provided by these Rules, a writ shall be issued out of the Registry.
- (3) Issue of a writ takes place upon its being dated and sealed by an officer of the Registry.
- (4) The officer by whom a concurrent writ is sealed must mark it as a concurrent writ an official stamp.
- (5) writ shall be sealed unless at the time of tender thereof for sealing the person tendering it leaves at the Registry a copy thereof signed, where the plaintiff sues in person, by him or, where he does not so sue, by or on behalf of his attorney.

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

- (1) For the purposes of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue.
- (1A) 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 writ from time to time for such period, not exceeding twelve 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 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.

## **Order 7 – Originating summonses: General provisions**

### **1. Application (O. 7, r. 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 by or under any Ordinance.

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

- (1) Every originating summons (other than an *ex parte* summons) shall be in Form No. 8 or, if so authorised or required, in Form No. 10 in Appendix A and every *ex parte* originating summons shall be in Form No. 11 in Appendix A.
- (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.

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

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

**4. Concurrent summons (O. 7, r. 4)**

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

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

- (1) [blank]
- (2) [blank]
- (3) Order 6, Rule 7 shall apply in relation to an originating summons as it applies in relation to a writ.

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

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

**6. Ex parte originating summonses (O. 7, r. 7)**

- (1) Rules 2(1) and 3(1) 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 7(3) and (5) shall, with the necessary modifications, apply in relation to an *ex parte* originating summons as they apply in relation to a writ.

**Order 8 – Originating and other motions: General provisions****1. Application (O. 8, r. 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 Ordinance.

**2. Notice of motion (O. 8, r. 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 this 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 two clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

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

- (1) The notice of an originating motion must be in Form No. 13 Appendix A and the notice of any other motion in Form No. 38 in that Appendix.



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 5, shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.
- (4) The notice of an originating motion must be issued out of the Registry.
- (5) *[blank]*
- (6) Issue of the notice of an originating motion takes place upon its being dated and sealed by an officer of the Registry.

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

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

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

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

### **Order 9 – Petitions: General provisions**

#### **1. Application (O. 9, r. 1)**

Rules 2 to 4 apply to petitions by which civil proceedings in the Supreme 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 Act.

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

- (1) Every petition must include a concise statement of the nature of the claim made 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 5, shall, with necessary modifications, apply in a relation to a petition as it applies in relation to a writ.

#### **3. Presentation of petition (O. 9, r. 3)**

A petition must be presented by leaving it at the Registry.

#### **4. Fixing time for hearing petition (O. 9, r. 4)**

- (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 less than seven days before the day fixed for the hearing of the petition.

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

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

## Order 10 – Service of originating process: General provisions

### 1. General provisions (O. 10, r. 1)

- (1) A writ must be served personally on each defendant by the plaintiff or his agent.
- (2) [blank]
- (3) [blank]
- (4) Where a defendant's attorney indorses on the writ a statement that he accept service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.
- (5) Subject to Order 12, rule 7, where a writ is not duly served on a defendant but he acknowledges service of it, the writ shall be deemed, unless the contrary is shown, to have been duly served on him and to have been so served on the date on which he acknowledges service.
- (6) Every copy of a writ for service on a defendant shall be sealed with the seal of the Supreme Court and shall be accompanied by a form of acknowledgment of service in Form No. 14 in Appendix A in which the title of the action and its number have been entered.
- (7) This rule shall have effect subject to the provisions of any Ordinance and these rules and in particular to any enactment which provides for the manner in which documents may be served on bodies corporate.

### 2. Service of writ on agent of oversea principal (O. 10, r. 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 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 same time of the application neither such an individual nor such a body corporate, and
  - (c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principalthe Court may authorize 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 authorizing service of a writ on a defendant's agent must limit a time within which the defendant must acknowledge service.
- (3) Where an order is made under this rule authorizing 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 of the address out of the jurisdiction.

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

- (1) Where—
- (a) a contract contains a term to the effect that the Supreme Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Supreme 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 Supreme Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to paragraph (2) be deemed to have been duly served on the defendant.
- (2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ out of the jurisdiction has been granted under Order 11, rule 1 (1) or service of writ is permitted without leave under Order 11, rule 1 (2).

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

Where a writ is indorsed with a claim for possession of land, the Court may—

- (a) if satisfied on an *ex parte* application that no person appears to be in possession of the land and that service cannot be otherwise effected on any defendant, authorise service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the land;
- (b) if satisfied on such an application that no person appears to be in possession of the land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to some conspicuous part of the land shall be treated as good service on that defendant.

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

- (1) The foregoing rules of this Order shall apply, with any necessary modifications, in relation to an originating summons (other than *ex parte* originating summons or an originating summons under Order 113) as they apply in relation to a writ, except that an acknowledgment of service of an originating summons shall be in Form No. 15 in Appendix A.
- (2) Rule 1(1) (2) (3) and (4) shall apply, with any necessary modifications in relation to a notice of an originating motion and a petition as they apply in relation to a writ.

## Order 11 – Service of process, etc., out of the jurisdiction

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

- (1) Service of a writ out of the jurisdiction is permissible with the leave of the court if in the action begun by the writ—
  - (a) relief is sought against a person domiciled or ordinarily resident within the jurisdiction;
  - (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);

- (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
- (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which—
  - (i) was made within the jurisdiction, or
  - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
  - (iii) is by its terms, or by implication, governed by the law of the Turks and Caicos Islands; or
  - (iv) contains a term to the effect that the Supreme Court should have jurisdiction to hear and determine any action in respect of the contract;
- (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
- (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;
- (g) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
- (h) the claim is brought to construe, rectify, set aside or enforce an Ordinance, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;
- (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
- (j) the claim is brought for any relief or remedy in respect of any trust over which the Court has jurisdiction under section 5 of the Trust Ordinance;
- (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;
- (l) the claim is brought in a probate action within the meaning of Order 76;
- (m) *[blank]*
- (n) *[blank]*
- (o) *[blank]*
- (p) *[blank]*
- (q) the claim is made under the Control of Drugs (Trafficking) Ordinance;
- (r) the claim is made under the Insurance Ordinance, the Banking Ordinance or the Trustee's Licensing Ordinance;
- (s) the claim is made under the Criminal Justice (International Cooperation) Ordinance;
- (t) the claim is brought for money had and received or for an account or other relief against the defendant as constructive trustee, and the defendant's alleged liability arises out of acts committed, whether by him or otherwise, within the jurisdiction;

- (u) the claim is made under the United Kingdom Carriage by Air Act 1961, and the Carriage by Air (Supplementary Provisions) Act 1962, as applied to the Turks and Caicos Islands;
  - (v) the claim is brought against a person who is or was a director, officer or member of a company registered within the jurisdiction or who is a partner of a partnership whether general or limited which is governed by the laws of the Islands and the subject of the matter of the claim relates in any way to such company or partnership or the status, rights or duties of such director, officer, member or partner in relation thereto.
- (2) Service of a writ out of the jurisdiction is permissible without the leave of the court provided that each claim made by the writ is a claim which by virtue of any enactment the Supreme Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.
- (3) Where a writ is to be served out of the jurisdiction under paragraph (2) the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall be 28 days, unless the court directs other period.
- (4) For the purposes of this rule, and of rule 9 of this order domicile is to be determined in accordance with the common law.

2.

[blank]

3.

[blank]

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

- (1) An application for the grant of leave under rule 1(1) must be supported by an affidavit stating—
- (a) the grounds on which the application is made,
  - (b) that in the deponent's belief the plaintiff has a good cause of action,
  - (c) in what place or country the defendant is, or probably may be found, and
  - (d) Where the application is made under rule 1(1) (c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try.
- (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) [blank]
- (4) An order granting under rule 1 leave to serve a writ out of the jurisdiction must limit a time within which the defendant to be served must acknowledge service.

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

- (1) Subject to the following provisions of this rule, order 10, rule 1(1), (4), (5) and (6) and Order 65, rule 4, shall apply in relation to the service of a writ, notwithstanding that the writ is to be served out of the jurisdiction, save that the accompanying form of acknowledgment of service shall be modified in such manner as may be appropriate.

- (2) Nothing in this rule or in any order or direction of the court made by virtue of it all shall authorize or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.
- (3) A writ which is to be served out of the jurisdiction—
  - (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected, and
  - (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 6 or rule 7.
- (4) *[blank]*
- (5) An official certificate stating that a writ as regards which rule 6 has been complied with has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate—
  - (a) by a British consular authority in that country, or
  - (b) by the government of judicial authorities of that country, or
  - (c) by any other authority designated in respect of that country under the Hague Convention, shall be evidence of the facts so stated.
- (6) An official certificate by the Secretary of State stating that a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.
- (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 such a certificate.
- (8) In this rule and rule 6 the "Hague Convention" means the Convention of the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on November 15, 1965.

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

- (1) Save where a writ is to be served pursuant to paragraph (2A) this rule does not apply to service in—
  - (a) the United Kingdom;
  - (b) any independent Commonwealth country;
  - (c) any associated state;
  - (d) any colony;
  - (e) the Republic of Ireland.
- (2) Where in accordance with these rules a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the Supreme Court, the writ may be served—
  - (a) through the judicial authorities of that country; or
  - (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).
- (2A) Where in accordance with these rules, a writ is to be served on a defendant in any country which is a party to the Hague Convention, the writ may be served—
  - (a) through the authority designated under the Convention in respect of that country, or

- (b) if the law of that country permits—
    - i. through the judicial authorities of that country, or
    - ii. through a British consular authority in that country.
- (3) Where in accordance with these rules a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the Supreme Court the writ may be served—
  - (a) through the government of that country, where that government is willing to effect service; or
  - (b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.
- (4) A person who wishes to serve a writ by a method specified in paragraph (2), (2A) or (3) must lodge in the Registry a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.
- (5) Every copy of a writ lodged under paragraph (4) must be accompanied by a translation of the writ in the official language of the country, in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected:
 

Provided that this paragraph shall not apply in relation to a copy of a writ which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.
- (6) Every translation lodge under paragraph (5) 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.
- (7) Documents duly lodged under paragraph (4) shall be sent by the Registrar to the Governor with a request that he arrange the writ to be served by the method indicated in the request lodged under paragraph (4) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

## **7. Service of writ in certain actions under Acts (O. 11, r. 7)**

- (1) Subject to paragraph (4) where a person to whom leave has been granted under rule 1 to serve a writ on a State, as defined in section 14 of the State Immunity Act 1978, as extended to the Turks and Caicos Islands, wishes to have the writ served on that State, he must lodge in the Registry—
  - (a) a request for service to be arranged by the Governor, and
  - (b) a copy of the writ; and
  - (c) except where the official language of the State is, or the official languages of the State include, English, a translation of the writ in the official language or one of the official languages of that State.
- (2) Rule 6(6) 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 (5) of that rule.
- (3) Documents duly lodged under this Rule shall be sent by the Registrar to the Governor with the request that the Governor arrange for the writ to be served.

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

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

Every request lodged under rule 6(4) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Governor in respect of the service requested and, on receiving due notification of the amount of those expenses to pay that amount to the Accountant General and to produce a receipt for the payment to the Registrar.

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

- (1) Subject to Order 73, rule 7, rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to service of a writ.
- (2) *[blank]*
- (3) *[blank]*
- (4) Subject to Order 73, rule 7, service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the court but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these rules or under any Ordinance be served out of the jurisdiction without leave.
- (5) Rule 4 (1), (2) and (3) 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.
- (6) An order granting under this rule leave to serve out of the jurisdiction an originating summons must limit a time within which the defendant to be served with the summons must acknowledge service.
- (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.

## **10. Service abroad of Magistrate's Court process (O. 11, r. 10)**

Rule 6(7) shall apply, with the necessary modifications, to any Magistrate's Court documents sent to the Registrar for service abroad and every certificate or declaration of service received by the Registrar in respect of such service shall be transmitted by him to the Magistrate concerned.

# **Order 12 – Acknowledgment of service of writ or originating summons**

## **1. Mode of acknowledging service (O. 12, r. 1)**

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



- (5) The date on which service is acknowledged is the date on which the acknowledgment of service is received at the Registry.

2.

*[blank]*

**3. Acknowledgment of service (O. 12, r. 3)**

- (1) An acknowledgment of service must be in Form O. 14 or 15 in Appendix A, whichever is appropriate, and, except as provided in rule 1(2) must be signed by the attorney acting for the defendant specified in the acknowledgment or, if the defendant is acting in person, by that defendant.
- (2) An acknowledgment of service must specify—
- (a) in the case of a defendant acknowledging service in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent, and
  - (b) in the case of a defendant acknowledging service by an attorney, a business address (to which may, be added a numbered box at a document exchange) of his attorney's within the jurisdiction;

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

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

- (3) Where the defendant acknowledges service by an attorney who is acting as agent for another attorney having a place of business within the jurisdiction, acknowledgment of service must state that the first-named attorney so acts and must also state the name and address of that other attorney.
- (4) If an acknowledgment of service does not specify the defendant's address for service or the Court is satisfied that any address specified in the acknowledgment of service is not genuine, the Court may on application by the plaintiff set aside the acknowledgment or order the defendant to give an address or, as the case may be, a genuine address for service and may in any case direct that the acknowledgement shall nevertheless have effect for the purposes of Order 10, rule 1 (5) and Order 65, rule 9.

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

On receiving an acknowledgment service an officer of the Registry must—

- (a) affix to the acknowledgment an official stamp showing the date on which he received it;
- (b) enter the acknowledgment in the cause book with a note showing if it be the case, that the defendant has indicated in the acknowledgment an intention to contest the proceedings or to apply for a stay of execution in respect of any judgment obtained against him in the proceedings;
- (c) make a copy of the acknowledgment, having affixed to it an official stamp showing the date on which he received the acknowledgment and send it by post other suitable means to the plaintiff or, as the case may be, his attorney at the plaintiffs address for service.

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

References in these rules the time limited for acknowledging service are references—

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

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

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

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

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

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

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

- (b) in any other action by summons,  
and the notice of motion or summons must state the grounds of the application.
- (4) An application under paragraph (1) must be supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit must be served with the notice of motion or summons by which the application is made.
- (5) Upon hearing an application under paragraph (1) the Court, if it does not dispose of the matter in dispute, may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a preliminary issue.
- (6) A defendant who makes an application under paragraph (1) shall not be treated as having submitted to the jurisdiction of the court by reason of his having given notice of intention to defend the action; and if the court makes no order on the application or dismisses it, the notice shall cease to have effect, but the defendant may, subject to rule 6 (1), lodge a further acknowledgment of service within 14 days or such other period as the Court may direct and in that case paragraph (7) shall apply as if the defendant had not made any such application.
- (7) Except where the defendant makes an application in accordance with paragraph (1) the acknowledgment by a defendant of service of a writ shall, unless the acknowledgment is withdrawn by leave of the court under Order 21, rule 1, be treated as a submission by the defendant to the jurisdiction of the court in the proceedings.

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

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

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

- (1) Each defendant named in and served with an originating summons (other than *ex parte* originating summons or an originating summons under order 113) must acknowledge service of the summons as if it were a writ.
- (2) [blank]
- (3) The foregoing rules of this Order shall apply in relation to an originating summons (other than *ex parte* originating summons or an originating summons under Order 113) as they apply to a writ except that after the word "extended", wherever it occurs in rule 5(a) there shall be inserted the words "or abridged" and for the reference in rule 5(b) to Order 11, rules 1(3) and 4(4) there shall be substituted a reference to Order 11 rule 9(6).

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

For the purpose of any enactment referring expressly or implied to the entry of appearance as a procedure provided by rules of court for responding to a writ or other process issuing out of the Supreme Court, or of

any rule of law, the acknowledgment of service of the writ or other process in accordance with these rules shall be treated as the entry of an appearance to it, and related expressions shall be construed accordingly.

### **Order 13 – Failure to give notice of intention defend**

#### **Claim for liquidated demand (O. 13, r. 1)**

- (1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time enter final judgment against that defendant for a sum not exceeding 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 purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest under section 101B of the Civil Procedure Ordinance at a rate which is not higher than that payable on judgment debts at the date of the writ.

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

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

### **3. Claim for detention of goods (O. 13, r. 3)**

- (1) Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to give notice of intention to defend the plaintiff may, after the prescribed time and subject to Order 42, rule 1A—
  - (a) At his option enter either—
    - (i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or
    - (ii) interlocutory judgment for the value of the goods to be assessed and cost, or
  - (b) Apply by summons for judgment against that defend for delivery of the goods without giving him the alternative of paying their assessed value and in any case proceed with the action against the other defendants, if any.
- (2) A summons under paragraph (1)(b) must be supported by affidavit and notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

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

- (1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, subject to paragraph (2) if that defendant fails to give notice of intention to defend the plaintiff may, after the prescribed time, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any.
- (2) Notwithstanding anything in paragraph (1) the plaintiff shall not be entitled, except with the leave of the court, to enter judgment under that paragraph unless he produces a certificate by his attorney, or (if he sues in person) an affidavit, stating that either the claim does not relate to a dwelling-house or that the claim relates to a dwelling-house which is not subject to any statutory restrictions on the recovery of possession for the time being in force.

- (3) An application for leave to enter judgment under paragraph (2) shall be by summons stating the grounds of the application, and the summons must, unless the Court otherwise orders and notwithstanding anything in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.
- (4) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14, rule 1.
- (5) Where there is more than one defendant, judgment entered under this rule shall not be forced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

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

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

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

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

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

In the foregoing rules of this Order "the prescribed time" in relation to a writ issued against a defendant means the time limited for the defendant to acknowledge service of the writ or, if within that time the defendant has returned to the appropriate office an acknowledgment of service containing a statement to the effect that he does not intend to contest the proceedings, the date on which the acknowledgment was received at the appropriate office.

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

- (1) Judgment shall not be entered against defendant under this Order unless—
  - (a) the defendant has acknowledged service on him of the writ; or
  - (b) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ on the defendant; or
  - (c) the plaintiff produces the writ indorsed by the defendant's attorney with a statement that he accepts service of the writ on the defendant's behalf.

- (2) Where, in an action begun by writ, an application is made to the court for an order affecting a party who has failed to give notice of intention to defend, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party failed to give such notice.

#### **7A. Judgment against a State (O. 13, r. 7a)**

- (1) Where the defendant is a State, as defined in section 14 of the State Immunity Act 1978 as applied in the Turks and Caicos Islands ('the Act') the plaintiff shall not be entitled to enter judgment under this Order except with the leave of the Court.
- (2) An application for leave to enter judgment shall be supported by an affidavit—
  - (a) stating the grounds of the application,
  - (b) verifying the facts relied on as excepting the State from the immunity conferred by section 1 of the Act; and
  - (c) verifying that the writ has been served by being transmitted through the Governor to the Ministry of Foreign Affairs of the State, or in such other manner as may have been agreed to by the State, and that the time for acknowledging service, as extended by section 12(2) of the Act (by two months) where applicable, has expired.
- (3) The application may be made *ex parte* but the Court hearing the application may direct a summons to be issued and served on that state, for which purpose such a direction shall include leave to serve the summons and a copy of the affidavit out of the jurisdiction.
- (4) 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, and the grant of leave to enter judgment under this Order shall include leave to serve out of the jurisdiction—
  - (a) a copy of the judgment, and
  - (b) a copy of the affidavit, where not already served.
- (5) The procedure for effecting service out of the jurisdiction pursuant to leave granted in accordance with the rule shall be the same as for the service of the writ under Order 11, rule 7(1) except where section 12(6) of the Act applies and an alternative method of service has been agreed.

#### **8. Stay of execution on default judgment (O. 13, r. 8)**

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

#### **9. Setting aside judgment (O. 13, r. 9)**

Without prejudice to Rule 7(3) and (4) the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuit of this order.

## Order 14 – Summary judgment

### 1. Application by plaintiff for summary judgment (O. 14, r. 1)

- (1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that 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—
  - (a) an action which includes a claim by the plaintiff for libel, slander, false prosecution, false imprisonment or seduction,
  - (b) [blank]
  - (c) an Admiralty action *in rem*.
- (3) This Order shall to apply to an claim to which order 86 applies.

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

- (1) An application under rule 1 must be made by summons supported by an affidavit verifying the facts on which the claim, or the part of a claim, to which the application relates is based and stating that in the deponents belief there is no defence 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 10 clear days before the return day.

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

### 4. Leave to defend (O. 14, r.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.
- (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 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 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.

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

- (1) Where a defendant to an action begun by writ has served a counterclaim on the plaintiff, then, subject to paragraph (3) the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part.
- (2) Rules 2, 3 and 4 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1, but with the following modifications, that is to say—
  - (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
  - (b) the words in rule 3(2) "any counterclaim made or raised by the defendant in" shall be omitted;
  - (c) and the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.
- (3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

## **6. Directions (O. 14, r. 6)**

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

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

## **7. Costs (O. 14, r. 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 the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to paragraphs (1) and (2) of rule 8 of that Order, 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.



- (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.

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

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

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

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

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

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

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

### **Order 14A – Disposal of case on point of law**

#### **1. Determination of questions of law or construction (O. 14A, r. 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 order or judgment as it thinks just.
- (3) The Court shall not determine any question under this Order unless the parties have either—
  - (a) had an opportunity of being heard on the question, or
  - (b) consented to an order or judgment on such determination.
- (4) The jurisdiction of the court under this Order may be exercised by the Registrar.
- (5) Nothing in this Order shall limit the powers of the court under order 18, rule 19, or any other provision of these rules.

## Order 15 – Causes of action, counterclaims and parties

### 1. Joinder of causes of action (O. 15, r. 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 in his personal capacity but with reference to the same estate in respect of all the others, or
  - (c) with the leave of the court.
- (2) An application for leave under this rule must be made *ex parte* by affidavit before the issue of the writ or originating summons, as the case may be, and the affidavit must state the grounds of the application.

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

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

- (1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action, then, subject to rule 5(2) he may join that other person as a party against whom the counterclaim is made.
- (2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim and, in the case of a person who is not already a party to the action, the defendant must issue the counterclaim out of the Registry and serve on the person concerned a sealed copy of the counterclaim, together with a form of acknowledgment of service in Form No. 14 in Appendix A (with such modifications as the circumstances may require) and a copy of the writ or originating summons by which the action was begun and of all other pleadings served in the action; 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 defense 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 which, by virtue of Order 18, rule 2, he must serve on the plaintiff the defence to which the counterclaim is added.
- (4) *[blank]*
- (5) 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 6, rule 7(3) and (5), Order 10, Order 11, Orders 12 and 13 and Order 75, rule 4, shall apply in relation to the counterclaim and the proceedings arising from it as if—
- (a) the counterclaim were a writ and the proceedings arising from it an action; and
  - (b) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.
- (5A) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on any person other than the plaintiff who before service is already a party to the action, provisions of Order 14, rule 5 shall apply in relation to the counterclaim and the proceedings arising there from, as if the party against whom the counterclaim is made were the plaintiff in the action.
- (6) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 17 in Appendix A, addressed to that person.
- (7) **Joinder of parties (O. 15, r. 4)**
- (1) Subject to rule 5(1) two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the court or where—
    - (a) if separate actions were brought by or against each of them, as the case may be, some common question of law of fact would arise in all the actions, and
    - (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.
  - (2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any Ordinance 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 a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.
- This paragraph shall not apply to a probate action.
- (8) **Court may order separate trials, etc (O. 15, r. 5)**
- (1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.
  - (2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

## 6. Misjoinder and nonjoinder (O. 15, r. 6)

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

- (2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application—
  - (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
  - (b) order any of the following persons to be added as a party, namely—
    - (i) any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
    - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.
- (3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.
- (4) No person shall be as a plaintiff without his consent signified in or in such other manner as may be authorized.
- (5) No person shall be added or substituted as a party after the expiry of any relevant period of limitation unless the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added, or substituted.
- (6) Except in a case to which the law of another country relating to limitation applies, and the law of the Turks and Caicos Islands does not apply, the addition or substitution of a new party shall be treated as necessary for the purposes of paragraph (5) if, and only if, the Court is satisfied that—
  - (a) the new party is a necessary party to the action in that property is vested in him at law or in equity and the plaintiffs claim in respect of an equitable interest in that property is liable to be defeated unless the new party is joined, or
  - (b) the relevant cause of action is vested in the new party and the plaintiff jointly but not severally, or
  - (c) the new party is the Attorney General and the proceedings should have been brought by relater proceedings in his name, or
  - (d) the new party is a company in which the plaintiff is a shareholder on whose behalf the plaintiff is suing to enforce a right vested in the company, or
  - (e) the new party is sued jointly with the defendant and is not also liable severally with him and failure to join the new party might render the claim unenforceable.

#### **6A. Proceedings against estates (O. 15, r. 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 or 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 order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.
- (5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.
- (6) Where an order is made under paragraph (4), rules 7(4) and 8(3) and (4) shall apply as if the order had been made under rule 7 on the application of the plaintiff.
- (7) Where no grant of probate or administration has been made, any adjustment 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.

## **7. Change of parties by reason of death, etc. (O. 15, r. 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 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—
  - (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 any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun and of all other pleadings served in the proceedings and a form of acknowledgment of service in Form 14 or 15 in Appendix A, whichever is appropriate.

- (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.

## **8. Provisions consequential on making or order under rule 6 or 7 (O. 15, r. 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.
- (2A) Together with the writ of summons served paragraph under paragraph (2) shall be served a copy of all other pleadings served in the action.
- (3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to acknowledgment of service shall apply accordingly to acknowledgment of service by him, subject, in the case of a person to be made a defendant by an order under rule 7 to the modification that the time limited for acknowledging service shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.
- (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 acknowledgment of service by the old party shall not dispense with acknowledgment of service by the new.
- (5) The foregoing provisions of this rule shall apply in relation to an action begun by originating summons as they apply in relation to an action begun by writ.

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

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

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

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

- (1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.
- (2) An application by any person for an order under this rule may be made *ex parte*, supported by an affidavit showing that he is possession of the land in question and if by a tenant, naming him. The affidavit shall specify the applicant's address for service and Order 12, rule 3(2), (3) and (4) shall apply as if the affidavit were an acknowledgment of service.
- (3) A person added as a defendant by an order under this rule shall serve on the plaintiff a copy of the order giving the added defendant's address for service specified in accordance with paragraph (2).

#### **11. Relator actions (O. 15, r. 11)**

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

#### **12. Representative proceedings (O. 15, r. 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 who 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 to 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 particulars 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 whom the application is made to be tried and determined in any manner in which any issue question in an action may be tried and determined.

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

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



- (2) Where a defendant in a derivative action has given notice of intention to defend, the plaintiff must apply to the Court for leave to continue the action.
- (3) The application must be supported by an affidavit verifying the facts on which the claim and the entitlement to sue on behalf of the company are based.
- (4) Unless the Court otherwise orders, the application must be issued within 21 days after the relevant date, and must be served, together with the affidavit in support and any exhibits to the affidavit, not less than 10 clear days before the return day on all defendants who have given notice of intention to defend; any defendant so served may show cause against the application by affidavit or otherwise.
- (5) In paragraph (4), "the relevant date" means the later of
  - (a) the date of service of the statement of claim;
  - (b) the date when notice of intention to defend was given (provided that, where more than one notice of intention to defend is given, that date shall be the date when the first notice was given).
- (6) Nothing in this rule shall prevent the plaintiff from applying for interlocutory relief pending the determination of an application for leave to continue the action.
- (7) In a derivative action, Order 18, rule 2(1) (time for service of defence) shall not have effect unless the Court grants leave to continue the action and, in that case, shall have effect as if it required the defendant to serve a defence within 14 days after the order giving leave to continue, or within such other period as the Court may specify.
- (8) On the hearing of the application under paragraph (2), the Court may
  - (a) grant leave to continue the action, for such period and upon such terms as the Court may think fit;
  - (b) subject to paragraph (11), dismiss the action;
  - (c) adjourn the application and give such directions as to joinder of parties, the filing of further evidence, discovery, cross examination of deponents and otherwise as it may consider expedient.
- (9) If the plaintiff does not apply for leave to continue the action as required by paragraph (2) within the time laid down in paragraph (4), any defendant who has given notice of intention to defend may apply for an order to dismiss the action or any claim made in it by way of derivative action.
- (10) On the hearing of such an application for dismissal, the Court may
  - (a) subject to paragraph (11), dismiss the action;
  - (b) if the plaintiff so requests, grant the plaintiff (on such terms as to costs or otherwise as the Court may think fit) an extension of time to apply for leave to continue the action; or
  - (c) make such other order as may in the circumstances be appropriate.
- (11) Where only part of the relief claimed in the action is sought on behalf of the company, the Court may dismiss the claim for that part of the relief under paragraphs (8) and (10), without prejudice to the plaintiffs right to continue the action as to the remainder of the relief and Order 18, rule 2(1) shall apply as modified by paragraph (7).
- (12) If there is a material change in circumstances after the Court has given leave to the plaintiff to continue the action in pursuance of an application under paragraph (2), any defendant who has given notice of intention to defend may make an application supported by affidavit requiring the plaintiff to show cause why the Court should not dismiss the action or any claim made in it by way of derivative action. On such application the Court shall have the same powers as it would have had upon an application under paragraph (2).



- (13) The plaintiff may include in an application under paragraph (2) an application for an indemnity out of the assets of the company in respect of costs incurred or to be incurred in the action and the court may grant such indemnity upon such terms as may in the circumstances be appropriate.
- (14) So far as possible, any application under paragraph (13) and any application by the plaintiff under Order 14 shall be made so as to be heard at the same time as the application under paragraph (2).

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

- (1) In any proceedings concerning
  - (a) the estate of a deceased person, or
  - (b) property subject to a trust, or
  - (c) the construction of a written instrument, including a statute,
 the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.
- (2) The conditions 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 satisfied. 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 purposes 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 ascertained persons) but—
  - (a) there is some other person in the same interest before the court who assents to the compromise or on whose behalf the Court sanctions the compromise, or
  - (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

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

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

- (1) At any stage in an action to which this rule applies, the Court may, on the application of any party or of its own motion, direct that notice of the action be served on any person who is not a party thereto but who will or may be affected by any judgment given therein.
- (2) An application under this rule may be made *ex parte* and shall be supported by an affidavit stating the grounds of the application.

- (3) Every notice of an action under this rule shall be in Form No. 52 in Appendix A and shall be issued out of the Registry, and the copy to be served shall be a sealed copy accompanied by a copy of the originating summons or writ and of all other pleadings served in the action, and by a form of acknowledgment of service in Form No. 14 or 15 in Appendix A with such modifications as may be appropriate.
- (4) A person may, within 14 days of service on him of a notice under this rule, acknowledge service of the writ or originating summons and shall thereupon become a party to the action, but in default of such acknowledgment and subject to paragraph 5 he shall be bound by any judgment given in the action as if he was a party thereto.
- (5) If at any time after service of such notice on any person the writ or originating summons is amended so as substantially to alter the relief claimed, the Court may direct that the judgment shall not bind such person unless a further notice together with a copy of the amended writ or originating summons is issued and served upon him under this rule.
- (6) This rule applies to any action relating to:
  - (a) the estate of a deceased person, or
  - (b) property subject to a trust.
- (7) Order 6, rule 7 (3) and (5) shall apply in relation to a notice of an action under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.

#### **14. Representation of beneficiaries by trustee, etc. (O. 15, r. 14)**

- (1) Any proceedings, including proceedings to enforce a security by foreclosure otherwise, may be bought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.
- (2) Paragraph (1) is without prejudice to the power of the court to order any person having such an interest as foresaid to be made a party to the proceedings or to make an order under rule 13.

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

- (1) Where in any proceeding 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 purpose 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.

#### **16. Declaration judgment (O. 15, r. 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 or right whether or not any consequential relief is to be claimed.

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

The Court may give the conduct of an action, inquiry or other proceeding to such person as it thinks fit.

**Order 16 – Third party and similar proceedings****1. Third party notice (O. 16, r. 1)**

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

then, subject to paragraph (2), the defendant may issue a notice in Form No. 20 or 21 in Appendix A, 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 ground 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 used.

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

- (1) Application for leave to issue a third party notice may be made *ex parte* but the Court may direct a summons for leave to be issued.
- (2) An application for leave to issue a third party notice must be supported by an affidavit stating—
  - (a) the nature of the claim made by the plaintiff in the action;
  - (b) the stage which proceedings in the action have reached;
  - (c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and
  - (d) the name and address of the person against whom the third party notice is to be issued.

**3. Issue, service and acknowledgment of service, of third party notice (O. 16, r. 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 and a form of acknowledgment of service in Form No. 14 in Appendix A with such modifications as may be appropriate.

- (3) Service of a third party notice may be acknowledged by properly completing an acknowledgment of service and handling it in at the Registry.
- (4) Subject to the foregoing provisions of this rule, the following provisions of these rules, namely, Order 6, rule 7(3) and (5), Order 10, Order 11, and Order 12 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 was a plaintiff and the person against whom it is issued a defendant in that action:

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

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

- (1) If the third party gives notice of intention to defend, the defendant who issued the third party notice must, by summons to be served on all the other parties to the action, apply to the court for directions.
- (2) If no summons is served on the third party under paragraph (1) the third party may, not earlier than seven days after giving notice of intention to defend by summons to be served on all 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 direction 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 may be varied or rescinded by the Court at any time.

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

- (1) If a third party does not give notice of intention to defend or, having been ordered to serve a defence, fails to do so—
  - (a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action 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 notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, enter judgment against the third party in respect

of any contribution or indemnity claimed in the notice, and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

- (2) If a third party of the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on the application by summons of the 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.

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

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

## **7. Judgment between and third party (O. 16, r. 6)**

- (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 judgment is given for the payment of any contribution or indemnity to a person who is under a liability to make a payment in respect of the same debt or damage, execution shall not issue on the judgment without the leave of the Court until that liability has been discharged.
- (3) For the purpose of paragraph (2) "liability" includes liability under a judgment in the same or other proceedings.

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

- (1) Where in any action a defendant who has given notice of intention to defend—
  - (a) claims against a person who is already a party to the action any contribution or indemnity; or
  - (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff, orthen, subject to paragraph (2) the defendant may, without leave, issue and serve on that person a notice containing a statement of the nature and grounds of his claim or, as the case may be, of the question or issue required to be determined.
- (2) Where a defendant makes such a claim as is mentioned in paragraph (1) and that claim could be made by him by counterclaim in the action, paragraph (1) shall not apply in relation to the claim.
- (3) No acknowledgment of service of such a notice shall be necessary if the person on whom it is served has acknowledged service of the writ or originating summons in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom and the person on whom, such a notice is served of the claim, question or issue stated in the notice as would be appropriate under a notice to be served of the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has given notice of intention to defend the action or is a plaintiff) had given notice to defend the claim, question or issue.
- (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 giving notice of intention to defend" there were substituted the words "14 days after service of the notice on him".

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

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

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

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

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

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

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

- (1) Where—
  - (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto, or
  - (b) claim is made to any money, goods or chattels taken or intended to be taken by a bailiff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,the person under liability as mentioned in sub-paragraph (a) or (subject to rule 2) the bailiff, may apply to the court for relief by way of interpleader.
- (2) References in this Order to a bailiff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the Supreme Court.

## 2. Claim to goods, etc., taken in execution (O. 19, r. 2)

- (1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of the court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the bailiff charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service.

- (2) On receipt of a claim made under this rule the bailiff must forthwith give notice thereof to the execution creditor and the execution creditor must, within seven days after receiving the notice, give notice to the bailiff informing him whether he admits or disputes the claim.

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

- (3) Where—
  - (a) the bailiff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice, and
  - (b) the claim made under this rule is not withdrawn, the bailiff may apply to the court for relief under this Order.
- (4) A bailiff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule shall withdraw from possession of the money, goods or chattels claimed and may apply to the court for relief under this Order of the following kind, that is to say, an order restraining the bringing of an action against him for or in respect of his having taken possession of that money or those goods or chattels.

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

- (1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action.
- (2) Where the applicant is a bailiff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2(4) the summons must be served on any person who made a claim under that rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.
- (3) An originating summons under this rule shall be in Form No. 10 in Appendix A.
- (4) Subject to paragraph (5) a summons under this rule must be supported by evidence that the applicant—
  - (a) claims no interest in the subject-matter in dispute other than charges or costs,
  - (b) does not collude with any of the claimants to that subject-matter, and
  - (c) is willing to pay or transfer that subject-matter into court or to dispose of it as the Court may direct.
- (5) Where the applicant is a bailiff, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the court to do so.
- (6) Any person who makes a claim under rule 2 and who is served with a summons under this rule shall within 14 days serve on the execution creditor and the bailiff an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.



- (7) Where the applicant is a bailiff a summons under this rule must give a notice of the requirement in paragraph (6).

#### **4 To whom bailiff may apply for relief (O. 17, r. 4)**

An application to the court for relief under this Order may, if the applicant is a bailiff, be made to the Registrar.

#### **5. Powers of court hearing summons (O. 17, r. 5)**

- (1) Where on the hearing of a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute (hereafter in this Order referred to as "the claimants") appear, the Court may order—
- (a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order, or
- (2) Where—
- (a) the applicant on a summons under this Order is a bailiff, or
  - (b) all the claimants consent or any of them so requests, or
  - (c) the questions 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 person claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

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

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

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

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



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

Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several causes or matters, 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.

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

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

## **Order 18 – Pleadings**

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

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

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

- (1) Subject to paragraph (2), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on every other party to the action who may be affected thereby before the expiration of 14 days after the time limited for acknowledging service of the writ or after the statement of claim is served on him whichever is the later.
- (2) If a summons under Order 14, rule 1, or under Order 86, rule 1, is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within 14 days after the making of the Order or within such other period as may be specified therein.
- (3) Where an application is made by a defendant under Order 12, rule 8(1), paragraph (1) of this rule shall not have effect in relation to the defendant unless the application is dismissed or no order is made on the application and, in that case, paragraph (1) shall have effect as if it required him to serve his defence within 14 days after the final determination of the application or within such other period as may be specified by the Court.
- (4) Paragraph (1) is subject to the provisions of Order 15, rule 12A (7) (derivative actions).

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

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

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

#### **5.**

*[blank]*

#### **6. Pleadings: Formal requirements (O. 18, r. 6)**

- (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 letter and number of the action,
  - (b) the title of the action
  - (c) *[blank]*
  - (d) the description of the pleading, and
  - (e) the date on which it was served.
- (2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.
- (3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.
- (4) Every pleading of a party must be indorsed—
  - (a) where the party sues or defends in person, with his name and address;
  - (b) in any other case, with the name or firm and business address of the attorney by whom it was served and also (if the attorney is the agent of another) the name of firm and business address of his principal.
- (5) Every pleading of a party must be signed by an attorney, if settled by him, or by the party, if he sues or defends in person.

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

- (1) Subject to the provisions of this rule, and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.
- (2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except 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 lies on the 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.

#### **7A. Conviction, etc. to be adduced in evidence: Matters to be planned (O. 18, r. 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 the Turks and Caicos Islands 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 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 the Turks and Caicos Islands or has been adjudged to be the father of a child in affiliation proceedings before a court in the Turks and Caicos Islands, 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.

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

- (1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, the expiry of any relevant period of limitation, fraud or any fact showing illegality—
  - (a) which he alleges makes any claim or defence of the opposite party not maintainable, or
  - (b) which, if not specifically pleaded, 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 possession of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.
- (3) A claim for exemplary damages or for provisional damages must be specifically pleaded together with the facts on which the party pleading relies.
- (4) A party must plead specifically any claim for interest however it arises, and all facts relied upon in support of the claim.

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

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

**10. Depature (O. 18, r. 10)**

- (1) A party shall not in any pleading make any 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.

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

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

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

- (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,
  - (a) particulars of any misrepresentation, fraud, breach of trust, willful default or undue influence on which the party pleading relies;
  - (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; and
  - (c) where a claim for damages is made against a party pleading, particulars of any facts on which the party relies in mitigation of, or otherwise in relation to, the amount of damages.
- (1A) Subject to paragraph (1B), a plaintiff in an 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 requirement of paragraph (1A) or staying the proceedings).
- (1C) For the purpose 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 fact that a person had acknowledge 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 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) Where particulars are given pursuant to a request, or order of the court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

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

- (1) 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) 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.

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

- (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.
- (2) Subject to paragraph (3)—
  - (a) there is at the close of pleadings an implied joinder of issue on the pleading last served, and
  - (b) a party may in his pleading expressly join issue on the next preceding pleading.
- (3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.
- (4) A joinder of issue operates as a denial of every 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.

### **15. Statement of claim (O. 18, r. 15)**

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

- (2) A statement of claim shall not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but, subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the indorsement of the writ without amending the indorsement.
- (3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

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

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

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

Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by a 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.

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

Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically—

- (a) Rules 12(1A), (1B) and 1(C) and 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;
- (b) Rules 8(2), 16 and 17 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

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

- (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that—
  - (a) it discloses no reasonable cause of action or defence, as the case may be; or
  - (b) it is scandalous, frivolous or vexatious; or
  - (c) it may prejudice, embarrass or delay the fair trial of the action; or
  - (d) it is otherwise an abuse of the process of the court;and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
- (2) No evidence shall be admissible on an application under 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.

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

- (1) The pleadings in an action are deemed to be closed—
  - (a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim or

- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.
- (2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

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

- (1) Where in an action to which this rule applies any defendant has given notice of intention to defend in the action, the plaintiff or that defendant may apply to the court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.
- (2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree such a statement, may settle the statement itself.
- (3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate, and Order 25, rules 2 to 7, shall, with the omission of so much of the 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 under this rule were a summons for directions.
- (4) This rule applies to every action begun by writ other than one which includes—
  - (a) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment; or
  - (b) a claim by the plaintiff based on an allegation of fraud.

## **Order 19 – Default of pleadings**

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

### **2. Default of defence: Claim for liquidated demand (O. 19, r. 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 the 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.

### **3. Default of defence: Claim for unliquidated damages (O. 19, r. 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 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.

**4. Default of defence: Claim for detention of goods (O. 19, r. 4)**

- (1) Where the plaintiffs claim against a defendant relates to the detention of goods only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these rules for the service of the defence and subject to Order 42, rule 1A,—
  - (a) at his option, enter either—
    - (i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs, or
    - (ii) interlocutory judgment for the value of the goods to be assessed and costs, or
  - (b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value, and in any case proceed with the action against the other defendants, if any.
- (2) A summons under paragraph (1)(b) must be supported by affidavit and, notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

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

- (1) Where the plaintiff's claim against a defendant is for possession of land only, then, subject to paragraph (2), 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 attorney, 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 88, rule 1, enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.
- (2) Notwithstanding anything in paragraph (1), the plaintiff shall not be entitled, except with the leave of the Court, to enter judgment under that paragraph unless he produces a certificate by his attorney, or (if he sues in person) an affidavit, stating either that the claim does not relate to a dwelling-house or that the claim relates to a dwelling-house which is not subject to any statutory restrictions on the recovery of possession for the time being in force.
- (3) An application for leave to enter judgment under paragraph (2) shall be by summons stating the grounds of the application, and the summons must, unless the Court otherwise orders, be served on the defendant against whom it is sought to enter judgment.
- (4) If the Court refuses leave to enter judgment, it may make or give any such order or directions as it might have made or given had the application been an application for judgment under Order 14, rule 1.
- (5) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

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

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



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

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

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

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

**Order 20 – Amendment****1. Amendment of writ without leave (O. 20, r. 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 or 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.

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

- (1) Subject to paragraph (2) a party may not amend his acknowledgment of service without the leave of the court.
- (2) A party whose acknowledgment of service contains a statement to the effect that—
  - (a) he does, or
  - (b) he does notintend to contest the proceedings to which the acknowledgment relates may, without the leave of the court, amend the acknowledgment by substituting for that statement a statement to the opposite effect, provided that in a case falling under sub-paragraph (b) the amendment is made before judgment has been obtained in the proceedings.
- (3) Where an acknowledgement of service is authorised to be amended under this rule, a fresh acknowledgment, amended as so authorised, must be handed in at the Registry, and Order 12, rule 4, shall apply.

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

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

**4. Application for disallowance of amendment made without leave (O. 20, r. 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 rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.
- (3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

**5. Amendment of writ or pleading with leave (O. 20, r. 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 party intending to sue or, as the case may be, intended to be sued.
- (4) An amendment to alter the capacity in which a party sues may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.
- (5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

**6.**

*[blank]*

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

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

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

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

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

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

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

- (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, re-issued, 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, the name of the judge or Registrar by whom the order (if any) authorizing 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.
- (3) An amendment to any document made under this rule shall, unless the Court otherwise orders, be shown either by making or underlining the amendment in the following different colours, namely, a first amendment in red, a second or re-amendment in green, a third amendment in violet and a fourth amendment in yellow; or by underlining the first amendment in black, putting a second or re-amendment in italics, a third amendment in bold print, and subsequent amendments to be in italics and underlined, and bold and underlined.

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

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

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

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

**Order 21 – Withdrawal and discontinuance****1. Withdrawal of acknowledgment of service (O. 21, r. 1)**

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

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

- (1) Subject to paragraph (2A), the plaintiff in an action begun by writ may without the leave of the court, discontinue the action, or withdraw any particular claim made by him therein, as against any

or all of the defendants at any time not later than 14 days after service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned.

- (2) Subject to paragraph 2(A), a defendant to an action begun by writ may,
- (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 to that effect on the plaintiff or other party concerned.

- (2A) A party in whose favour an interim payment has been ordered, in accordance with Order 29, rule 11, may not discontinue any action or counterclaim, or withdraw any particular claim therein, except with the leave of the court or the consent of all the other parties.
- (3) Where there are two or more defendants to an action begun by writ 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 services 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 reference to a defence, to the plaintiff and to paragraph (1) of references to a defence to counterclaim, to the defendant and to paragraph (2) respectively.

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

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

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

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

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

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

- (1) Where a party has discontinued an action or counterclaim or withdrawn any particular claim made by him therein and he is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any party by the claim withdrawn, then if, before payment of those costs, he subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.
- (2) Any application for an order under this rule may be made by summons or motion or by notice under Order 25, rule 7.

**6. Withdrawal of summons (O. 21, r. 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****1. Payment into court (O. 22, r. 1)**

- (1) In any action for a debt or damages any defendant may at any time pay into court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.
- (2) On making any payment into court under this rule, and on increasing any such payment already made, the defendant must give notice thereof in Form No. 23 in Appendix A to the plaintiff and every other defendant (if any); and within three days after receiving the notice the plaintiff must send the defendant a written acknowledgment of its receipt.
- (3) A defendant may, without leave, give notice of an increase in a payment made under this rule but, subject to that and without prejudice to paragraph (5) a notice of payment may not be withdrawn or amended without the leave of the court which may be granted on such terms as may be just.
- (4) Where two or more causes of action are joined in the action and money is paid into court under this rule in respect of all, or some only of, those causes of action, the notice of payment—
  - (a) must state that the money is paid in respect of all those causes of action or, as the case may be, must specify the cause or causes of action in respect of which the payment is made, and
  - (b) where the defendant makes separate payments in respect of each, or any two or more, of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.
- (5) Where a single sum of money is paid into court under this rule in respect of two or more causes of action, then, if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may, subject to paragraph (6) order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.
- (6) *[blank]*
- (7) *[blank]*

- (8) For the purposes of this rule, the plaintiffs cause of action in respect of a debt or damages shall be construed as a case of action in respect, also, of such interest (if any) as might be included in the judgment, if judgment were given at the date of the payment into court.

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

Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum or sums of money into court under rule 1, the notice of payment must state, if it be the case, that in making the payment the defendant has taken into account and intends to satisfy—

- (a) the cause of action in respect of which he claims, or
- (b) where two or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them.

## **3. Acceptance of money paid into court (O. 22, r. 3)**

- (1) Where money is paid into court under rule 1, then subject to paragraph (2) within 21 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 21 days after receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may—

- (a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case maybe, or
- (b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,

by giving notice in Form No. 24 in Appendix A 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 two days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the Judge begins to deliver judgment or, if the trial is with a jury, before the Judge begins his summing up.
- (3) Rule 1(5) shall not apply in relation to money paid into court in an action after the trial or hearing of the action has begun.
- (4) On the plaintiff accepting any money paid into court all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to him shall be stayed.
- (5) Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum 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 into court shall, subject to rules 4 and 10 and Order 80, rule 12, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptances relates.



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

- (1) Where a plaintiff accepts any sum paid into court and that sum was paid into court—
  - (a) by some but not at all of the defendants sued jointly or in the alternative by him, or
  - (b) with a defence of tender before action, or
  - (c) in an action to which Order 80, rule 12 applies, or
  - (d) in satisfaction of a cause or causes of action arising in tort from the death of any person,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 the 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.

**5. Money remaining in court (O. 22, r. 5)**

If any money paid into court in an action is not accepted in accordance with rule 3, the money remaining in court shall not be paid out except in pursuance of an order of the court which may be made at any time before, or at 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.

**6. Counterclaim (O. 22, r. 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 in accordingly with the necessary modifications.

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

- (1) Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of rule 3(4) after the trial or hearing has begun, and subject to paragraph (2) the fact that money has been paid into court under the foregoing provisions of this Order shall not be pleaded and no communication of that fact shall be made to the court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of the debt or damages have been decided.
- (2) Where the question of the costs of the issue of liability falls to be decided, that issue having been tried and an issue or question concerning the amount of the debt or damages remains to be tried separately, any party may bring to the attention of the Court the fact that a payment into court has or has not been and the date (but not the amount) of such payment or of the first payment if more than one.



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

- (1) On making any payment into court under an order of the court or a certificate of the Registrar, a party must give notice thereof to every other party to the proceedings.
- (2) Subject to paragraph (3), money paid into court under an order of the court or a certificate of the Registrar shall not be paid out except in pursuance of an order of the court.
- (3) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 14—
  - (a) may be notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice, or
  - (b) if he pleads a tender, may by his pleading appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered;and money appropriated in accordance with this rule shall be deemed to be money paid into court in accordance with rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.
- (4) If the Court so orders, paragraph (3) shall apply, with the necessary modifications, where a party has paid money to another to abide the outcome of the action.

**9.**

*[blank]*

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

- (1) Where the entitled to money in court is a person who has received Legal Aid in the respect of the action to which the payment into court relates, payment shall be made only to that party's attorney or former attorney without the need for any authority from the party.
- (2) Subject to paragraph (1), payment shall be made to the party entitled or to his attorney.
- (3) This rule applies whether the money in court has been paid into court under rule 1 or under an order of the court or a certificate of the Registrar.

**11. Payment out: Small intestate estates (O. 22, r.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, including the fund or share, do not exceed \$5,000 in value 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.

**12.**

*[blank]*

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

Cash under the control of or subject to the order of the court may be invested in any manner approved by the Accountant General.

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

- (1) A party to proceedings may at any time make a written offer to any other party to those proceedings which is expressed to be 'without prejudice save as to costs' and which relates to any issue in the proceedings.
- (2) Where an offer is made under paragraph (1), the fact that such an offer has been made shall not be communicated to the Court until the question of costs falls to be decided.

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

- (1) Where, on the application of a defendant to an action or other proceeding in the Supreme 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 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.

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

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

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

## **Order 24 – Discovery and inspection of documents**

### **1. Mutual discovery of documents (O. 24, r. 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.

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

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

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

- (2) Unless the Court otherwise orders, a defendant to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle shall not make discovery of any documents to the plaintiff under paragraph (1).
- (3) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any enactment to make discovery of any documents.
- (4) Paragraphs (2) and (3) shall apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in paragraph (2) to the plaintiff, of a reference to the party making the counterclaim.
- (5) On the application of any party required by this rule to make discovery of documents, the Court may—
  - (a) order that the parties to the action or any of them shall make discovery under paragraph (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or
  - (b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage;

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

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

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

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

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

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

- (1) A list of documents made in compliance with rule 2 or with an order under rule 3 must be in Form No. 26 in Appendix A, 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 foresaid verifying a list of documents must be in Form No. 27 in Appendix A.

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

**7. Order for discovery of particular documents (O. 24, r. 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 of affidavit under rule 2 or rule 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.

**7A. Application under sections 65B(2) or 65C(2) of the Civil Procedure Ordinance (O. 24, 7A)**

- (1) An application for an order under section 65B(2) of the Ordinance for the disclosure of documents before the commencement of proceedings shall be made by originating summons (in Form No. 10 in Appendix A) 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 section 65C(2) of the Ordinance 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 Supreme Court in which a claim for a personal injuries 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 for personal injuries made or likely to be made in the proceedings and that the person against whom the order is sought is likely to have or 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 the said section 65B(2) or 65C(2) 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 document 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 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 the documents at the trial.
- (7) In this rule "a claim for personal injuries" means a claim in respect of personal injuries to a person or in respect of a person's death.
- (8) For the purposes of rules 10 and 11 an application for an order under the said section 65B(2) or 65C(2) shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

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

On the hearing of an application for an order under rule 3, 7 or 7A 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.

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

A party who has served a list of documents on any other party, whether in compliance with rule 2 or 6 or with an order under rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within seven days after the service thereof at which the said documents may be inspected at a place specified in the notice.

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

- (1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings, affidavits or witness statements 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 four days after service of the notice, serve on the party giving the notice a notice stating a time within seven days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

#### **11. Order for production for inspection (O. 24, r. 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 maybe, 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 be entitled to inspection, make an order for production of the documents in question for inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.
- (2) Without prejudice to paragraph (1) but subject to rule 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 on which inspection is sought and stating the belief of the deponent that they are in possession, custody or power of that other party and that they relate to a matter in question in the cause or matter.

#### **11A. Provision of copies of documents (O. 24, r. 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 think fit.

#### **12. Order for production to court (O. 24, r. 12)**

At any stage of 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.

#### **13. Production to be ordered only if necessary, etc. (O. 24, r. 13)**

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

#### **14. Production of business books (O. 24, r. 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.

#### **14A. Use of documents (O. 24, r. 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.

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

**16. Failure to comply with requirement for discovery, etc. (O. 24, r. 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 document for the purpose of inspection or any other purpose or to supply copies thereof 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 shall be liable to committal.
- (3) Service on a party's attorney 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 of knowledge of the order.
- (4) An attorney on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

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

Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or carried 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 direction**

**1. Summons for direction (O. 25, r. 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 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 86, and directions have been given under the relevant Order;



- (b) actions in which the plaintiff or defendant has applied under Order 18, rule 21, for trial without pleadings or further pleadings and directions have been given under that rule;
  - (c) actions in which an order has been made under Order 24, rule 4, for the trial of an issue or question before discovery;
  - (d) actions in which directions have been given under Order 29, rule 7;
  - (e) actions in an order for the taking of an account has been made under Order 43, rule 1;
  - (f) *[blank]*
  - (g) *[blank]*
  - (h) actions for the infringement of a patent;
  - (i) *[blank]*
  - (j) actions for personal injuries for which automatic directions are provided by rule 8;
  - (k) actions in which the parties agree under rule 9 that the only matters to be determined are the mode of trial and time for setting down.
- (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.
- (6) In the case of an action which is proceeding only as respects a counterclaim, references in this rule to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.
- (7) Notwithstanding anything in paragraph (1), any party to an action to which this rule applies may take out a summons for directions at any time after the defendant has given notice of intention to defend, or, if there are two or more defendants, at least one of them has given such notice.

## 2. Duty to consider all matters (O. 25, r. 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 direction, 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) Except where the parties agree to the making of an order under Order 33 as to the place or mode of trial before all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions have been dealt with, no such order shall be made until all those matters have been dealt with.
- (5) *[blank]*
- (6) *[blank]*
- (7) If the bearing 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 two days' notice to the other parties.

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

- (1) On the hearing of the summons for directions the Court shall in particular consider, if necessary of its own motion, whether any order should be made or direction given in the exercise of the powers conferred by any of the following provisions, that is to say—
  - (a) any provision of Part IV of Order 38;
  - (b) Order 20, rule 5 and Order 38, rules 2 to 7;
  - (c) *[blank]*
  - (d) Order 33, rule 4(2).
- (2) On the hearing of the summons for directions, the Court shall decide whether the bundle to be provided under Order 34, rule 10 is to include the documents mentioned in paragraph (2)1 of that rule and direct the parties accordingly.
- (3) On the hearing of the summons for directions, the Court shall consider, if necessary of its own motion, whether a pre-trial review is necessary—
  - (a) to ensure readiness for trial and compliance with its directions; or
  - (b) to ensure that the matter is dealt with expeditiously, fairly and economically; or
  - (c) for any other purpose,and in any such case may order a pre-trial review to be held, and shall give all necessary directions to ensure its effectiveness.

### **4. Admissions and agreements to be made (O. 25, r. 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 agreement so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.

## **5. Limitation of right of appeal (O. 25, r. 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 direction may record any such agreement.

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

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

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

- (2) No leave shall be required by virtue of paragraph (1) for the use of an affidavit by any party on the hearing of the summons for directions in connection with any application thereat for any order if, under any of these rules, an application for such an order is required to be supported by an affidavit.
- (3) If the Court on any hearing of the summons for directions requires a party to the action or his attorney 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 so to do, order the whole or any part of the pleadings of the party concerned to be struck out, or, if the party is plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.
- (4) Notwithstanding anything in the foregoing provision 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 advisers of any party otherwise than with the consent of that party.

## **7. Duty to make all interlocutory application on summons for directions (O. 25, r. 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 seven days before the 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.
- (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 seven days before the resumed hearing of the summons, serve on the 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 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 two clear days' notice to the other party stating the grounds of the application.

## 8. Automatic directions in personal injury actions (O. 25, r. 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 seven 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—
    - (i) expert evidence, he shall, within 14 weeks, disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible; and
    - (ii) any other oral evidence, he shall, within 14 weeks, serve on the other parties written statements of all such oral evidence which he intends to adduce;
  - (c) unless such reports are agreed, the parties shall be at liberty to call as expert witnesses those witness the substance of whose evidence has been disclosed in accordance with the preceding sub-paragraph except that the number of expert witness 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) *[blank]*
  - (f) the action shall be tried by Judge alone and shall be set down within six months;
  - (g) the Court shall be notified, on setting down, of the estimated length of the trial.
- (1A) Nothing in paragraph (1) shall require a party to produce a further medical report if he proposes to reply at the trial only on the report provided pursuant to Order 18, rule 12(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, "statement of the special damages claimed" has the same meaning as in Order 18, rule 12(1C).
- (2) Paragraphs (4) to (16) of Order 38, rule 2A shall apply with respect to statements and reports served under sub-paragraph (1)(b) as they apply with respect to statements served under that rule.
- (3) Nothing in paragraph (1) shall prevent any party to an action to which this rule applies from applying to the court for such further or different directions or orders as may, in the circumstances, be appropriate.
- (4) For the purposes of this rule—

"a road accident" means an accident on land due to a collision or apprehended collision involving a vehicle; and

"documents relating to special damages" include

  - (a) documents relating to any industrial injury, industrial disablement or incapacity benefit rights, and
  - (b) if maintainable, documents relating to any claim for dependency on the deceased.
- (5) This rule applies to any action for personal injuries except—
  - (a) any Admiralty action; and
  - (b) any action where the pleadings contain an allegation of a negligent act or omission in the course of medical treatment.

## 9. Standard directions by consent (O. 25, r. 9)

- (1) Subject to paragraph (3), where in any action the parties agree, not more than one month after the pleadings are deemed to be closed, that the only directions required are as to the mode of trial and the time for setting down, the provisions of rule 8(1)(g) shall apply and the action shall be tried by a judge alone and shall be set down within six months.
- (2) *[blank]*
- (3) The Court may give such further directions or orders, whether on application by a party or its own motion, as may, in the circumstances, be appropriate.

## Order 26 – Interrogatories

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

- (1) A party to any cause or matter may in accordance with the following provisions of this Order serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter which are necessary either—
  - (a) for disposing fairly of the cause or matter, or
  - (b) for saving costs.
- (2) Without prejudice to the provisions of paragraph (1), a party may apply to the Court for an order giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter.
- (3) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) may not be administered notwithstanding that it might be admissible in oral cross-examination of a witness.
- (4) In this Order,

"interrogatories without order" means interrogatories served under paragraph (1);

"ordered interrogatories" means interrogatories served under paragraph (2) or interrogatories which are required to be answered pursuant to an order made on application under rule 3(2) and, where such an order is made, the interrogatories shall not, unless the Court orders otherwise, be treated as interrogatories without order for the purposes of rule 3(1).
- (5) Unless the context otherwise requires, the provisions of this Order apply to both interrogatories without order and ordered interrogatories.

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

- (1) Where interrogatories are served, a note at the end of the interrogatories shall specify—
  - (a) a period of time (not being less than 28 days from the date of service) within which the interrogatories are to be answered:
  - (b) where the party to be interrogated is a body corporate or unincorporated which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the officer or member on whom the interrogatories are to be served, and
  - (c) where the interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

- (2) Subject to rule 5(1), a party on whom interrogatories are served shall, unless the Court orders otherwise on an application under rule 3(2), be required to give within the period specified under rule 2(1)(a) answers, which shall (unless the Court directs otherwise) be on affidavit.

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

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

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

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

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

- (1) Without prejudice to rule 3(2), where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his answer.
- (2) Where any person on whom ordered interrogatories have been served answers any of them insufficiently, the Court may make an order requiring him to make a further answer, either by affidavit or on oral examination as the Court may direct.
- (3) Where any person on whom interrogatories without order have been served answers any of them insufficiently, the party serving the interrogatories may ask for further and better particulars of the answer given and any such request shall not be treated as service of further interrogatories for the purpose of this rule 3(1).

### **6. Failure to comply without order (O. 26, r. 6)**

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

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

A party may put in evidence at the trial of a cause or matter, or of any issue therein, some only of the answers to interrogate, or part only of such 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 order, the Court may direct that that other answer or part shall be put in evidence.

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

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

**Order 27 – Admissions****1. Admissions of case of other party (O. 27, r. 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.

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

- (1) A party to a cause or matter may not later than 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, such facts or such part of his case as may be 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. Judgment on admission (O. 27, r. 3)**

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

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

**4. Admissions and productions of documents specified in list of documents (O. 27, r. 4)**

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

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



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

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

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

## **Order 28 – Originating summons procedure**

### **1. Application (O. 28, r. 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 Ordinance; and, subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as it applies in relation to other summonses.

#### **1A. Affidavit evidence (O. 28, r. 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 Registry the affidavit evidence on which he intends to reply.
- (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 the court under paragraph (1) must be served by the plaintiff on the defendant, or, if there are two defendants, on each defendant, before the expiration of 14 days after service has been acknowledged by that defendant.
- (3) 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 Registry and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

- (4) 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 evidence in reply and shall in that event serve copies thereof on that defendant.
- (5) No other affidavit shall be received in evidence without the leave of the Court.
- (6) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.
- (7) The provisions of this rule apply subject to any direction by the Court to the contrary.
- (8) In this rule references to affidavits and copies of affidavits include references to exhibits and copies of such exhibits.

## **2. Fixing time for attendance of parties before the court (O. 28,r. 2)**

- (1) In the case of an originating summons which is in Form No. 8 in Appendix A the plaintiff must, within one month of the expiry of the time within which copies of affidavit evidence may be served under this rule 1A, 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 No. 12 in Appendix A) 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 which is in Form No. 10 in Appendix A, or for the hearing of an *ex parte* originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be and, in the case of a summons which is required to be served, the time limited for acknowledging service shall, where appropriate, be abridged so as to expire on the next day but one before one before the day so fixed, and the time limits for lodging affidavit under rule 1A(1) and (2) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.
- (3) Where a plaintiff fails to apply for an appointment under paragraph (1) any defendant may with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has acknowledged service of the originating summons.

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

- (1) Not less than 14 days before the day fixed under rule 2 for the attendance of the parties before the court for the hearing of an originating summons which is in Form No. 8 in Appendix A, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party.
- (2) Not less than four clear days before the day fixed under rule 2 for the hearing of an originating summons which is in Form No. 10 in Appendix A, the plaintiff must serve the summons on every defendant or, if any defendant has already been served with the summons, must serve on that defendant notice of the day fixed for the hearing.
- (3) Where Notice in Form No. 12 in Appendix A is served in accordance with paragraph (1), such notice shall specify what orders or directions the party serving the notice intends to seek at the hearing; and any party served with such notice who wishes to seek different orders or directions must, not less than 7 days before the hearing, serve on every other party a notice specifying the other orders and directions he intends to seek.
- (4) If the hearing of an originating summons which is in Form No. 8 or Form No. 10 in Appendix A is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for he must not less than 7 days before the resumed bearing of the summons serve on every other party a notice specifying those orders and directions.

- (5) Where a party is required by any provisions of this rule or rule 5(2) to serve a notice or a copy of a notice on "every other party" he must—
  - (a) where he is the plaintiff, serve it on every defendant who has acknowledged service of the originating summons, and,
  - (b) where he is a defendant, serve it on the plaintiff and on every other defendant affected thereby.

#### **4. Directions, etc., by the Court (O. 28, r. 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) In any case where the Court does not dispose of any originating summons altogether at a hearing or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.
- (3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross examination of any of the deponents, as it may direct.
- (4) Without prejudice to the generality of paragraph (2) and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give under Order 25 if the cause or matter had been begun by writ and the summons were a summons for directions under that Order.
- (5) The Court may at any stage of the proceedings order that any affidavit, or any particulars of any claim, defence or other matter stated in any affidavit, shall stand as pleadings or that points of claim, defence or reply be delivered and stand as pleadings.

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

- (1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.
- (2) If the hearing of the summons is adjourned generally, any party may restore it to the list on 14 days' notice to every other party, and rule 3(4) shall apply in relation to any such adjourned hearing.

#### **6. Applications affecting party who has failed to acknowledge service (O. 28, r. 6)**

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

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

- (1) A defendant to an action begun by originating summons who has acknowledged service of the summons and who alleges that he has any claim or is entitled to any relief or remedy against the

plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

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

#### **8. Continuation of proceedings as if cause or matter begun by writ (O. 28, r. 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 and may, in particular, order that any affidavits 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, rule 2 to 7, shall with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if there had been a summons for directions in the proceedings and that order were one of the orders to be made thereon.
- (3) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.
- (4) Any reference in these rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

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

- (1) Except where the Court disposes of a cause or matter begun by originating summons in chambers or makes an order in relation to it under rule 8 or some other provision of these rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make such order as to the hearing of the cause or matter as may be appropriate.
- (2) *[blank]*
- (3) The Court shall by order determine the place and mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.
- (4) Order 33, rule 4(2) and Order 34, rules 1 to 8, shall apply in relation to a cause or matter begun by originating summons and to an order made therein under this rule as they apply in relation to an action begun by writ and to an order made therein under this said rule 4 and shall have effect accordingly with the necessary modifications and with the further modification that for references therein to the summons for directions there shall be substituted references to the first or any resumed bearing of the originating summons by the Court.

#### **10. Failure to comply with rules or Court orders (O. 28, r. 10)**

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

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

Order 34, rule 9, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

**Order 29 – Interlocutory injunctions, interim preservation of property, interim payments, etc.****Part I – Interlocutory injunctions, interim preservation of property, etc.****1. Application for injunction (O. 29, r.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 case is one of urgency such application may be made *ex parte* on affidavit but, except as aforesaid, such application must be made by motion or summons.
- (3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

**1A. Cross-examination on assets disclosure affidavit (O. 29, r. 1A)**

- (1) Where—
  - (a) the Court has made an order restraining any party from removing the jurisdiction of the Supreme 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-examination on his affidavit,the Court may order that the cross-examination shall be concluded otherwise than before a judge, in which case the cross-examination shall take place before the Registrar or an examiner of the court.
- (2) *[blank]*
- (3) 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.

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

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

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

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

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

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

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

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

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

### **5. Order for early trial (O. 25, r. 5)**

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

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

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

Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings

(if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

## **7. Directions (O. 29, r. 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 (h) of Order 25, rule 1(2) the Court thinks fit to give directions under this rule before the summons for directions, rules 2 to 7 of that Order shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a summons for directions.

## **7A. Inspection etc. of property under section 65B(1) or section 65C(3) of the Civil Procedure Ordinance (O. 29, r. 7A)**

- (1) An application for an order under section 65B(1) of the Civil Procedure Ordinance in respect of property which may become the subject-matter of subsequent proceedings in the Supreme 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 under section 65C(3) of the Civil Procedure Ordinance in respect of property which is not the property of or in the possession of any party to the proceedings shall be made 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 the said section 65B(1) or 65C(3) 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.

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

Where any real or personal property forms the subject-matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer to 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 the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

## **Part II – Interim payments**

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

In this Part of this Order—

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

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

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

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

- (1) If, on the hearing of an application under rule 10 in an action for damages, the Court is satisfied—
  - (a) that the defendant against whom the order is sought (in this paragraph referred to as "the respondent") has admitted liability for the plaintiff's damages, or
  - (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
  - (c) that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent or, where there are two or more defendants, against any of them,

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



- (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 plaintiffs claim,
  - (b) a public authority; or
  - (c) a person whose name means and resources are such as to enable him to make the interim payment.

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

If, on the hearing of an application under rule 10, the Court is satisfied—

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

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

- (1) Subject to Order 80, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides 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 the preceding paragraph for money in court to be paid out may 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 installments 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.

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

Where an application is made under rule 10, 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.

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

The fact that an order has been made under rule 11 or 12 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or 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.

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

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

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

Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue his action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application of any party, make 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 or any part of the interim payment which the defendant who has 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.

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

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**

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

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

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

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

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

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

- (1) A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the Court.
- (2) The Court may direct that such remuneration shall be—
  - (a) fixed by reference to such scales or rates of professional charges as it thinks fit, or
  - (b) assessed by the Registrar.
- (3) Where remuneration is assessed by the Registrar pursuant to a direction under paragraph (2)(b), an appeal shall lie from the assessment to a judge in chambers under Order 58.

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

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.

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

- (1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.
- (2) Any party to whom a receiver is required to submit account may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to such accounts.
- (3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to lodge his accounts with the court and a copy of such notice shall be lodged in the Registry.
- (4) Following an examination by or on behalf of the Court of an item or items in an action to which objection is taken the result of such examination must be certified by the Judge or Registrar, as the case may be, and an order may thereupon be made as to the incidence of any costs or expenses incurred.

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

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

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

- (1) Where a receiver fails to attend for the examination of any account of his, or fails to submit any account, provide access to any books or papers or do any other thing which he is required to submit, provide or do, he and any or all of the parties to the cause or matter in which he 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 examination 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 required to be so paid, the Court may disallow any remuneration claimed by the receiver and may where he has failed to pay any such sum into court, charge him with interest at the rate of 6% *per annum* on that sum while in his possession as receiver.

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

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 land by order of Court: Conveyancing counsel**

## **Part I – Sales, etc. of land by order of Court**

### **1. Power to order sale of land (O. 31, r. 1)**

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

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

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

- (1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or subsequently direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.
- (2) The Court may give 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 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 him;
  - (h) requiring an abstract of the title to be referred to conveyancing counsel for his opinion thereon and to settle the particulars and conditions of sale.

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

- (1) If either the Court has directed payment of the purchase money into court or the Court so directs, the results of a sale by order of the Court must be certified—
  - (a) in the case of a sale by public auction, by the auctioneers who conducted the sale, and

- (b) in any other case, by the attorney of the party or person having the conduct of the sale and the Court may require the certificate to be verified by the affidavit of the auctioneer or attorney, as the case may be.
- (2) The attorney of the party or person having the conduct of the sale must file the certificate and any affidavit in the Registry.

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

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

### **Part II – Conveyancing counsel**

#### **5. Reference of matter to conveyancing counsel (O. 31, r. 5)**

The court may refer to conveyancing counsel approved by the chief justice—

- (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 mortgage thereof, or with a view to the sale thereof,
- (b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement or other instrument, and
- (c) any other matter it thinks fit,

and may act upon his opinion in the matter referred.

#### **6. Objection to conveyancing counsel's opinion (O. 31, r. 6)**

Any party may object to the opinion given by any conveyancing counsel 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.

7.

[blank]

#### **8. Obtaining counsel's opinion on reference (O. 31, r. 8)**

The order referring any matter to conveyancing counsel shall be recorded in the books of the court and a copy of such order shall be sent by the court to counsel and shall constitute sufficient authority for him to proceed with the reference.

### **Order 32 – Applications and proceedings in chambers**

#### **1. Mode of making application (O. 32, r. 1)**

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

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

- (1) Issue of a summons by which by which an application in chambers is to made takes place on its sealed, signed and dated by the Registrar.

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

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

- (1) A summons asking only for the extension or abridgement of any period of time may be served on the day before the day specified in the summons for the hearing of the application.
- (2) Except as provided by paragraph (1), and unless the Court otherwise orders or any of these rules otherwise provides
- (a) a summons must be served on every other party not less than two days before the day specified in the summons for the hearing of the application;
  - (b) it must be served within 14 days of its issue; and
  - (c) any evidence relied on in support of the application must be served with the summons.

### **4. Adjournment of hearing (O. 32, r. 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 two clear days' notice to all the other parties on whom the summons was served.

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

- (1) Where any party to a summons fails to attend on the first or any resumed bearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.
- (2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed bearing 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 re-hear the summons.
- (4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

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

The Court may set aside an order made *ex parte*.

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

- (1) A writ of *subpoena ad testificandum* or a writ of *subpoena duces tecum* to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the Registry if the party who desires the attendance of the witness produces a note from the Judge before whom the proceedings are to be heard authorising the issue of the writ.

### **8. Registrar may administer oaths (O. 32, r. 8)**

The Registrar shall have the authority to administer oaths and take affidavits for the purpose of proceedings in the Supreme Court.

9.

[blank]

**10. Application to make order of Privy Council order of Supreme Court (O. 32, r. 10)**

An application to make an order of the Privy Council an order of the Supreme Court may be made *ex parte* by affidavit to the Registrar.

**11. Jurisdiction of the Registrar (O. 32, r. 11)**

- (1) The Registrar shall have power to transact all such business and exercise all such authority and jurisdiction as under the Ordinance or these rules may be transacted and exercised by a Judge in chambers except in respect of the following matters and proceedings, that is to say—
  - (a) matters relating to criminal proceedings;
  - (b) matters relating to the liberty of the subject;
  - (c) [blank]
  - (d) subject to paragraph (2), Order 51, rule 2 and Order 77, rule 16, proceedings for the grant of an injunction or for the appointment of a receiver;
  - (e) appeals from the Registrar;
  - (f) applications for review of the Registrar's decision on taxation;
  - (g) [blank]
  - (h) Any other matter or proceeding which by any of these rules is required to be heard only by a Judge.
- (2) The Registrar shall have power to grant "an injunction in the terms agreed by the parties to the proceedings in which the injunction is sought.

**12. Reference of matter to Judge (O. 32, r. 12)**

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.

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

- (1) The Judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.
- (2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into chambers.

14.

[blank]

15.

[blank]

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

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.

**17. Notice of filing, etc., of affidavit (O. 32, r. 17)**

Any party—

- (a) filing an affidavit intended to be used by him in any proceedings in chambers under Order 44, or
  - (b) intending to use in any such proceedings any affidavit filed by him in previous proceedings,
- must give notice to every party of the filing or, as the case may be, of his intention to do so.

**18.**

*[blank]*

**19. Disposal of matter in chambers (O. 32, r. 19)**

The Judge may by any judgment or order made in court in any proceedings direct that such matters (if any) in the proceedings as he may specify shall be disposed in chambers.

**20.**

*[blank]*

**21.**

*[blank]*

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

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

## **Order 33 – Place and mode of trial**

**1. Place of trial (O. 33, r. 1)**

Subject to the provisions of these rules and of section 14 of the Ordinance, the place of trial of a cause or matter, or of any question or issue arising therein, shall be determined by the Court.

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

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 alone, or
- (b) a Judge with a jury, or
- (c) *[blank]*
- (d) *[blank]*

- (e) the Registrar, or
- (f) a Referee.

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

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

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

- (1) In every action begun by writ, an order made on the summons for directions shall determine the place and mode of the trial; and any such order may be varied by a subsequent order of the Court made at or before the trial.
- (2) In any such action different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others.
- (2A) In an action for personal injuries, the Court may at any stage of the proceedings and of its own motion make an order for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded and—
  - (a) notwithstanding the provisions of Order 42, rule 5(5), an order so made in the absence of the parties shall be drawn up by the Registrar who shall serve a copy of the Order on every party, and
  - (b) where a party applies within 14 days after service of the order upon him, the Court may confirm or vary the order or set it aside.
- (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.

#### **4A. Split trial: Offer on liability (O. 33, r. 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.

### **5. Trial with jury (O. 33, r. 5)**

- (1) Notice of demand for trial with a jury must be given before the place and mode of the trial is fixed under rule 4.
- (2) The Court may, either of its own motion or on the application of any party, order that any cause or matter, or any issue arising in any cause or matter, be tried by a special jury.
- (3) An application for a special jury under paragraph (2) must be made at the same time as any application under paragraph (1), unless the Court otherwise orders.



6.

*[blank]*

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

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

**Order 34 – Setting down for trial action begun by writ**

**1. Application and interpretation (O. 34, r. 1)**

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

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

- (1) Every order made in an action which provides for trial before a Judge shall, whether the trial is to be with or without a jury and wherever the trial is to take place, fix a period within which the plaintiff is to set down the action for trial.
- (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) Every order which provides for trial before a Judge shall contain an estimate of the length of the trial.

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

- (1) In order to set down for trial an action which is to be tried before a judge, the party setting it down must, subject to any order of the Court to the contrary, deliver to the Registrar, by post or otherwise, a request that the action be set down for trial at the place determined and lodge one bundle 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),
  - (c) any request or order for particulars and the particulars given, and any interrogatories and answers thereto,
  - (d) all orders made in the action except only any order relating only to time.
- (2) The Judge's bundle must be bound up in the proper chronological order, save that voluntary particulars of any pleading and particulars to which Order 18, rule 12(7) applies shall be placed immediately after the pleading to which they relate.
- (3) *[blank]*
- (4) Where a new trial becomes necessary in the case of any action, the procedure for setting down the action for the new trial shall be that specified in the foregoing provisions.

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

**5. Further provisions as to lists (O. 34, r. 5)**

(1) *[blank]*

(2) Where, after an action has been set down for trial—

- (a) an order is made under Order 33, rule 4(1) varying the order determining the place of trial; or
- (b) the place of trial is changed under paragraph (5) of this rule,

the action shall be treated, unless the Court otherwise directs, as having been set down at the new place of trial on the date on which it was first set down for trial elsewhere.

- (3) At any time after an action has been set down for trial and before it is tried, the Court may require the parties to furnish the court or an officer thereof, by personal attendance or otherwise, with such information as may be necessary to show whether the action is ready for trial, and if any party fails to comply with any such requirement, the Court may—
  - (a) of its own motion, on seven days' notice to the parties, direct that the action be removed from the list, or
  - (b) on the application of any party, dismiss the action for want of prosecution or strike out the defence or counterclaim or make such other order as the Court thinks fit.

Where a direction is given under sub-paragraph (a) the Court may subsequently direct the action to be restored to the list on such terms, if any, as it thinks fit.

(4) *[blank]*

(5) Without prejudice to Order 33, rule 4(1) a Judge may, if it appears to him that the action cannot conveniently be tried at the place of trial which has been ordered, change the place of trial to some other permissible place.

(6) The power conferred by paragraph (5) may be exercised by the Court of its own motion or on the application of a party, but before acting of its own motion the Court shall give to every party concerned an opportunity of being heard on the question whether the power should be exercised and for that purpose the Court may cause him to be given notice of a date, time and place at which the question will be considered.

**6.**

*[blank]*

**7.**

*[blank]*

**8. Notification of setting down (O. 34, r. 8)**

- (1) A party to an action who sets it down for trial must, within 24 hours after doing so, notify 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 and take such steps as may be necessary to withdraw the record.
- (3) In performance of the duty imposed by paragraph (2) a plaintiff who gives notice of acceptance of a payment into court in accordance with O. 22, rule 3(1) shall at the time lodge a copy of the notice with the Registrar.

**9. Abatement, etc., of action (O. 34, r. 9)**

- (1) Where after an action has been set down for trial the action becomes abated, or the interest of liability of any party to the action is assigned or transmitted to or devolves on some other person, the attorney 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, who shall cause the appropriate entry to be made 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.

**10. The court bundle (O. 34, r. 10)**

- (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 with the Registrar one bundle for the use of the Judge 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 documents 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) where a direction has been given under Order 25, rule 3(2), 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 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.
- (4) *[blank]*

- (5) For the purposes of this rule, "plaintiff" includes a defendant where an action is proceeding on a counterclaim and "defendant" includes any other party who is entitled under any order of the Court or otherwise to be heard at trial.

### **Order 35 – Proceedings at trial**

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

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

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

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

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

#### **4.**

[blank]

#### **5.**

[blank]

#### **6.**

[blank]

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

- (1) The Judge before whom an action is tried (whether with or without a jury) may give directions—
- (a) as to the party to begin,
  - (b) as to the order of speeches at the trial, and
  - (c) in an action tried without a jury dispensing with opening speeches;
- and, subject to any such directions, the party to begin and the order 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 paragraph (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 make a further speech in reply, but only in relation to that point of law or that authority as the case may be.

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

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

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

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

## **10. Certificate of Registrar (O. 35, r. 10)**

At the conclusion of the trial of any action the Registrar shall make a certificate in which he shall certify—

- (a) the time actually occupied by the trial,
- (b) any order made by the Judge under Order 38, rule 5 or 6,
- (c) every finding of fact by the jury, where the trial was with a jury,
- (d) the judgment given by the Judge, and
- (e) any order made by the Judge as to costs.

**11. List of exhibits (O. 35, r. 11)**

- (1) The associates or clerk of the court in attendance at the trial 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 exhibits 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 associate or clerk shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have a certified 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.

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

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

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

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

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

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

**Order 36 – Trials before, and inquiries by referees and masters****1. Application and interpretation (O. 36, r. 1)**

This Order applies to referees by the Court to a Referee or Arbitrator, pursuant to Part 11 of the Arbitration Ordinance, and "Referee" shall, where the context admits, include an Arbitrator.

**2.**

*[blank]*

**3. Transfer or referees' business (O. 36, r. 3)**

- (1) At any stage before the trial of a cause or matter, any party may apply by summons to the court to transfer the proceedings to be dealt with by a Referee.

- (2) If the Court considers that any cause or matter may more appropriately be dealt with by a Referee, the Court may of its own motion, but subject to any right to trial with a jury, order that the cause or matter, or any question or issue of fact arising therein, shall be tried by a Referee.
- (3) *[blank]*
- (4) No order for the transfer of proceedings shall be made by the Court under this rule unless the parties have either—
  - (a) had an opportunity of being heard on the issue, or
  - (b) consented to such an order.

#### **4. Powers, etc., of referees (O. 36, r. 4)**

- (1) Subject to any directions contained in the order referring any business to a Referee—
  - (a) the Referee shall for the purpose of disposing of any cause or matter (including any interlocutory application therein) or any other business referred to him have the same jurisdiction powers and duties (except the power of committal but including discretion as to costs) as a Judge, exercisable or, as the case may be, to be performed as nearly as circumstances admit in the like cases, in the like manner and subject to the like limitations, and
  - (b) every trial and all other proceedings before a Referee shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before a Judge.
- (2) *[blank]*
- (3) A referee may hold any trial or any other proceeding before him at any place which appears to him to be convenient and may adjourn the proceedings from place to place as he thinks fit.

#### **5.**

*[blank]*

#### **6. Entry of business and application for directions (O. 36, r. 6)**

- (1) An application for directions (including an application for a fixed date of hearing) shall be made by the plaintiff to the Referee to whom the business has been allocated within 14 days of the date of the order transferring the cause or matter.
- (2) If that party does not make an application for directions to the Referee in accordance with paragraph (2) any other interested party may do so or may apply to the Referee—
  - (a) in the case of any cause or matter referred for trial, for an order to strike out the pleadings of the party in default or, where the party in default is the plaintiff or has made a counterclaim, an order to dismiss the action or counterclaim;
  - (b) in the case of any question or issue referred for trial or inquiry and report, to have the matter referred back to the Court.
- (3) Upon application by any party for an order under paragraph (2)(a) the Referee may make the order asked for on such terms as may be just or deal with the application as if it were an application for directions.
- (4) Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires to serve a notice specifying the orders and directions which they desire, and with any other necessary modifications, apply as if any application under this rule were a summons for directions under that order.

7.

*[blank]*

**8. Reference to referee of question of fact for inquiry, etc. (O. 36, r. 8)**

In any cause or matter other than a criminal proceeding by the Crown the Court may, subject to any right to trial with a jury, refer to a Referee for inquiry and report any question or issue of fact arising therein; and, unless the Court otherwise orders, the further consideration of the cause or matter shall stand adjourned until the receipt of the Referee's report.

**9. Report on reference under rule 8 (O. 36, r. 9)**

- (1) The report made by a Referee in pursuance of a reference under rule 8 shall be made to the Court and notice thereof served on the parties to the references.
- (2) The referee may in his report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inference as it thinks fit.
- (3) On the receipt of the Referee's report, the Court may—
  - (a) adopt the report in whole or in part;
  - (b) vary the report;
  - (c) require an explanation from him;
  - (d) remit the whole or any part of the question or issue originally referred to him for further consideration by him or any other Referee; or
  - (e) decide the question or issue originally referred to him on the evidence taken before him, either with or without additional evidence.
- (4) When the report of the Referee has been made, an application to vary the report or remit the whole report or any part of the question or issue originally referred may be made on the hearing by the Court of the further consideration of the cause or matter, after whole or any part of the question or issue originally referred may be made on the hearing by the Court of the further consideration of the cause or matter, after giving not less than four days' notice thereof, and any other application with respect to the report may be made on that hearing without notice.
- (5) Where on a reference under rule 8 the Court orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the Referee's report, the order may continue directions with respect to the proceedings on the receipt of the report, and the foregoing provisions of this rule shall have effect subject to any such directions.

10.

*[blank]*

**11. Trial before, and inquiry by, Registrar (O. 36, r. 11)**

- (1) An order under rule 3 may, with the consent of the parties to the cause or matter, order that the cause or matter, or any question or issue of fact arising therein, be tried before the Registrar and that rule shall effect accordingly.
- (2) Without prejudice to Orders 43 and 44, and subject to the provisions of those Orders, a reference under rule 8 may be made by the Judge to the Registrar instead of a Referee and that rule and rule 9 shall have effect accordingly.



- (3) Rule 4 shall apply in relation to the Registrar, and the conduct of any proceedings before the Registrar at a trial before, or reference to, him under this Order as it applies in relation to a Referee and the conduct of proceedings before a Referee, except that the Registrar shall not have power to make orders of committal or the power conferred on a Referee by rule 4(2).

## **Order 37 – Damages: Assessment after judgment and orders for provisional damages**

### **Part I – Assessment of damages after judgment**

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

- (1) Where judgment is given for damages to be assessed and no provisions 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 65, rule 9, 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 proceedings 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 the proceedings at trial.

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

Where in pursuance of this Order or otherwise damages are assessed by the Registrar, he shall certify the amount of the damages and the certificate shall be filed in the Registry.

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

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

#### **4. Power to order assessment by Referee, etc. (O. 37, r. 4)**

- (1) Where judgment is given for damages to be assessed, the court may—
- (a) order that the assessment of the damages be referred to a Referee, or
  - (b) order that the damages be assessed by the Registrar, or
  - (c) [blank]
  - (d) order that the action shall proceed to trial before a Judge (with or without a jury) as respects the damages.
- (2) [blank]
- (3) 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.

**5. Assessment of values (O. 37, r. 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.

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

**Part II – Orders for provisional damages for personal injuries****7. Application and interpretation (O. 37, r. 7)**

- (1) This part of this Order applies to actions in which section 101A of the Civil Procedure Ordinance (in this Part of this Order referred to as "section 101A") applies.
- (2) In this Part 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 the injured person will not develop the disease or suffer the deterioration referred to in section 101A; and
  - (b) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

**8. Order for provisional damages (O. 37, r. 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—
  - (a) the plaintiff has pleaded a claim for provisional damages, and
  - (b) the Court is satisfied that the action is one to which section 101A applies.
- (2) An order for an award of provisional damages shall specify the disease or type of deterioration 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 which such application may be made.
- (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 disease or type of deterioration and may in respect of each disease or deterioration 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.

**9. Offer to submit to an award (O. 37, r. 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) 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 disease or suffer the deterioration referred to in section 101A and identifying the disease or deterioration in question

- (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) When 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).

#### **10. Application for award of further damages (O. 37, r. 10)**

- (1) This rule applies where the plaintiff, pursuant to an award a 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 three months' written notice to the defendant of his intention to apply for further damages and, if the defendant is to the plaintiffs knowledge insured in respect of the plaintiff's claim, to the insurers.
- (4) The plaintiff must take out a summons for directions as to the future conduct of the action within 21 days after the expiry of the period of notice referred to in paragraph (3).
- (5) On hearing of the summons for directions the Court shall give such directions as may be appropriate for the future conduct of the action including, but not limited to, the disclosure of medical reports and the place, mode and date of the hearing of the application for further damages.
- (6) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the order for the award of provisional damages.
- (7) The provision of Order 29 with regard to the making of interim payments shall, with the necessary modifications, apply where an application is made under this rule.
- (8) The Court may include in an award of further damages simple interest at such rate as it thinks fit on all or any part thereof for all or any part of the period between the date of notification of the plaintiff's intention to apply for further damages and the date of the award.

### **Order 38 – Evidence**

#### **Part I – General rules**

##### **1. General rule: Witnesses to be examined orally (O. 38, r. 1)**

Subject to the provisions of these rules and of the Evidence Ordinance and any other enactment relating to the 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.

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

- (1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks reasonable so to order.
- (2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavit and as to the production of the deponents for cross-examination as the Court thinks

fit but, subject to any such terms and to any subject order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

- (3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

## **2A. Exchange of witness statements (O. 38, r. 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 issue of fact are defined by the pleadings;
  - (c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.
- (2) At times summons for directions in an action commenced by writ the Court may direct every party to serve on the other parties, within 14 weeks (or such other period as the Court may specify) of the hearing of the summons and on such terms as the Court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial.

The Court may give a direction to any party under this paragraph at any other stage of such an action and at any stage of any other cause or matter; Order 3, rule 5(3) shall not apply to any period specified by the Court under this paragraph.

- (3) Directions under paragraphs (2) or (17) may make difference 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) by him that the contents are true to the best of his knowledge and belief;
  - (b) sufficiently identify and 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 resume 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 it relates, no other party may put the statement in evidence at the trial.
- (7) Subject to paragraph (9), where the party serving the statement does call such a witness at the trial—
  - (a) except where the trial is with a jury, the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence in chief of the witness or part of such evidence;

- (b) the party may not without the consent of the other parties or the leave of the court adduce evidence from that witness the substance of which is not included in the statement served, except—
    - (i) where the Court's directions under paragraph (2) or (17) specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues;
    - (ii) in relation to new matters which have arisen since the statement was served on the other party;
  - (c) whether or not the statement or any part of it is referred to during the evidence in chief of the witness, any part 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) *[blank]*
- (10) Where a party fails to comply with a direction for the exchange of statements he shall not be entitled to adduce evidence to which the direction related without the leave of the Court.
- (11) Where a party serves a witness statement under this rule, no other party may make use of that statement for any purpose other than the purpose of the proceedings in which it was served—
- (a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or
  - (b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7)(a) or otherwise).
- (12) Subject to paragraph (13), the Judge shall, if any person so requests during the course of the trial, direct the associate or clerk of the court to certify as open to inspection any witness statement which was ordered to stand as evidence in chief under paragraph (7)(a).
- A request under this paragraph may be made orally or in writing.
- (13) The Judge may refuse to give directions under paragraph (12) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available—
- (a) in the interests of justice or national security;
  - (b) because of the nature of any expert medical evidence in the statement, or
  - (c) for any other sufficient reason.
- (14) Where the associate is directed under paragraph (12) to certify 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 seven days after the conclusion of the trial.

- (16) In this rule—
- (a) any reference in paragraphs (12) to (15) to a witness statement shall in relation to a witness statement of which only part has been ordered to stand as evidence in chief under paragraph (7)(a), be construed as a reference to that part;
  - (b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy.
- (17) The Court shall have power to vary or override any of the provisions of this rule (except paragraphs (1), (8) and (12) to (16)) and to give such alternative directions as it thinks fit.

### **3. Evidence of particulars facts (O. 38, r. 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 driven 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 district, by the production of a specified newspaper which contains a statement of that fact.

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

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

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.

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

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

### **7.**

*[blank]*

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

The foregoing rules of this Order (other than rule 2A) 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.

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

- (1) No deposition taken in any cause or matter shall be received 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 or unable from sickness or other infirmity to attend the trial.
- (2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.
- (3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

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

- (1) Certified copies of writs, records, pleadings and documents filed in the Supreme Court shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.
- (2) Without prejudice to the provisions of any enactment, every document purporting to be sealed with seal of the Supreme Court shall be received in evidence without further proof, and any document producing to be so sealed and to be a copy of a document filed in, or issued out of, the Registry shall be deemed to be a certified copy of that document without further proof unless the contrary is shown.

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

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

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

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

- (1) At any stage in a cause or matter the Court may order any person to attend any proceeding in the cause or matter and produce any document, to be specified or described in 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.

## **Part II – Writs of subpoena**

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

- (1) A writ of *subpoena* must be in Form No. 28, 29 or 30 in Appendix A, whichever is appropriate.
- (2) Issue of a writ of *subpoena* takes place upon its being sealed by the Registrar.
- (3) [blank]
- (4) [blank]

- (5) Before a writ of *subpoena* is issued a *praecipe* 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 attorney and also (if the attorney is the agent of another) the name or firm and business address of his principal.

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

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

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

Where there is a mistake in any person's name or address in a writ of *subpoena*, then if the writ has not been served, the party by whom the writ was issued may have the writ re-sealed in correct form by filing a second *praecipe* under 14(5) indorsed with the words "Amended and re-sealed".

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

A writ of *subpoena* must be served personally and, subject to rule 19, the service shall not be valid unless effected within 12 weeks after the date of issue of the writ and not less than four days or such other period as the Court may fix, before the day on which attendance before the Court is required.

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

Subject to rule 19, a writ of *subpoena* continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

**18A. Production orders (O. 38, r. 18A)**

The Registrar, upon application by any party to a cause or matter, may issue an order under this hand for bringing up before the court any prisoner or person confined in any jail or prison or other place under any sentence, or awaiting trial, or otherwise, to be examined as a witness in any cause or matter before the court.

**19.-34.**

[blank]

## Part IV – Expert evidence

**35. Interpretation (O. 38, r. 35)**

In this part of this Order a reference to a summons for directions includes a reference to any summons or application to which, under any of these rules, Order 25, rules 2 to 7, apply.

**36. Restriction on adducing expert evidence (O. 38, r. 36)**

- (1) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence—
- (a) has applied to the Court to determine whether a direction should be given under rule 37 or 41 (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 of this Order.

**37. Direction that expert report be disclosed (O. 38, r. 37)**

- (1) Subject to paragraph (2), where in any cause or matter an application is made under rule 36(1) in respect of oral expert evidence, then, unless the Court considers that there are special reasons for 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 further medical report if he proposes to rely at the trial only on the report provided pursuant to Order 18, rule 12(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, "statement of the special damages claimed" has the same meaning in Order 18, rule 12(1C).

**38. Meeting of experts (O. 38, r. 38)**

In any cause or matter the Court may, if it thinks fit, direct that there be a meeting "without prejudice" of such experts within such periods before or after the disclosure of their reports as the Court may specify, for the purpose of identifying those parts of their evidence which are in issue. Where such a meeting takes place the experts may prepare a joint statement indicating those parts of their evidence on which they are, and those on which they are not, in agreement.

**39. Disclosure of part of expert evidence (O. 38, r. 39)**

Where the Court considers that any circumstances rendering it undesirable to give a direction under rule 37 relate to part only of the evidence sought to be adduced, the Court may, if it thinks fit, direct disclosure of the remainder.

**40.**

*[blank]*

**41.**

*[blank]*

**42. Putting in evidence expert report disclosed by another (O. 38, r. 42)**

A party to any cause or matter may put in evidence any expert report disclosed to him by any other party in accordance with this part of this Order.

**43. Time for putting expert report in evidence (O. 38, r. 43)**

Where a party to any cause or matter calls as a witness the maker of a report which has been disclosed in accordance with a direction given under rule 37, the report may be put in evidence at the commencement of its maker's examination in chief or at such other time as the Court may direct.

**44. Revocation and variation of directions (O. 38, r. 44)**

Any direction given under this Part of this Order may on sufficient cause being shown be revoked or varied by a subsequent direction given at or before the trial of the cause or matter.

## **Order 39 – Evidence by deposition: Examiners of the court**

### **1. Power to order deposition to be taken (O. 39, r. 1)**

- (1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order (in Form No. 32 in Appendix A) for the examination on oath before a Judge, an officer or examiner of the court or some other person at any place, of any person.
- (2) An order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit and may contain an order for the production of any document which appears to the Court to be necessary for the purposes of the examination.

### **2. Where person to be examined is out of the jurisdiction (O. 39, r. 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 No. 34 in Appendix A) 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 No. 37 in Appendix A) under that rule appointing a special examiner to take the evidence of that person in that country.
- (2) An application may be made for the appointment as special examiner of a British consul in the country in which the evidence is to be taken or his deputy—
  - (a) if there subsists with respect to that country a Civil Procedure Convention providing for the taking of the evidence of an person in that country for the assistance of proceedings in the Supreme Court or
  - (b) with the consent of the Governor.

### **3. Order for issue or letter or request (O. 39, r. 3)**

- (1) Where an order is made under rule 1 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any person in that country the following provisions of this rule shall apply.
- (2) The party obtaining the order must prepare the letter of request and lodge it in the Registry, and the letter must be in Form No. 35 in Appendix A, with such variations as the order may require.
- (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) Each document lodged under paragraph (2) or (3) must be accompanied by a translation of the document in the official language of the country in which the examination is to be taken 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 unless the official language or one of the official languages of that country is English.
- (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, or his address and of his qualifications for making the translation.

- (6) The party obtaining the order must, when he lodges in Registry the documents mentioned in paragraphs (2) to (5) also file in that office an undertaking signed by him or his attorney to be responsible personally for all expenses incurred by the Governor in respect of the letter or request and, on receiving due notification of the amount of those expenses, to pay that amount to the Accountant General and to produce a receipt for the payment to the Registrar.

### **3A. Examination otherwise than on oath (O. 39, r. 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.

### **4. Enforcing attendance of witness at examination (O. 39, r. 4)**

Where an order has been made under rule 1—

- (a) for the examination of any person before an officer or examiner of the court or some other person (in this rule and rules 5 to 14 referred to as "the examiner") or
- (b) for the cross-examination before 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.

### **5. Refusal of witness, be sworn, etc. (O. 39, r. 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 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 willfully disobeys any order made against him under paragraph 1 is guilty of contempt of court.

### **6. Appointment of time and place for examination (O. 39, r. 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 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.

**7. Examiner to have certain documents (O. 39, r. 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.

**8. Conduct of examination (O. 39, r. 8)**

- (1) Subject to any directions contained in the order for examination—
  - (a) any person ordered to be examined before the examiner may be cross-examined and re-examined, and
  - (b) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in like manner as at the trial of a cause or matter.
- (2) The examiner may put any question to any person examined before him as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.
- (3) The examiner may, if necessary, adjourn the examination from time to time.

**9. Examination of additional witnesses (O. 39, r. 9)**

The examiner may, with the written consent of all parties to the cause or matter, take the examination of any person in addition to those named or provided for in order for examination, and must annex such consent to the original deposition of that person.

**10. Objection to questions (O. 39, r. 10)**

- (1) If any person being examined before the examiner objects to answer any question put to him, or if objection is taken to any such question, that question, the ground for the objection and the answer to any such question to which objection is taken must be set out in the deposition of that person or in a statement annexed thereto.
- (2) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by the Court and not by the examiner, but the examiner must state to the parties his opinion thereon, and the statement of his opinion must be set out in the deposition or in a statement annexed thereto.
- (3) If the Court decides against the person taking the objection it may order him to pay the costs occasioned by his objection.

**11. Taking of depositions (O. 39, r. 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.

## **12. Time taken by examination to be indorsed on depositions (O. 39, r. 12)**

Before sending any deposition to the Registry under rule 11(4) the examiner must indorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees received in respect thereof.

## **13. Special report by examiner (O. 39, r. 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.

## **14. Order for payment of examiner's fees (O. 39, r. 14)**

- (1) If the fees and expenses due to an examiner are not paid he may report that fact to the court, and the Court may direct the Registrar to apply for 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.

## **15. Perpetuation of testimony (O. 39, r. 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.

## **16. Examiners of the court (O. 39, r. 16)**

Any attorney of not less than three years' standing may be appointed by the Chief Justice to act as an examiner of the court for a period not exceeding five years at a time, but the Chief Justice may at any time revoke any such appointment.

## **17. Assignment of examinations to examiners of the court (O. 39, r. 17)**

- (1) The examinations to be taken before examiners of the court shall be assigned to them by the Registrar.
- (2) If an examiner is unable or declines to be take an examination assigned to him, the examination shall be assigned to some other examiner under paragraph (1).

## **18. Obtaining assignment of examiner of the court (O. 39, r. 18)**

- (1) Where the order itself does not identify the examiner to be appointed, the party prosecuting an order for examination before an examiner of the court must take the order or a copy thereof to the Registrar for him to note on it the name of the examiner to whom the examination is to be assigned and must leave a copy of the order with that examiner.

- (2) A copy of the order for examination is sufficient authority for the examiner whose name is indorsed on it to proceed with the examination.

## **19. Fees and expenses of examiners of the court (O. 39, r. 19)**

- (1) The remuneration of the examiners of the court shall be fixed by the Registrar in advance of the examination.
- (2) The party prosecuting the order must also pay all reasonable travelling and other expenses, including charges for the room (other than the examiner's office) where the examination is taken.
- (3) An examiner shall not be obliged to send any deposition to the Registry under rule I 1(4) until all fees and expenses due to him in respect of the examination have been paid.

## **Order 40 – Court expert**

### **1. Appointment of expert to report on certain questions (O. 40, r. 1)**

- (1) In any cause or matter which is to be tried without a jury and in which any question for an expert witness arises the Court may at any time, on the application of any party, appoint an independent expert or, if more than one such question arises, two or more such experts, to inquire and report upon any question of fact or opinion not involving questions of law or of construction.  
  
An expert appointed under this paragraph is referred to in this Order as a "court expert".
- (2) Any court expert in a cause or matter shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court.
- (3) The question to be submitted to the Court expert and the instructions (if any) given to him shall, failing agreement between the parties, be settled by the Court.
- (4) In this rule "expert", in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence.

### **2. Report of Court expert (O. 40, r. 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 attorneys.
- (2) The Court may direct the court expert to make a further or supplemental report.
- (3) Any part of a court expert's report which is not accepted by all the parties to the cause or matter in which it is made shall be treated as information furnished to the court and be given such weight as the Court thinks fit.

### **3. Experiments and tests (O. 40, r. 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 of their attorneys and shall, if possible, make an arrangement with them as to the expenses involved, the persons to attend and other relevant matters; and if the parties are unable to agree on any of those matters it shall be settled by the Court.

**4. Cross-examination of court expert (O. 40, r. 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 the Registrar or an examiner at such time and place as may be specified in the order.

**5. Remuneration of Court expert (O. 40, r. 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 the Registrar or an examiner.
- (2) Without prejudice to any 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.

**6. Calling of expert witness (O. 40, r. 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**

**1. Form of affidavit (O. 41, r. 1)**

- (1) Subject to paragraph (2) and (3) every affidavit sworn in a cause or matter must be entitled in that cause or matter.
- (2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words "and other matters", and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.
- (3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words "and others", and similarly with respect to defendants.
- (4) Every affidavit must be expressed in the first person and, unless the Court otherwise directs, 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.

In the case of a deponent who is giving evidence in a professional, business or other occupational capacity the affidavit may, instead of stating the deponent's place or residence, state the address at which he works, the position he holds and the name of his firm or employer, if any.

- (5) In every affidavit whether or not both sides of the paper are used, the printed, written or typed sides of the paper must be numbered consecutively.
- (6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

- (7) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.
- (8) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person and whom it is sworn.

## **2. Affidavit by two or more deponents (O. 41, r. 2)**

Where an affidavit is made by two or more deponents, the names of the persons making the affidavit must be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents.

## **3. Affidavit by illiterate or blind person (O. 41, r. 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.

## **4. Use of detective affidavit (O. 41, r. 4)**

An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

## **5. Contents of affidavit (O. 41, r. 5)**

- (1) Subject to—
  - (a) Order 14, rule 2(2) and 4(2);
  - (b) Order 86, rule 2(1) and 4(1A);
  - (c) Order 88, rule 5(2A);
  - (d) Order 113, rule 3;
  - (e) paragraph (2) of this rule, and
  - (f) 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.

## **6. Scandalous, etc., matter in affidavit (O. 41, r. 6)**

The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

## **7. Alterations in affidavit (O. 41, r. 7)**

- (1) An affidavit which has in the jurat or body thereof any interlineations, 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 initialed 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 initialed them.

- (2) Where an affidavit is sworn at the Registry, the official stamp of that office may be substituted for the signature or initials required by this rule.

#### **8. Affidavit not to be sworn before attorney of party, etc. (O. 41, r. 8)**

No affidavit shall be sufficient if sworn before the attorney of the party on whose behalf the affidavit is to be used or before any agent, partner or clerk of that attorney.

#### **9. Filing of affidavits (O. 41, r. 9)**

- (1) Every affidavit used in a cause or matter proceeding in the court must be filed in the Registry.

(2)-(4) *[blank]*

- (5) 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 tiled or used without the leave of the Court.

#### **10. Use of original affidavit (O. 41, r. 10)**

- (1) An original affidavit may be used with the leave of the Court, notwithstanding that it has not been filed in accordance with rule 9.

(2) *[blank]*

- (3) Where an original affidavit is used without having been filed then, unless the party whose affidavit it is undertakes to file it, he must immediately after it is used leave it with the Registrar for filing.

- (4) Where an affidavit has been filed, a copy thereof, sealed with the Court seal, may be used in any proceedings.

#### **11. Document to be used in conjunction with affidavit to be exhibited to it (O. 41, r. 11)**

- (1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit.

- (2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.

The certificate must be entitled in the same matter as the affidavit and rule 1(1), (2) and (3) shall apply accordingly.

#### **12. Affidavit taken in Commonwealth country admissible without proof of seal, etc. (O. 41, r. 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 any part of the Commonwealth in testimony of an affidavit being taken before it or him in that part 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

### 1. Form of judgment, etc. (O. 42, r. 1)

- (1) If, in the case of any judgment, a form thereof is prescribed by Appendix A the judgment must be in that form.
- (2) The party entering any judgment shall be entitled to have recited therein a statement of manner in which, and the place at which, the writ or other originating process by which the cause or matter in question was begun was served.
- (3) Any order must be signed by the Judge, Referee or Registrar by whom it was made and must be sealed.
- (4) Notwithstanding paragraph 3, where the person who made any order is absent from the Islands, or otherwise unable to sign the order, the Registrar, or any person for the time being acting as Registrar, having satisfied himself that it represents the order in fact made, may sign it.

### 1A. Judgment in favour or reversioner for detention of goods (O. 42, r. 1A)

Where a claim relating to the detention of goods is made by a partial owner whose right of action is not founded on a possessory title, any judgment or order given or made in respect of the claim shall be for the payment of damages only.

In this paragraph "partial owner" means one or two or more persons having interest in the goods, unless he has the written authority of every other such person to sue on the latter's behalf.

### 2. Judgment, etc., requiring act to be done: Time for doing it (O. 42, r. 2)

- (1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.
- (2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified in the judgment or order by virtue of paragraph (1) but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

### 3. Date from which judgment or order takes effect (O. 42, r. 3)

- (1) Subject to the provisions of Rule 3A, a judgment or order of the Court or a Referee takes effect from the day of its date.
- (2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court or Referee, as the case may be, 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.

### 3A. Judgment against a State (O. 42, r. 3a)

- (1) Where a judgment on failure to acknowledge service has been entered against a State, as defined in section 14 of the State Immunity Act 1978 as extended to the Turks and Caicos Islands, the judgment shall not take effect until two months after service on the State of—
  - (a) a copy of the judgment, and
  - (b) a copy of the affidavit in support of the application for leave to enter judgment, unless one has already been served pursuant to a direction under Order 13, rule 7A(3).

#### 4. Orders required to be drawn up (O. 42, r. 4)

- (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 authorized 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
  - (c) which neither imposes any special terms nor includes any special directions other than a direction as to costs,  
*[Please note: numbering as in original.]*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 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 an attorney.

#### 5. Drawing up and entry of judgments and orders (O. 42, r. 5)

- (1) Where a judgment given in a cause or matter is presented for entry in accordance with this rule at the appropriate office, it shall be entered by the Registrar in the book kept for the purpose, to be called the judgment book, and the Registrar keep an alphabetical index thereof.
- (2) The party seeking to have such a judgment entered must draw up the judgment and present it to the Registrar for signature by the Judge or other person making it and for entry.
- (3) A party presenting a judgment for entry must—
  - a) if he the plaintiff, produce the original of the writ or other originating process by which the cause or matter in question was begun;
  - b) produce any certificate, order or other document needed to satisfy the Registrar that he is entitled to have the judgment entered.
- (4) On entering any such judgment the Registrar shall file the judgment and return a duplicate thereof to the party who presented it for entry.
- (5) Every order required to be drawn up must be drawn up by the party having conduct of the summons, notice or other document in respect of which the order was made and if that party fails to draw up the order within seven days after it is made any other party affected by the order may draw it up.
- (6) The order referred to in paragraph (5) must, when drawn up, be produced at the Registry, together with a copy thereof, and when signed by the Judge or other person making it, the order, sealed with the seal of the Court, shall be returned to the party producing it and the copy shall be lodged in the Registry.

**5A. Consent judgments and orders (O. 42, r. 5A)**

- (1) Subject to paragraphs (2), (3), (4) and (5), where all the parties to a cause or matter are agreed upon the terms in which a judgment should be given, or an order should be made, a judgment or order in such terms may be given effect as a judgment or order of the Court by the procedure provided in rule 5.
- (2) This rule applies to any judgment or order which consists of one or more of the following—
  - (a) any judgment or order for—
    - (i) the payment of a liquidated sum, or damages to be assessed, or the value of goods to be assessed;
    - (ii) the delivery up of goods, with or without the option of paying the value of the goods to be assessed, or agreed value;
    - (iii) the possession of land where the claim does not relate to a dwelling house;
  - (b) any order for—
    - (i) the dismissal, discontinuance or withdrawal of any proceedings, wholly or in part;
    - (ii) the stay of proceedings, either unconditionally or upon conditions as to the payment of money;
    - (iii) the stay of proceedings upon terms which are scheduled to the other but which are not otherwise part of it (a "Tomlin order");
    - (iv) the stay of enforcement of a judgment, either unconditionally or upon condition that the money due under the judgment is paid by installments specified in the order;
    - (v) the setting aside of a judgment in default;
    - (vi) the transfer of any proceedings to the Magistrate's Court;
    - (vii) the payment out of money in court;
    - (viii) the discharge from liability of any party;
    - (ix) the payment, taxation or waiver of costs, or such other provision for costs as may be agreed;
  - (c) any order, to be included in a judgment or order to which the preceding sub-paragraphs apply, for—
    - (i) the extension of the period required for the service or filing of any pleading or other document;
    - (ii) the withdrawal of the record;
    - (iii) liberty to apply, or to restore.
- (3) Before any judgment, or order to which this rule applies may be entered, or sealed, it must be drawn up in the terms agreed and expressed as being "By Consent" and it must be signed by each of the parties or by their attorneys.
- (4) *[blank]*
- (5) This rule shall not apply to any judgment or order in proceedings in which any of the parties is a person under disability.

## **Order 43 – Accounts and inquiries**

### **1. Summary order for account (O. 43, r. 1)**

- (1) Where a writ is indorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has acknowledged service of the writ or after the time limited for acknowledging service, apply for an order under this rule.
- (1A) A defendant to an action begun by writ who has served a counter-claim, which includes a claim for an account or a claim which necessarily involves taking an account, on—
  - (a) the plaintiff, or
  - (b) any other party, or
  - (c) any person who becomes a party by virtue of such servicemay 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 hearing of the application, the Court may, unless satisfied 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.

### **2. Court may direct taking of accounts, etc. (O. 43, r. 2)**

- (1) The Court may, on an application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.
- (2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

### **3. Directions as to manner of taking account or making inquiry (O. 43, r. 3)**

- (1) Where the Court orders an account to be taken or inquiry to be made it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched or the inquiry is to be made.
- (2) Without prejudice to the generality of paragraph (1) the Court may direct that in taking an account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

### **4. Account to be made, verified etc. (O. 43, r. 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 Court and must at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

**5. Notice to be given of alleged omissions, etc., in account (O. 43, r. 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.

**6. Allowances (O. 43, r. 6)**

In taking any account directed by any judgment or order all just allowances shall be made without any direction to that effect.

**7. Delay in prosecution of accounts, etc. (O. 43, r. 7)**

- (1) 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.
- (2) The Court may direct any party to take over the conduct of the proceedings in question and to carry out any directions made by an order under this rule.

**8. Distribution of fund before all persons entitled are ascertained (O. 43, r. 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.

**9. Guardian's accounts (O. 43, r. 9)**

The accounts of a person appointed guardian of a minor's estate must be verified and passed in such manner as the Court may direct.

**Order 44 – Proceedings under judgments and orders: Chancery jurisdiction****1. Application to orders (O. 44, r. 1)**

In this order references to a judgment include references to an order.

**2. Service of notice of judgment on person not a party (O. 44, r. 2)**

- (1) Where in an action for—
  - (a) the administration of the estate of a deceased person, or
  - (b) the execution of a trust, or
  - (c) the sale of any property

the Court gives a judgment or makes a direction which affects persons not parties to the action, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he had originally been a party to the action.

- (2) If it appears that it is not practicable to serve notice of a judgment on a person directed to be served, the Court may dispense with service and may also order that such person be bound by the judgment.
- (2A) Order 6, rule 7(3) and (5) shall apply in relation to a notice of judgment under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.
- (3) Every notice of a judgment for service under this rule must be indorsed with a memorandum in Form No. 52A in Appendix A and accompanied by a form of acknowledgment of service in Form No. 15 in Appendix A with such modifications as may be appropriate and the copy of the notice to be served shall be a sealed copy.
- (4) A person served with notice of a judgment may, within one month after service of the notice on him, and after acknowledging service apply to the Court to discharge, vary or add to the judgment.
- (5) A person served with notice of a judgment may, after acknowledging service of the notice, attend the proceedings under the judgment.
- (6) Order 12, rules 1 to 4, shall apply in relation to the acknowledgment of service of a notice of judgment as if the judgment were a writ, the person by whom the notice is served were the plaintiff and the person on whom it is served were a defendant.

### **3. Directions by the Court (O. 44, r. 3)**

- (1) Where a judgment given in a cause or matter in the exercise of the court's Chancery jurisdiction contains directions which make it necessary to proceed in chambers under the judgment, the Court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to—
  - (a) the manner in which any account or inquiry is to be prosecuted,
  - (b) the evidence to be adduced in support thereof,
  - (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft,
  - (d) without prejudice to Order 15, rule 17, the parties required to attend all or any part of the proceedings.
  - (e) the representation by the same attorneys of parties who constitute a class and by different attorneys of parties who ought to be separately represented and
  - (f) the time within which each proceeding is to be taken, and may fix a day or days for the further attendance of the parties.
- (2) The Court may revoke or vary any directions given under this rule.

### **4. Application of rules 5 to 8 (O. 44. r. 4)**

Rules 5 to 8 apply—

- (a) where in proceedings for the administration under the direction of the court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other ascertained claimants to be made, and
- (b) where in proceedings for the execution under the direction of the court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs an account of debts or other liabilities to be taken or any inquiry to be made.

**5. Advertisements for creditors and other claimants (O. 44. r. 5)**

The Court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

**6. Examination of claims (O. 44, r. 6)**

- (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—
  - (a) examine the claims of persons claiming to be creditors of the estate,
  - (b) determine, so far as he is able, to which of such claims the estate is liable, and
  - (c) at least seven clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them and listing all the other debts of the deceased which are or may still be due.
- (2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—
  - (a) examine the claims,
  - (b) determine, so far as he is able, which of them are valid, and
  - (c) at least seven clear days before the time appointed for adjudicating on claims, make an affidavit stating his findings and his reasons for them.
- (3) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this rule.

**7. Adjudication on claims (O. 44, r. 7)**

For the purpose of adjudicating on claims the court may—

- (a) direct any claim to be investigated in such manner as it thinks fit,
- (b) require any claimant to attend and prove his claim or to furnish further particulars or evidence of it, or
- (c) allow any claim after or without proof thereof.

**8. Notice of adjudication (O. 44, r. 8)**

The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him of that fact.

**9. Interest on debts (O. 44, r. 9)**

- (1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—
  - (a) on any such debt as carries interest, at the rate it carries, and
  - (b) on any other debt, from the date of the judgment at the rate, if any, payable on judgment debts at that date.



- (2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt in accordance with paragraph (1)(b) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.
- (3) For the purpose of this rule "debt" includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

#### 10. Interest on legacies (O. 44, r. 10)

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 court, interest shall 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.

#### 11. Registrar's order (O. 44, r. 11)

- (1) Subject to Order 37, rule 2, the result of proceedings before the Registrar under a judgment shall be stated in the form of an order.
- (2) Subject to any direction of the Registrar under paragraph (3) or otherwise an order under this rule shall have effect as a final order disposing of the cause or matter in which it is made.
- (3) An order under this rule shall contain such directions as the Registrar thinks fit as to the further consideration, either in court or in chambers, of the cause or matter in which it is made.
- (4) Every order made under this rule shall have immediate binding effect on the parties to the cause or matter in which it is made and copies of the order shall be served on such of the parties as the Registrar may direct.

#### 12. Appeal against registrar's order (O. 44, r. 12)

Rule 1 of Order 58 shall apply to an order made pursuant to rule 11 above, save that—

- (a) except where paragraph (e) below applies, the notice referred to in Order 58, rule 1(2) shall state the grounds of the appeal, and must be issued within 14 days after the order is made;
- (b) the hearing shall be in open court unless the Court directs otherwise;
- (c) no fresh evidence (other than evidence as to matters which have occurred after the date of the Registrar's order) shall be admitted except on special grounds;
- (d) the judge bearing the appeal shall have the same power to draw in inferences of fact as has the Court of Appeal;
- (e) if the order is to be acted on by the Accountant General or is an order passing a receiver's account, notice of appeal must be issued not later than two clear days after the making of the order and, where the order is to be acted on by the Accountant General, a copy of it must be served on the Accountant General as soon as practicable after it is made.

## Order 45 – Enforcement of judgments and orders: General

### 1. Enforcement of judgment, etc., for payment of money (O. 45, r. 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) *[blank]*
  - (d) the appointment of a receiver;
  - (e) in a case in which rule 5 applies, an order of committal;
  - (f) in such a case, writ of sequestration.
- (2) Subject to the provisions of these rules, a judgment or order for the payment of money into court may be enforced by one or more of the following means, that is to say—
  - (a) the appointment of a receiver,
  - (b) in a case in which rule 5 applies, an order of committal;
  - (c) in such a case, writ of sequestration.
- (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 power of a court under the Civil Procedure Ordinance, section 154 and 155, or the Debtor's Ordinance, to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him, or to any enactments relating to bankruptcy or the winding up of companies.
- (4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

### 2.

*[blank]*

### 3. Enforcement of judgment for possession of land (O. 45, r. 3)

- (1) Subject to the provisions of these rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say—
  - (a) writ of possession;
  - (b) in a case in which rule 5 applies, an order of committal;
  - (c) in such a case, writ of sequestration.
- (2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the court.
- (3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the court for any relief to which he may be entitled.
- (4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

#### 4. Enforcement of judgment for delivery of goods (O. 45, r. 4)

- (1) Subject to the provisions of these rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say—
  - (a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as a "writ of specific delivery").
  - (b) in a case in which rule 5 applies, an order of committal.
  - (c) in such a case, writ of sequestration.
- (2) Subject to the provisions of these rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say—
  - (a) writ of delivery to recover the goods or their assessed value;
  - (b) by order of the Court, writ of specific delivery;
  - (c) in a case in which rule 5 applies, writ of sequestration.

An application for an order under sub-paragraph (b) shall be made by summons, which must, notwithstanding Order 65, rule 9, be served on the defendant against whom the judgment or order sought to be enforced was given or made.

- (3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.
- (4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

#### 5. Enforcement of judgment to do or abstain from doing any act (O. 45. r. 5)

- (1) Where—
  - (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, rule 5, or
  - (b) a person disobeys a judgment or order requiring him to abstain from doing an act,then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say—
  - (i) with the leave of the Court, a writ of sequestration against the property of that person:
  - (ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;
  - (iii) subject to the provisions of the Debtors Ordinance, an order of committal against that person or, where that person is a body corporate, against any such officer.
- (2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under rule 6.
- (3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall

not be enforced by order of committal under paragraph (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be enforced.

**6. Judgment, etc. requiring act to be done: Order fixing time for doing it (O. 45, r. 6)**

- (1) Notwithstanding that a judgment or Order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, rule 5, have power to make an Order requiring the act to be done within another time, being such time after service of that Order, or such other time, as may be specified therein.
- (2) Where, notwithstanding Order 42, rule 2(1) or by reason of Order 42, rule 2(2) a judgment or Order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have the power subsequently to make an Order requiring the act to be done within such time after service of that Order, or such other time, as may be specified therein.
- (3) An application for an Order under this rule must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the person required to do the act in question.

**7. Service of copy of judgment, etc., prerequisite to enforcement under rule 5 (O. 45, r. 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 6 (3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless—
  - (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question, and
  - (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.
- (3) Subject as aforesaid, an order requiring body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5(1)(ii) or (iii) unless—
  - (a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought, and
  - (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.
- (4) There must be prominently displayed on the front of the copy of an order served under this rule a warning to the person on whom the copy is served that disobedience to the order would be a contempt of court punishable by imprisonment, or (in the case of an order requiring a body corporate to do or abstain from doing an act) punishable by sequestration of the assets of the body corporate and by imprisonment of any individual responsible.
- (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, 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 is sought to enforce the order has had notice thereof either—
  - (a) by being present when the order was made, or

- (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.
- (7) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

#### **8. Court may order act to be done at expense of disobedient party (O. 45, r. 8)**

If an order of *mandamus*, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to any other power it may leave, including its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practical, 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.

#### **9. Execution by or against person not being a party (O. 45, r. 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 as if he were a party.

#### **10. Conditional judgment: Waiver (O. 45, r. 10)**

A party entitled under any judgment or order to any relief subject to the fulfillment of any condition who fails to fulfill that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

#### **11. Matters occurring after judgment: Stay of execution, etc. (O. 45, r. 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 be order grant such relief, and on such terms, as it thinks just.

#### **12. Forms of writ (O. 45, r. 12)**

- (1) A writ of seizure and sale must be in such of the Forms Nos. 53 to 63 in Appendix A as is appropriate in the particular case.
- (2) A writ of delivery must be in Form No. 64 or 65 in Appendix A, whichever is appropriate.
- (3) A writ of possession must be in Form No. 66 or 66A in Appendix A whichever is appropriate.
- (4) A writ of sequestration must be in Form No. 67 in Appendix A.

#### **13. Enforcement of judgments and orders for recovery of money, etc. (O. 45, r. 13)**

- (1) Rule 1(1) of this Order, with the omission of sub-paragraphs (e) and (f) thereof, and Order 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 paragraphs (1)(b) and (c) thereof, and Order 47, rule 3(2) shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.
- (3) Rule 4 of this Order, with the omission of paragraph 1(b) and (c) and (2)(c) thereof, and Order 47, rule 3(2) shall apply in relation to a judgment or order that a person do have a return of any goods and to judgment or order that person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

**14.**

*[blank]*

**15. Signing judgment for costs under deemed order (O. 45, r. 15)**

A party entitled to tax his costs by virtue of paragraphs (3), (4), (5) or (6) of Order 62, rule 5 may, if the taxed costs are not paid within four days after taxation, sign judgment for them.

**16. Recording of satisfaction (O. 45, r.16)**

- (1) Every person who receives full satisfaction upon any judgment shall, upon the request of the party against whom judgment was given, notify such satisfaction to the Registrar, who shall enter the same in the judgment book, and any such person neglecting to do so shall be deemed guilty of contempt of court.
- (2) Where any party against whom judgment has been given satisfies the Registrar by affidavit that the judgment has been fully paid, the Registrar shall enter its satisfaction in the judgment book.

## **Order 46 – Writs of execution: General**

**1. Definition (O. 46, r. 1)**

In this Order, unless the context otherwise requires, "writ of execution" includes a writ of seizure and sale, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

**2. When leave to issue any writ of execution is necessary (O. 46, r. 2)**

- (1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases, that is to say:—
  - (a) where six years or more have elapsed since the date of the judgment or order;
  - (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
  - (c) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;
  - (d) where under the judgment or order any person is entitled to relief subject to the fulfillment of any condition which it is alleged has been fulfilled;
  - (e) Where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the court or a sequestrator.

- (2) Paragraph (1) is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.
- (3) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within the 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.

### **3. Leave required for issue of writ in aid of other writ (O. 46, r. 3)**

A writ of execution in aid of any other writ of execution shall not issue without the leave of the court.

### **4. Application for leave to issue writ (O. 46, r. 4)**

- (1) An application for leave to issue a writ of execution may be made *ex parte* unless the Court directs it to be made by summons.
- (2) Such an application must be supported by an affidavit—
  - (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due there under and the amount due there under 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,
  - (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.

### **5. Application for leave to issue writ of sequestration (O. 46, r. 5)**

- (1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration must be made to a Judge by a motion.
- (2) Subject to paragraph (3) the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.
- (3) Without prejudice to its power under Order 65, rule 4, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.
- (4) The Judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 6 but, except in such a case, the application shall be heard in open court.

### **6. Issue of writ of execution (O. 46, r. 6)**

- (1) Issue of a writ of execution takes place on its being sealed by the Registrar.



- (2) Before such a writ is issued a *praecipe* for its issue must be filed.
- (3) The *praecipe* must be signed by or on behalf of the attorney of the person entitled to execution or, if that person is acting in person, by him.
- (4) No such writ shall be sealed unless at the time of the tender thereof for sealing—
  - (a) the person tendering it produces—
    - (i) the judgment or order on which the writ is to issue, or a certified 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) where judgment on failure to acknowledge service has been entered against a State, as defined in section 14 of the State Immunity Act 1978 as extended to the Turks and Caicos Islands, evidence that the State has been served in accordance with Order 42, rule 3A, and that the judgment has taken effect, and
  - (b) the Registrar it is satisfied that the period, if any, specified in the judgment or under for the payment of any money or the doing of any other act there under has expired.
- (5) Every writ of execution shall bear the date of the day on which it is issued.

## 7.

[blank]

## 8. Duration and renewal of writ of execution (O. 46, r. 8)

- (1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.
- (2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any one time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any, as the Court may allow.
- (3) Before a writ the validity of which had been extended under paragraph (2) is executed either the writ must be sealed with the seal of the Court showing the date on which the order extending its validity was made or the applicant for the order must serve a notice (in Form No. 71 in Appendix A) sealed as aforesaid, on the bailiff to whom the writ is directed informing him of the making of the order and the date thereof.
- (4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by the reference to the date on which it was originally delivered to the bailiff.
- (5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3) purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ, or, as the case may be, of the writ referred to in that notice, has been extended under paragraph (2).
- (6) If, during the validity of a writ of execution, an interpleader summons is issued in relation to an execution under that writ, the validity of the writ shall be extended until the expiry of 12 months from the conclusion of the interpleader proceedings.

## 9. Return to writ of execution (O. 46, r. 9)

- (1) Any party at whose instance or against whom a writ of execution was issued may serve a notice on the bailiff to whom the writ was directed requiring him, within such time as may be specified in the



notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.

- (2) If a bailiff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the Court for an order directing the bailiff to comply with notice.

## **Order 47 – Writs of seizure and sale**

### **1. Power to stay execution by writ of seizure and sale (O. 47, r. 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 acknowledge service of the writ or originating summons in the action or did not state in his acknowledgment of service that he intended to apply for a stay of execution under this rule pursuant to Order 13, rule 8.
- (3) An application made by summons must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property 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 four clear days before the return day, be served on the party entitled to enforce the judgment or order.

### **2.**

*[blank]*

### **3. Separate writs to enforce payment of costs (O. 47, r. 3)**

- (1) Where only the payment of money, together with costs to be taxed, is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been taxed, the party entitled to enforce that judgment or order may issue a writ of seizure and sale to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than eight 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.

## Order 48 – Examination of judgment debtor, etc

### 1. Order for examination of judgment debtor (O. 48, r. 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 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 or a Judge 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 served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

### 2. Examination of party liable to satisfy other judgment (O. 48, r. 2)

Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in this order, and that rule shall apply accordingly with the necessary modifications.

### 3. Examiner to make record of debtor's statement (O. 48, r. 3)

The Registrar or Judge 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 or Judge shall sign the statement.

## Order 49 – Garnishee proceedings

### 1. Attachment of debt due to judgment debtor (O. 49, r. 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 a sum of money amounting in value to at least \$500, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as "the garnishee") is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.
- (2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and in the meantime attaching such debt as is mentioned in paragraph (1) or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and costs of the garnishee proceedings.
- (3) [blank]
- (4) An order under this rule shall not require a payment which would reduce below \$1 the amount standing in the name of the judgment debtor in an account with a building society or a credit union.

## 2. Application for order (O. 49, r. 2)

An application for an order under rule 1 must be made *ex parte* supported by an affidavit—

- (a) stating the name and last known address of the judgment debtor,
- (b) identifying the judgment or order to be enforced and stating the amount of such judgment or order and the amount remaining unpaid under it at the time of the application,
- (c) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief, and
- (d) stating, where the garnishee is a bank or other deposit-taking institution having more than one place of business, the name and address of the branch at which the judgment debtor's account is believed to be held and the number of that account or, if it be the case, that all or part of this information is not known to the deponent.

## 3. Service and effect of order to show cause (O. 49, r. 3)

- (1) Unless the Court otherwise directs, an order under rule 1 to show cause must be served—
  - a) on the garnishee personally, at least 15 days before the time appointed thereby for the further consideration of the matter, and
  - b) on the judgment debtor, at least seven days after the order has been served on the garnishee and at least seven days before the time appointed by the order for the further consideration of the matter.
- (2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

## 4. No appearance or dispute of liability by garnishee (O. 49, r. 4)

- (1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may make an order absolute under rule 1 against the garnishee.
- (2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other for the payment of money.

## 5. Dispute of liability by garnishee (O. 49, r. 5)

Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried, without, if it order trial before the Registrar, the need for any consent by the parties.

## 6. Claims of third persons (O. 49, r. 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 his claim with particulars thereof.
- (2) After bearing any person who attends before the Court in compliance with an order under paragraph (1) the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for

determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

7.

*[blank]*

**8. Discharge of garnishee (O. 49, r. 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.

**9. Money in Court (O. 49, r. 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 produce the summons at the office of the Accountant General and leave a copy at the 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 Accountant General

**10. Costs (O. 49, r. 10)**

The cost of any application for an order under rule 1 or 9, and of any proceedings arising there from 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 –**  
*[blank]*

**Order 51 – Receivers: Equitable execution**

**1. Appointment of receiver by way of equitable execution (O. 51, r. 1)**

Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

**2. Registrar may appoint receiver (O. 51, r. 2)**

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.

### 3. Application of rules as to appointment of receiver, etc. (O. 51, r. 3)

An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 30, rule 1, and rules 2 to 6 of that Order shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose.

## Order 52 – Committal

### 1. Committal for contempt of court (O. 52, r. 1)

- (1) The power of the Court to punish for contempt of court may be exercised by an order of committal.
- (2) [blank]
- (3) Where contempt of court is committed in connection with any proceedings in the Supreme Court, then an order of committal may be made by the Chief Justice or a single judge.
- (4) Where by virtue of any enactment the Supreme 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 Supreme Court, have been a contempt of that court, an order of committal may be made by a single judge.

### 2.

[blank]

### 3.

[blank]

### 4. Application to court (O. 52, r. 4)

- (1) An application for an order of committal must be made by motion and be supported by an affidavit.
- (2) Subject to paragraph (3) the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person sought to be committed.
- (3) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

### 5. Saving for power to commit without application for purpose (O. 52, r. 5)

- (1) Nothing in the forgoing provisions of this Order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of court.

### 6. Provisions as to hearing (O. 52, r. 6)

- (1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say—
  - (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of 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 foresaid, the application shall be heard in open Court
- (2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open Court state—
    - (a) the name of that person
    - (b) in general terms the nature of the contempt of Court in respect of which the order of committal is being made, and
    - (c) the length of the period for which he is being committed.
  - (3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the notice of motion under rule 4.
- The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.
- (4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

#### **7. Power to suspend execution of committal order (O. 52, r. 7)**

- (1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.
- (2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

#### **8. Discharge of person committed (O. 52, r. 8)**

- (1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.
- (2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generally of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

#### **9. Saving for other powers (O. 52, r. 9)**

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 enactment in like manner as if he had been guilty of contempt of the Supreme Court, to pay a fine or to give security for his good behavior, 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.

## Order 53 – Applications for judicial review

### 1. Cases appropriate for application for judicial review (O. 53, r. 1)

- (1) An application for—
  - (a) an order of *mandamus*, prohibition or *certiorari*, or
  - (b) an injunction restraining a person from acting in any office in which he is not entitled to act,shall be made by way of an application for judicial review in accordance with the provisions of this Order.
- (2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1)(b)) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to—
  - (a) the nature of the matters in respect of which relief may be granted by way of an order of *mandamus*, prohibition or *certiorari*,
  - (b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and
  - (c) all the circumstances of the case,it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

### 2. Joinder of claims for relief (O. 53, r. 2)

On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

### 3. Grant of leave to apply for judicial review (O. 53, r. 3)

- (1) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with this rule.
- (2) An application for leave must be made *ex parte* to a Judge by filing in the Registry—
  - (a) a notice in Form No. 86A containing a statement of
    - (i) the name and description of the applicant,
    - (ii) the relief sought and the grounds upon which it is sought,
    - (iii) the name and address of the applicant's attorneys (if any), and
  - (b) an affidavit verifying the facts relied on.
- (3) The Judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open court; in any case, the Registrar shall serve a copy of the Judge's order on the applicant.
- (4) [blank]
- (5) [blank]
- (6) Without prejudice to its powers under Order 20, rule 8, the Court bearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.

- (7) The Court shall not grant leave unless it considers that the applicant has sufficient interest in the matter to which the application relates.
- (8) Where leave is sought to apply for an order of *certiorari* to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.
- (9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.
- (10) Where leave to apply for judicial review is granted, then—
  - (a) if the relief sought is an order of prohibition or *certiorari* and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders,
  - (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

#### **4. Delay in applying for relief (O. 53, r. 4)**

- (1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.
- (2) Where the relief sought is an order of *certiorari* in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.
- (3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

#### **5. Mode of applying for judicial review (O. 53, r. 5)**

- (1) [blank]
- (2) The application shall be made by originating motion to a judge sitting in open court, unless the Court directs that it shall be made by originating summons to a Judge in chambers;  
Any such direction shall be without prejudice to the Judge's powers under Order 32, rule 13.
- (3) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a Magistrate's Court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the Clerk or Registrar of the Court and, where any objection to the conduct of the Magistrate is to be made, on the Magistrate.
- (4) Unless the Court granting leave has otherwise directed, there must be at least 10 days between service of the notice of motion or summons and the bearing.
- (5) A motion must be entered for hearing within 14 days after the grant of leave.
- (6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion or summons must be filed before the motion or summons is entered for bearing and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motions or summons.
- (7) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may



adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

#### **6. Statements and affidavit (O. 53, r. 6)**

- (1) Copies of the statement in support of an application for leave under rule 3 must be served with the notice of motion or summons and, subject to paragraph (2) no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.
- (2) The Court may on hearing of the motion or summons allow the applicant to amend his statement, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used by him.
- (3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention of any proposed amendment to every other party.
- (4) Any respondent who intends to use an affidavit at the hearing shall file it in the Registry and give notice thereof to the applicant as soon as practicable and in any event, unless the Court otherwise directs, within 56 days after service upon him of the documents required to be served by paragraph (1).
- (5) Each party to the application must supply to every other party on demand copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

#### **7. Claim for damages (O. 53, ar. 7)**

- (1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if—
  - (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and
  - (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.
- (2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

#### **8. Application for discovery, interrogatories, cross-examination, etc. (O. 53, r. 8)**

- (1) Any interlocutory application in proceedings on an application for judicial review may be made to any judge.

In this paragraph "interlocutory application" includes an application for an Order 24 or 26 or Order 38, rule 2 (3) or for an order dismissing the proceedings by consent of the parties.
- (2) [blank]
- (3) This rule is without prejudice to any statutory provision or rule of law restricting the making an order against the Crown.

#### **9. Hearing of application for judicial review (O. 53, r. 9)**

- (1) On the hearing of any motion or summons under rule 5, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to be a proper person to be heard, shall be heard notwithstanding that he has not been served with notice of the motion or the summons.
- (2) Where the relief sought is or includes an order of *certiorari* to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant,

commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has lodged in the Registry a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons.

- (3) Where an order of *certiorari* is made in any such case as is referred to in paragraph (2) the order shall, subject to paragraph (4) direct that the proceedings shall be quashed forthwith on their removal into Supreme Court.
- (4) Where the relief sought is an order of *certiorari* and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.
- (5) Where relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action, begun by writ by the applicant at the time of making his application, the Court may, instead of refusing application, order the proceedings to continue as if they had been begun by writ; and Order 28, rule 8, shall apply as if, in the case of an application made by motion, it had been made by summons.

#### 10. Saving for person acting in obedience to *mandamus* (O. 53, r. 10)

No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of *mandamus*.

### Order 54 – Applications for writ of *habeas corpus*

#### 1. Application for writ of *habeas corpus ad subjiciendum* (O. 54, r. 1)

- (1) Subject to rule 11, an application for a writ of *habeas corpus ad subjiciendum* shall be made to a judge in Court, except that—
  - (a) [blank]
  - (b) It may be made to a judge otherwise than in court at any time when no judge is sitting in court, and
  - (c) Any application on behalf of a minor 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.

#### 2. Power of court to whom *ex parte* application made (O. 54, r. 2)

- (1) The Court 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 to a judge in court; or
  - (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 may direct, and, unless the Court otherwise directs, there must be at least eight clear days between the service of the summons or notice and the date named therein for the bearing of the application.

### **3. Copies of affidavits to be supplied (O. 54, r. 3)**

Every party to an application under rule 1 must supply to every other party on demand copies of the affidavits which he proposes to use at the hearing of the application.

### **4. Power to order release of person restrained (O. 54, r. 4)**

Without prejudice to rule 2(1), the Judge hearing an application for a writ of *habeas corpus ad subjiciendum* may in his discretion order that the person restrained be released, and such order shall be a sufficient warrant to the Prisons Superintendent or any governor of a prison, constable or other person for the release of the person under restraint.

### **5. Directions as to return to writ (O. 54, r. 5)**

Where a writ of *habeas corpus ad subjiciendum* is ordered to issue, the Court by whom the order is made shall give directions as to the Court before whom, and the date on which, the writ is returnable.

### **6. Service of writ and notice (O. 54, r. 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 the Prisons Superintendent or a governor 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 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 No. 90 in Appendix A) stating the Court before whom and the date on which the person restrained is to be sought and that in default of obedience proceedings for committal of the party disobeying will be taken.

### **7. Return to the writ (O. 54, r. 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 before whom the writ is returnable.

### **8. Procedure at hearing of writ (O. 54, r. 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 Crown, and the one counsel for the person restrained in reply.

**9. Bringing up prisoner to give evidence, etc. (O. 54, r. 9)**

- (1) An application for a writ of *habeas corpus ad testificandum* or of *habeas corpus ad respondendum* must be made on affidavit to a judge in chambers.
- (2) An application for an order to bring up a prisoner, otherwise than by writ of *habeas corpus*, to give evidence in any cause or matter, civil or criminal, before any court, tribunal or justice, must be made on affidavit to a judge in chambers.

**10. Form of writ (O. 54, r. 10)**

A writ of *habeas corpus* must be in Form No. 89, 91 or 92 in Appendix A, whichever is appropriate.

**Order 55 – Appeals to Supreme Court from court, tribunal or person: General****1. Application (O. 55, r.1)**

- (1) Subject to paragraphs (2), (3) and (4), this Order shall apply to every appeal which by or under any enactment lies to the Supreme Court from any court, tribunal or person.
- (2) This Order shall not apply to an appeal under Part XIV of the Magistrate's Court Ordinance (Appeals in Criminal Cases).
- (3) [blank]
- (4) The following rules of this Order shall, in relation to an appeal to which this Order applies, have effect subject to any provision made in relation to that appeal by any other provision of these rules or by or under any enactment.
- (5) In this Order references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary court of law.

**2. Court to hear appeal (O. 55, r. 2)**

Except where it is otherwise provided by these rules or by or under any enactment, an appeal to which this Order applies shall be heard and determined by a single judge.

**3. Bringing of appeal (O. 55, r. 3)**

- (1) An appeal to which this Order applies shall be by way of rehearing and must be brought by originating motion.
- (2) Every notice of the motion by which such an appeal is brought must state the grounds of the appeal and, if the appeal is against a judgment, order or other decision of a court, must state whether the appeal is against the whole or a part of that decision and, if against a part only, must specify the part.
- (3) The bringing of such an appeal shall not operate as a stay of proceedings in the judgment, determination or other decisions against which the appeal is brought unless the Court by which the appeal is to be heard or the Court, tribunal or person by which or by whom the decision was given so orders.

**4. Service of notice of motion and entry of appeal (O. 55, r. 4)**

- (1) The persons to be served with notice of the motion by which an appeal to which this Order applies is brought are the following:—
  - (a) if the appeal is against a judgment, order or other decision of a court, the Registrar or clerk of the court and any party to the proceedings in which the decision was given who is directly affected by the appeal;
  - (b) if the appeal is against an order, determination award or other decision of a tribunal, Minister, government board or department or other person, the chairman of the tribunal, Minister, government board or department or person, as the case may be, and every party to the proceedings (other than the appellant) in which the decision appealed against was given.
- (2) The notice must be served, and the appeal entered, within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.
- (3) In the case of an appeal against a judgment, order or decision of a court, the period specified in paragraph (2) shall be calculated from the date of the judgment or order or the date on which the decision was given.
- (4) In the case of an appeal against an order, determination, award or other decision of a tribunal, Minister, government board or department or other, the period specified in paragraph (2) shall be calculated from the date on which notice of the decision, or, in a case where a statement of the reasons for a decision was given later than such notice, on which such a statement was given to the appellant by the person who made the decision or by a person authorized in that behalf to do so.

**5. Date of hearing of appeal (O. 55, r. 5)**

Unless the Court having jurisdiction to determine the appeal otherwise directs, an appeal to which this Order applies shall not be heard sooner than 21 days after service of notice of the motion by which the appeal is brought.

**6. Amendment of grounds of appeal, etc. (O. 55, r. 6)**

- (1) The notice of the motion by which an appeal to which this Order applies is brought may be amended by the appellant, without leave, by supplementary notice served not less than seven days before the day appointed for the hearing of the appeal, on each of the persons on whom the notice to be amended was served.
- (2) Within two days after service of a supplementary notice under paragraph (1) the appellant must lodge two copies of the notice in the office in which the appeal is entered.
- (3) Except with the leave of the Court hearing any such appeal, no grounds other than those stated in the notice of the motion by which the appeal is brought or any supplementary notice under paragraph (1) may be relied upon by the appellant at the hearing; but that Court may amend the grounds so stated or make any order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.
- (4) The foregoing provisions of this rule are without prejudice to the powers of the court under Order 20.

**7. Powers of Court hearing appeal (O. 55, r. 7)**

- (1) In addition to the power conferred by rule 6(3) the Court hearing an appeal to which this Order applies shall have the powers conferred by the following provisions of this rule.

- (2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in court, by affidavit, by deposition taken before an examiner or in some other manner.
- (3) The Court shall have power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose.
- (4) It shall be the duty of the appellant to apply to the judge or other person presiding at the proceedings in which the decision appealed against was given for a signed copy of any note made by him of the proceedings and to furnish that copy for the use of the court; and in default of production of such a note, or if such note is incomplete, in addition to such note, the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient.

Except where the Court otherwise directs, an affidavit or note by a person present at the proceedings shall not be used in evidence under this paragraph unless it was previously submitted to the person presiding at the proceedings for his comments.

- (5) The Court may give any judgment or decision or make any order which ought to have been given or made by the court, tribunal or person and make such further or other order as the case may require or may remit the matter with the opinion of the Court for rehearing and determination by it or him.
- (6) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.
- (7) The Court shall not be bound to allow the appeal on the ground merely of misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court substantial wrong or miscarriage has been thereby occasioned.

## **8. Right of Minister, etc., to appear and be heard (O. 55, r. 8)**

Where an appeal to which this Order applies is against an order, determination or other decision of a Minister or government board or department, the Minister or department, as the case may be, shall be entitled to appear and be heard in the proceedings on the appeal.

### **Order 56-57 – [blank]**

## **Order 58 – Appeals from the Registrar**

### **1. Appeals from certain decision of the Registrar, etc. to judge in chambers (O. 58, r. 1)**

- (1) An appeal shall lie to a judge in chambers from any judgment, order or decision of the Registrar.
- (2) The appeal shall be brought by serving on every other part to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice.
- (3) Unless the Court otherwise orders, the notice must be issued within five days after the judgment, order or decision appealed against was given or made and served not less than two 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.

### **2.-6. [blank]**

**7. Appeal from judgment, etc., of Judge in interpleader proceedings (O. 58, r. 7)**

- (1) Any judgment, order or decision of a Judge given or made in summarily determining under Order 17, rule 5(2)(b) or (c) any question at issue between claimants in interpleader proceedings shall be final and conclusive against the claimants and all persons claiming under them unless leave to appeal to the Court of Appeal is given by the judge or the Court of Appeal.
- (2) Where an interpleader issue is tried by a Judge (with or without a jury) an appeal shall lie to the Court of Appeal, without the leave of the Judge or that Court, from any judgment, order or decision given or made by the Judge on the trial.
- (3) The time within which notice of appeal under this rule must be served shall be the same as in the case of an appeal from an interlocutory order.

**Order 59-61 –  
[blank]**

**Order 62 – Costs**

**Part I – Preliminary**

**1 Interpretation (O. 62, r. 1)**

- (1) Except where it is otherwise expressly provided, or the context otherwise requires, the following provision of this rule shall apply for the interpretation of this Order.
- (2) "**party**", in relation to a cause or matter, includes a party who is treated as being a party to that cause or matter by virtue of Order 4 rule 9(2);  
  

"**patient**" means a person whom by reason of mental disorder within the meaning of Part vm of the Mental Health Act 1959 as applied to the Turks and Caicos Islands, is incapable of managing and administering his property and affairs,

"**the standard basis**" and "the indemnity basis" have the meanings assigned to them by rule 12(1) and (2) respectively,

"**taxed costs**" means cost taxed in accordance with this Order,
- (3) 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 real or personal, 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.
- (4) References to cost shall be contrasted as including references to fees, charges, disbursements, expenses and remuneration and, in relation to proceedings (including taxation proceedings), also include references to cost of or incidental to those proceedings.

**1. Application (O. 62, r. 2)**

- (1) [blank]
- (2) This Order shall have effect, with such modifications as may be necessary, where by virtue of any Ordinance the costs of any proceedings before an arbitrator or umpire or before a tribunal or other

body constituted by or under any Ordinance, not being proceedings in the Supreme Court, are taxable in the Supreme Court.

- (3) *[blank]*
- (4) The powers and discretion of the Court in respect of cost shall be exercised subject to and in accordance with this Order.

## Part II – Entitlement to costs

### 2. General principles (O. 62, r. 3)

- (1) This rule shall have effect subject only to the following provisions of this Order.
- (2) No party to any proceedings shall be entitled to recover any of the costs of those proceedings from any other party to those proceedings except under an order of the Court.
- (3) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.
- (4) The amount of his costs which any party shall be entitled to recover is the amount allowed after taxation on the standard basis where—
  - (a) an order is made that the cost of one party to proceedings be paid by another party to those proceedings, or
  - (b) an order is made for the payment of cost out of any fund, or
  - (c) no order is required,unless it appears to the Court to be appropriate to order costs to be taxed on the indemnity basis.
- (5) Paragraph (3) does not apply to matrimonial proceedings.
- (6) Subject to rule 8, a term mentioned in the first column of the table below, when used in an order for cost, shall have the effect indicated in the second column of that table.



<i>Term</i>	<i>Effect</i>
"Costs"	<p>(a) 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 or matter in which the proceedings arise; and</p> <p>(b) where this order is made at the conclusion of the cause or matter, the party in whose favour it is made shall be entitled to have his costs taxed forthwith;</p>
"Cost reserved"	(Except in matrimonial proceedings) 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.
"Cost in any event"	This order has the same effect as an order for "costs" made in interlocutory proceedings;
"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
"Cost 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;
"Plaintiff's costs in the cause" or "Defendant's costs in the cause"	The plaintiff or defendant, as the case may be, shall be entitled his costs of the proceedings in respect of which such an order is made if judgment is given in his favour in the cause or matter in which the proceedings arise, but he shall not be liable to pay the costs of any other party in respect of those proceedings if judgment is given in favour of any other party or parties in the cause or matter in question;
"Costs thrown away"	Where proceedings or any part of them have been ineffective or have been subsequently set aside, the party in whose favour this order is made shall be entitled to his costs of those proceedings or that

	part of the proceedings in respect of which it is made.
--	---

#### 4. Cases where no order for costs is to be made (O. 62, r. 4)

- (1) *[blank]*
- (2) *[blank]*
- (3) In a probate action where a defendant 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, no order for costs shall be made against him unless it appears to the Court that there was no reasonable ground for opposing the will.

#### 5. Cases where order for costs deemed to have been made (O. 62, r. 5)

- (1) In each of the circumstances mentioned in this rule an order for costs shall be deemed to have been made to the effect respectively described and the order shall be deemed to have been entered up on the date on which the event which gave rise to the entitlement to costs occurred.
- (2) Where a summons is taken out to set aside any processing on the ground of irregularity and the summons is dismissed, the party who issued the summons shall pay the costs of every other party.
- (3) Where a party by notice in writing and without leave discontinues an action or counterclaim or withdraws any particular claim made by him as against any other party, that other party, that other party shall be entitled to his costs of the action or counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.
- (4) Where a plaintiff by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into court in satisfaction of the cause of action or of all the causes of action in respect of which he claims, or accepts money paid in satisfaction of one or more specified causes of action and gives notice that he abandons the others, he shall be entitled to his costs of the action incurred up to the time of giving notice of acceptance.
- (5) Where in an action for libel or slander against several defendants sued jointly a plaintiff, by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into court by one of the defendants he shall be entitled to his costs of the action against that defendant incurred up to the time of giving notice of acceptance.
- (6) A defendant who has counterclaimed shall be entitled to the costs of the counterclaim if—
  - (a) he pays money into court and his notice of payment in states that he has taken into account and satisfied the cause or causes of action in respect of which he counterclaims, and
  - (b) the plaintiff accepts the money paid in;
 but the costs of such counterclaim shall be limited to those incurred up to the time when the defendant receives notice of acceptance by the plaintiff of the money paid into court.

#### 6. Cases where costs do not follow the event (O. 62, r. 6)

- (1) The provisions of this rule shall apply in the circumstances mentioned in this rule unless the Court orders otherwise.
- (2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall 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 him in that capacity or

out of the mortgaged property, as the case may be, and the Court may order otherwise only on the ground that he 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.

- (3) Where any person claiming to be a creditor seeks to establish any claim to a debt under any judgment or order in accordance with Order 44, he shall, if his claim succeeds, be entitled to his costs incurred in establishing it: and, if his claim or any part of it fails, he may be ordered to pay costs of any person incurred in opposing it.
- (4) Where a claimant (other than a person claiming to be a creditor) has established a claim to be entitled under a judgment or order in accordance with Order 44 and has been served with notice of the judgment or order pursuant to rule 2 of that Order, he shall, if he acknowledges service of the notice, be entitled as part of his cost of action (if allowed) to costs incurred in establishing his claim, and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.
- (5) The costs of any amendment made without leave in the writ or any pleadings shall be borne by the party making the amendment.
- (6) The costs of any application to extend the time fixed by these rules or by any direction or order there under shall be borne by the party making the application.
- (7) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 14 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts and the costs occasioned by and thrown away as a result of his failure to admit the facts shall be borne by him.
- (8) If a party—
  - (a) on whom a list of documents is served in pursuance 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 and the costs occasioned by and thrown away as a result of his non-admission shall be borne by him.

## **7. Special circumstances in which costs shall not or may not be taxed (O. 62, r. 7)**

- (1) The provisions of this rule shall apply in the circumstances mentioned in the rule.
- (2) Costs which by or under any direction of the Court are to be paid to a receiver appointed by the Supreme Court in respect of his remuneration, disbursements or expenses, shall be allowed in accordance with Order 30, rule 3 and shall not be taxed.
- (3) Where a writ in an action is indorsed in accordance with Order 6, rule 2(1)(b), and judgment is entered on failure to give notice of intention to defend or in default of defence for the amount claimed for costs (whether alone or together with any other amount claimed), the plaintiff is not entitled to tax his 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 be entitled to have those costs taxed.
- (4) In awarding costs to any person the Court may order that, instead of his taxed costs, that person shall be entitled—
  - (a) to a proportion (specified in the order) of those costs from or up to a stage of the proceedings so specified; or
  - (b) to a gross sum so specified in lieu of those costs;

but where the person entitled to such a gross sum is a litigant in person, rule 18 shall apply with the necessary modifications to the assessment of the gross sum as it applies to the taxation of the costs of a litigant in person.

- (5) Where a claimant is entitled to costs under rule 6(3) the amount of the cost shall be assessed by the Court unless it thinks fit to order taxation and the amount so assessed or taxed shall be added to the debt due to the claimant.
- (6) Where a party is entitled to costs under rule 6(7) or (8) the amount of those costs may be assessed by the Court and be ordered to be paid forthwith.

#### **8. Stage of proceedings at which costs to be taxed (O. 62, r. 8)**

- (1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.
- (2) If it appears to the Court when making an order for costs that all or any part of the costs ought to be taxed at an earlier stage it may order accordingly.
- (3) *[blank]*
- (4) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal, may be dealt with by the Court hearing the appeal.
- (5) *[blank]*
- (6) Notwithstanding anything in Part III of this Order, where the Court makes an order as to the costs of any proceedings before another court under paragraph (4), the order—
  - (a) shall specify the amount of the costs to be allowed; or
  - (b) shall direct that the costs be assessed by the court before which the proceedings took place or be taxed by an officer of that court; or
  - (c) shall direct that the costs be assessed by the Registrar.
- (7) *[blank]*
- (8) *[blank]*
- (9) Where it appears to the Registrar on application that there is no likelihood of any further order being made in a cause or matter, he may tax forthwith the costs of any interlocutory proceedings which have taken place.

#### **9. Matters to be taken into account in exercising discretion (O. 62, r. 9)**

The court in exercising its discretion as to costs shall take into account—

- (a) any offer of contribution brought to its attention in accordance with Order 16, rule 10;
- (b) any payment of money into court and the amount of such payment
- (c) any written offer made under Order 33, rule 4A(2); and
- (d) any written offer made under Order 22, rule 14.

#### **10. Misconduct or neglect in the conduct of any proceedings (O. 62, r. 10)**

- (1) Where it appears to be the Court in any proceedings that anything has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party, the Court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him to that other party.
- (2) Instead of making an order under paragraph (1) the Court may refer the matter to the Registrar, in which case the Registrar shall deal with the matter under rule 28(1).

11.

[blank]

### **Part III – Taxation and assessment of costs**

#### **12. Basis of taxation (O. 62, r. 12)**

- (1) On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party, and in these rules the term "the standard basis" in relation to the taxation of costs shall be construed accordingly.
- (2) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the Registrar may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party, and in these rules the term "the indemnity basis" in relation to the taxation of costs shall be construed accordingly.
- (3) Where the Court makes an order for costs without indicating the basis of taxation or an order that costs be taxed on a basis other than the standard basis or the indemnity basis, the costs shall be taxed on the standard basis.

13.

[blank]

#### **14. Costs payable to a trustee or personal representative out of any fund (O. 62, r. 14)**

- (1) This applies to every taxation of a trustee's or personal representative's cost where—
  - (a) he is or has been a party to any proceedings in that capacity, and
  - (b) he is entitled to be paid his costs out of any fund which he holds in that capacity.
- (2) On a taxation to which this rule applies, costs shall be taxed on the indemnity basis but shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the trustee or personal representative as such.

#### **15. Costs payable to an attorney by his own client (O. 62, r.15)**

- (1) This rule applies to every taxation of an attorney's bill to his own client.
- (2) On a taxation to which this rule applies costs shall be taxed on the indemnity basis but shall be presumed—
  - (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client, and
  - (b) to have been reasonable in amount if their amount was expressly or impliedly approved by the client, and
  - (c) to have been unreasonably incurred if in the circumstances of the case they are an unusual nature unless the attorney satisfies the Registrar that prior to their being incurred he informed his client that they might not be allowed on a taxation of costs *inter partes*.

**16. Costs payable to an attorney where money claimed by or on behalf of a minor or a patient (O. 62, r. 16)**

- (1) This rule applies to any proceedings in which—
  - (a) money is claimed or recovered by or on behalf of, or adjudged, or ordered, or agreed to be paid to, or for the benefit of, a minor or a patient; or
  - (b) money paid into court is accepted by or on behalf of a minor or patient.
- (2) The costs of proceedings to which this rule applies which are payable by any plaintiff to his attorney shall, unless the Court otherwise orders, be taxed under rule 15(1) and (2).
- (3) On a taxation under paragraph (2), the Registrar shall also tax any costs payable to that plaintiff in those proceedings and shall certify—
  - (a) the amount allowed on the taxation of the attorney's bill to his own client, and
  - (b) the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings, and
  - (c) the amount (if any) by which the amount mentioned in sub-paragraph (a) exceeds the amount mentioned in sub-paragraph (b), and
  - (d) where necessary, the proportion of the amount of such excess payable by, or out of money belonging to, respectively any claimant who is a minor or patient and any other party.
- (4) *[blank]*
- (5) Nothing in the foregoing provisions of the rule shall prejudice an attorney's lien for costs.
- (6) The foregoing provisions of the rule shall apply in relation to a counterclaim by or on behalf of a person who is a minor or a patient, as if for references to a plaintiff there were substituted references to a defendant.

**17. Provisions for ascertaining costs on a taxation (O. 62, r. 17)**

- (1) Subject to the following provisions of this rule, the provisions contained in Appendix 2 to this Order for ascertaining the amount of costs to be allowed on a taxation of costs shall apply to the taxation of all costs with respect to contentious business.
- (2) *[blank]*
- (3) Notwithstanding paragraph (1), costs shall be allowed in the cases to which Appendix 3 to this Order applies in accordance with the provisions of that Appendix unless the Court or Registrar otherwise orders.

**18. Litigants in person (O. 62, r. 18)**

- (1) Subject to the provisions of this rule, on any taxation of the costs of a litigant in person there may be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by an attorney on the litigant's behalf together with any payments reasonably made by him for legal advice relating to the conduct of or the issues raised by the proceedings.
- (2) The amount allowed in respect of any item shall be such sum as the Registrar thinks fit but not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the Registrar would have been allowed in respect of that item if the litigant had been represented by an attorney.

- (3) Where it appears to the Registrar that the litigant has not suffered any pecuniary loss in doing any item of work to which the costs relate, he shall be allowed in respect of the time reasonably spent by him on that item not more than \$25 per hour.
- (4) A litigant who is allowed costs in respect of attending court to conduct his case shall not be entitled to a witness allowance in addition.
- (5) Nothing in Order 6, rule 2(1)(b), or in rule 17(3) of, or Appendix 3 to, this Order shall apply to the costs of a litigant in person.
- (6) For the purpose of this rule a litigant in person does not include a litigant who is a practicing attorney.

## **Part IV – Powers of the Registrar**

### **19. Who may tax costs (O. 62, r. 19)**

The Registrar shall have power to tax—

- (a) the costs of or arising out of any proceedings to which this Order applies,
- (b) the costs ordered by an award made on a reference to arbitration under any Ordinance or payable pursuant to an arbitration agreement, and
- (c) any other costs the taxation of which is ordered by the Court.

### **20. Supplementary powers of the Registrar (O. 62, r. 20)**

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 connection with the payment of the costs being taxed, if the Court so orders;
- (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, and
- (d) order the production of any document which may be relevant in connection with those proceedings.

### **21. Extension of time (O. 62, r. 21)**

(1) The Registrar may—

- (a) extend the period within which a party is required by or under this Order or by the Court to begin proceedings for taxation or to do anything in or in connection with those proceedings on such terms (if any) as he thinks just; or
  - (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 things are to be done.
- (2) The Registrar may extend any such period as if referred to in paragraph (1) of this rule although the application for extension is not made until after the expiration of that period.

### **22. Certificates (O. 62, r. 22)**

(1) The registrar—

- (a) shall, at the conclusion of taxation proceedings before him, issue a certificate for the costs allowed by him;

- (b) may from time to time in the course of the taxation issue an interim certificate for any part of the costs which have been taxed or for any part of the amount of which is not in dispute;
  - (c) may amend or cancel an interim certificate issued by him; and
  - (d) may correct any clerical mistake in any certificate issued by him or any error arising therein from any accidental slip or omission.
- (2) If, in the course of the taxation of an attorney's bill to his own client, it appears to the Registrar that in any event the attorney 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 attorney to his client.
- (3) On the filing of a certificate issued under paragraph (2) the Court may order the amount specified in it to be paid forthwith to the client or into court.

### **23. Power of Registrar where party liable to be paid and to pay costs (O. 62, r. 23)**

Where a party entitled to be paid costs is also liable to pay costs, the Registrar may—

- (a) tax the costs which the party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- (b) delay the issue of a certificate for the costs the party is entitled to be paid until he has paid or tendered the amount he is liable to pay.

### **24. Taxation of bill of costs comprised in an account (O. 62, r. 24)**

- (1) Where the Court orders an account to be taken and the account consists in part of costs, the Court may direct the Registrar to tax those costs and the Registrar shall after taxation of the bill of costs return it, together with his report on it, to the Court.
- (2) The Registrar taxing a bill of costs in accordance with a direction under paragraph (1) shall have the same powers, and the same fee shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

### **25. Registrar to fix certain fees payable to conveyancing counsel (O. 62, r. 25)**

- (1) Where the Courts refers any matter to conveyancing counsel or obtains the assistance of any other person under Order 32, rule 16, the fees payable to counsel 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 a decision of the Registrar under paragraph (1) shall lie to the Court and the decision of the Court thereon shall be final.

### **26. Powers of Registrar on taxation of costs out of a fund (O. 62, r. 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 bill of costs be taxed for the purpose of being paid out of a fund, the Registrar may direct the party whose bill it is to send any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say—
  - (a) that the bill of costs, a copy of which or of part of which is sent with the letter has been referred to Registrar for taxation,



- (b) the address of the office at which the taxation is proceeding;
- (c) the time is appointed by the Registrar at which the taxation will be continued, and
- (c) such other information, if any, as the Registrar may direct.

**27. Powers of Registrar in relation to costs of taxation proceedings (O. 62, r. 27)**

- (1) Subject to the provisions of any Ordinance and the Order, the party whose bill is being taxed shall be entitled to his costs of the taxation proceedings.
- (2) Where it appears to the Registrar that in the circumstances of the case some other order should be made as to the whole or part of the costs, the Registrar shall have, in relation to the costs of taxation proceedings, the same powers as the Court has in relation to the costs of proceedings.
- (3) Subject to paragraph (5), the party liable to pay the costs of the proceedings which gave rise to the taxation proceedings may make a written offer to pay a specific sum in satisfaction of those costs which is expressed to be "without prejudice save as to the costs of taxation" at any time before the expiration of 14 days after the delivery to him of a copy of the bill of costs under rule 30(3) and, where such an offer is made, the fact that it has been made shall not be communicated to the Registrar until the question of the costs of the taxation proceedings falls to be decided.
- (4) The Registrar may take into account any offer made under paragraph (3) which has been brought to his attention.
- (5) *[blank]*
- (6) In this rule any reference to the costs of taxation proceedings shall be construed as including a reference to any fee which is prescribed by the Orders as to court fees for the taxation of a bill of costs.

**28. Powers of Registrar in relation to misconduct, neglect etc. (O. 62, r. 28)**

- (1) Where, whether or not on a reference by the Court under rule 10(2), it appears to the Registrar that anything has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, he may exercise the powers conferred on the Court by rule 10(1).
- (2) *[blank]*
- (3) *[blank]*
- (4) Where a party entitled to costs—
  - (a) fails without good reason to commence or conduct proceedings for the taxation of those costs in accordance with this Order or any direction, or
  - (b) delays lodging a bill of costs for taxation,the Registrar may—
  - (i) disallow all or part of the costs of taxation that he would otherwise have awarded that party; and
  - (ii) after taking into account all the circumstances (including any prejudice suffered by any other party as a result of such failure or delay, as the case may be, and any additional interest payable under any statutory provision because of the failure or delay), allow the party so entitled less than the amount he would otherwise have allowed on taxation of the bill or wholly disallow the costs.

- (5) An appeal shall lie to a judge in chambers from the exercise by the Registrar of the powers conferred by the rule, and Order 58, rule 1 shall apply to such an appeal as it applies to any other appeal from the Registrar.
- (6) In exercising his powers under this rule the Registrar shall have all the powers available to the Court in the exercise of the discretion under rule 10.

## Part V – Procedure on taxation

### 29. Commencement of proceedings (O. 62, r. 29)

- (1) Subject to paragraph (2), where a party is entitled to recover taxed costs or to require any costs to be taxed by the Registrar by virtue of—
  - (a) a judgment direction or order given or made in proceedings in the Supreme Court; or
  - (b) rule 5(3), (4) or (5); or
  - (c) an award made on an arbitration under any Ordinance or pursuant to an arbitration agreement; or
  - (d) an order, award or other determination of a tribunal or other body constituted by or under any Ordinance,

he must begin proceedings for the taxation of those costs either within three months after the judgment, direction, order, award or other determination was entered, signed or otherwise perfected or, in cases to which sub-paragraph (b) applies, within three months service of the notice given to him under Order 21, rule 2 or Order 22, rule 3.
- (2) *[blank]*
- (3) Where a party entitled to costs fails to begin proceedings for taxation within the time limit specified in paragraph (1), any other party to the proceedings which gave rise to the taxation proceedings may with the leave of the Registrar begin taxation proceedings.
- (4) Where leave has been granted under paragraph (3), the party to whom it has been granted shall proceed as if he were the person entitled to begin taxation proceedings.
- (5) Proceedings for the taxation of costs shall be begun by producing the requisite document at the Registry.
- (6) For the purpose of this rule the requisite document shall be ascertained by reference to Appendix 1 to this Order.
- (7) A party who begins proceedings for taxation must, at the same time, lodge in the Registry
  - (a) a copy of the requisite document produced under paragraph (5), and
  - (b) in the case where any costs to which the taxation proceedings relate are to be paid out of a fund, a statement of the nature of each party's interest in the fund; and
  - (c) unless the Registrar otherwise orders, a bill of costs
    - (i) in which the professional charges and the disbursements are set out in separate columns or sections and each column or section is cast, and
    - (ii) which is endorsed with the name, or firm and business address of the attorney whose bill it is, and
    - (iii) which is signed by that attorney or, if the costs are due to a firm, by a partner of that firm; and,

- (d) unless the Registrar otherwise orders, the papers and vouchers specified below in the other mentioned—
  - (i) *[blank]*
  - (ii) unless the relevant information is included in the judgment or order or the parties have agreed the times of the hearings, a certificate of times;
  - (iii) a bundle comprising accounts for disbursements;
  - (iv) a chronological list of the pleadings, summonses, orders and other significant steps in the action.
  - (v) *[blank]*
- (e) *[blank]*
- (f) in addition to the papers specified under subparagraph (d) above, the Registrar may, either of his own motion or on the application of any party, require the party who began the proceedings for taxation to lodge in the Registry, within such time as the Registrar may specify:
  - (i) one complete set of pleadings arranged in chronological order, with any interlocutory summonses and lists of documents annexed to it
  - (ii) reports and opinions of medical and other experts arranged in chronological order;
  - (iii) the attorney's correspondence and attendance notes; and
  - (iv) any other papers he considers relevant duly bundled and labeled.
- (8) In this rule and in the Part of this Order "party entitled to be heard on the taxation" means—
  - (a) a person who has acknowledged service or taken any part in the proceedings which gave rise to the taxation proceedings and who is directly liable under an order for costs made against him, or
  - (b) a person who had begun proceedings for taxation in accordance with this rule, or
  - (c) a person who had given the party taxing and the Registrar written notice that he had financial interest in the outcome of the taxation or,
  - (d) a person in respect of whom a direction has been given under rule 26.
- (9) Paragraph (7)(a), (b) and (d)(ii) and (iv) do not apply to matrimonial proceedings.

### 30. Subsequent procedure (O. 62, r. 30)

- (1) Subject to rules 31 and 32, where a party has begun proceedings for taxation in accordance with rule 29, the Registrar shall give to that party and to any other party entitled to be heard on the taxation not less than 14 days' notice of the day, time and place appointed for the taxation.
- (2) Subject to rule 32, where a party has begun proceedings for taxation in accordance with rule 29, the Registrar shall as soon as practicable give notice to any other party whose costs are to be taxed in the proceedings of the period within which his bill of costs (together with all necessary papers and vouchers) are to be sent to the Registrar.
- (3) A party whose costs are to be taxed must within seven days after beginning the proceedings for taxation or, as the case may be, receiving notice under paragraph (2),—
  - (a) send a copy of his bill of costs to every other party entitled to be heard on the taxation, and
  - (b) notify the Registrar that he has done so.

- (4) Where, in beginning or purporting to begin any taxation proceedings or at any stage in the course of or in connection with those proceedings, there has been a failure to comply with the requirements of this Order, whether in respect of time or in any other respect, the failure shall be treated as an irregularity and shall not nullify the taxation proceedings or any step taken *in* those proceedings.
- (5) The Registrar may, on the ground that there has been such a failure as is mentioned in paragraph (4), and on such terms as he thinks just, set aside either wholly or in part the taxation proceedings or exercise his powers under this Order to make such order (if any) dealing with the taxation proceedings generally as he thinks fit.
- (6) Order 3, rule 6 shall not apply to taxation proceedings.

### **31. Provisional taxation (O. 62, r. 31)**

- (1) Where in taxation proceedings duly begun in accordance with rule 29, only the party who commenced the proceedings is entitled to be heard on the taxation, the Registrar shall, unless he decides to proceed otherwise, send to that party a notice specifying the amount which he proposes to allow in respect of the bill of costs and requiring him to state, within 14 days after receipt of the notice, if he wishes to be heard on the taxation.
- (2) If the party referred to in paragraph (1) informs the Registrar within the time limit that he wishes to be heard on the taxation, the Registrar shall fix a day and time for the taxation and give not less than 14 day's notice thereof to that party.
- (3) Except on the taxation of an attorney's bill to his own client and where paragraph (1) applies, where in taxation proceedings begun in accordance with rule 29—
  - (a) the party lodging the bill so requests and the Registrar considers it to be appropriate, or
  - (b) the Registrar so decides,the Registrar may, instead of proceeding under rule 30(1), proceed under paragraphs (4) to (7) of this rule.
- (4) Where the Registrar decides to proceed under this and the following paragraphs of this rule, he shall send to each party entitled to be heard on the taxation (except the party whose bill it is), a notice requiring him to inform the Registrar within 14 days after the receipt of the notice if he wishes to be heard on the taxation.
- (5) If any party to whom notice has been given under paragraph (4) informs the Registrar within the time limited that he wished to be heard on the taxation, the proper officer shall fix an appointment for the taxation and give not less than 14 days' notice of the appointment to every party entitled to be heard.
- (6) If no party to whom notice has been given under paragraph (4) informs the Registrar within the time limited that he wishes to be heard on the taxation, the Registrar shall, unless he decides to proceed otherwise, send to party lodging the bill a notice specifying the amount which he proposes to allow in respect of the bill and requiring that party to inform him within 14 days after receipt of the notice if he wishes to be heard on the taxation.
- (7) If the party lodging the bill informs the Registrar within the time limited under paragraph (6) that he wishes to be heard on the taxation, the Registrar shall fix an appointment for the taxation and give not less than 14 days' notice of the appointment to that party.

**32. Short and urgent taxation (O. 62, r. 32)**

- (1) Where a party entitled to require the taxation of any costs of or arising out of proceedings to which this Order applies begins proceedings for the taxation of those costs in accordance with rule 29 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 interests of any person concerned in the taxation,the Registrar may assign an early hearing and shall forthwith give notice of the day and time appointed for the taxation to the party whose costs are to be taxed.
- (2) A party whose costs are to be taxed in proceedings entered in the list referred to in paragraph (1) must, not less than four days before the day appointed for the taxation, send a copy of his bill of costs to every other party entitled to be heard on taxation with a notice of the day and time appointed for the taxation.

**Part VI – Review of taxation****33.**

*[blank]*

**34.**

*[blank]*

**35. Review by a judge (O. 62, r. 35)**

- (1) Any party who is dissatisfied with any decision of the Registrar on a taxation may apply to a judge for an order to review that decision in whole or in part.
- (2) An application under this rule may be made at any time within 14 days after the Registrar has issued a certificate in accordance with rule 22(1)(a) or (b).
- (3) An application under this rule shall be made by summons and shall unless the judge thinks fit to adjourn it into court, be heard in chambers.
- (3A) Every applicant for review under this rule must at the time of making his application deliver to the Registrar his objections in writing specifying what 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 any other party who was entitled to receive notice of the appointment for the taxation pursuant to rules 30 and 31.
- (3B) Any party to whom a copy of the objection is delivered under this rule may, within 21 days after delivery of the copy to him or such other period as may be fixed by a judge, deliver to the Registry answers in writing, to the objections stating concisely the grounds on which he will oppose the objections, and must at the same time deliver a copy of the answers to the party applying for review and to any other party who was entitled to receive notice of the appointment for the taxation pursuant to rules 30 and 31.
- (3C) On a hearing of a review under rule 33 a party to whom a copy of objections was delivered under paragraphs (3) of the rule shall be entitled to be heard in respect of all or any of the objections notwithstanding that he did not deliver written answers to the objections under paragraph (4) of that rule.

- (4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under the rule, 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, including the power to award costs of the proceedings before him.
- (5) *[blank]*
- (6) On an application under this rule the judge may make such order as the circumstances may require and in particular may order the Registrar's certificate to be amended or, except where the dispute as to the item review is as to amount only, order the item to be remitted to the Registrar for taxation.

## Appendix 1

### Requisite document for purposes of rule 29

- 1. (1) Where a party is entitled to require any costs to be taxed by the virtue of a judgment or order given or made in any proceedings in the Supreme Court, the requisite document for the purposes of rule 29 is the judgment or order as the case may be.
  - (2) *[blank]*
  - (3) Where the entitlement arises by virtue of a direction of the court given under these rules, the requisite document is that direction.
- 2. Where a party is entitled by virtue of rule 5(3), (4) or (5) to require any costs to be taxed, the requisite document for the purposes of rule 29 is:—
  - (a) where he is entitled by virtue of rule 5(3), the notice given to him under Order 21, rule 2;
  - (b) where he is so entitled by virtue of rule 5 (4) or (5) a certified copy of the notice given by him under Order 22, rule 3.
- 3. Where a party is entitled to require taxation by the Registrar of the costs directed to be paid by an award made on the arbitration under any Ordinance or pursuant to an arbitration agreement and no order of the court for the enforcement of the award has been made, the requisite document for the purposes of rule 29 is the award.
- 4. Where apart from any order of the court a party is entitled to require taxation by the Registrar of the fees and charges payable to a bailiff, the requisite document for the purposes of rule 29 is the bailiff's bill of fees and charges.
- 5. Where a party is entitled to require taxation by the Registrar of any costs directed to be taxed or paid by an order, award or other determination of a tribunal or other body constituted by or under any Ordinance, the requisite document for the purposes of rule 29 is the order, award or other determination, as the case may be.

## Appendix 2

### Part I

#### 1. Amount of costs

- (1) The amount of costs to be allowed shall (subject to rule 18 and to any order of the court fixing the costs to be allowed) be in the discretion of the Registrar.

- (2) In exercising his discretion the Registrar shall have regard to all the 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;
  - (b) the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the attorney;
  - (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 attorney 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.
- (3) The bill of costs shall consist of such items specified in Part II as may be appropriate, set out, except for item 4, in chronological order, and each such item shall specify; the professional time actually spent in respect of it; by whom; and the rate or rates at which that professional time was charged to the client.
- (4) Where an attorney has undertaken work on the basis of a fixed fee, or a brief fee, whether or not it contains provision for refreshers, the bill of costs must nevertheless contain an itemization of the work actually done, set out in accordance with Part II, but need not specify a rate for the time worked.

## 2. Fees to overseas counsel

- (1) Except in the case of taxation of fees payable by the Crown, no fee to overseas counsel who come to the Islands for any particular cause or matter shall be allowed unless—
  - (a) before taxation its amount has been agreed by the attorney instructing counsel, and
  - (b) before the Registrar issues his certificate a receipt for the fees signed by counsel is produced.
- (2) Except in taxations under rules 14 and 15—
  - (a) no costs shall be allowed in respect of overseas 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;
  - (b) a refresher fee, the amount of which shall be in the discretion of the Registrar, shall be allowed to counsel either
    - (i) for each period of 5 hours (or part thereof) after the first during which a trial or hearing is proceeding, or
    - (ii) at the discretion of the Registrar, in respect of any day after the first day, on which the attendance of counsel at the place of trial was necessary.

## 3. Items to be authorised, certified etc.

- (1) *[blank]*
- (2) The costs of calling an expert witness with regard to any questions to which a court expert is appointed under Order 40 shall not be allowed on a taxation of costs on the standard basis, unless the Court at the trial has certified that the calling of the witness was reasonable.

## Part II

### 1. Interlocutory attendances

- (a) Attending the hearing of any summons or other application at Court or appointment in chambers or elsewhere.
- (b) Travelling and waiting.

### 2. [blank]

### 3. Attendance at trial or hearing

- (a) Attending the trial or hearing of a cause or matter, or an appeal or to hear a deferred judgment.
- (b) Travelling and waiting.

### 4. Preparation

#### **Part A – The doing of any work which was reasonably done arising out of or incidental to the proceeding, including—**

- (i) The Client: taking instructions to sue, defend, counterclaim, appeal or oppose etc., attending upon and corresponding with client; taking and preparing proofs of evidence;
- (ii) Witnesses interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at court including issue of *subpoena*;
- (iii) Expert Evidence: obtaining and considering reports or advice from experts and plans, photographs and models; where appropriate arranging their attendance at court, including issue of *subpoena*;
- (iv) Inspections: inspecting any property or place material to the proceedings;
- (v) Searches and Enquires: making searches at offices of public records and elsewhere for relevant documents: searches in the Companies Registry and similar matters;
- (vi) Special Damages: obtaining details of special damages and making or obtaining any relevant calculations;
- (vii) Other Parties: attending upon and corresponding with other parties or their attorneys;
- (viii) Discovery: perusing, considering or collating documents for affidavit or list of documents: attending to inspect or produce for inspection any documents required to be produced or inspected by order of the court or by virtue of Order 24;
- (ix) Documents: preparation and consideration of pleadings and affidavits, cases and instructions to and advice from counsel, any law involved and any other relevant documents including collating and service;
- (x) Negotiations: work done in connection with negotiations with a view to settlement;
- (xi) Agency: correspondence with and attendances upon other agents and work done by them;
- (xii) Interest: where relevant, the calculation of interest;
- (xiii) Notices: preparation and service of miscellaneous notices including notices to witnesses to attend court.



**Part B – Travelling and waiting time in connection with the above matters****5. Taxation**

- (a) Taxation of costs
  - (i) Preparing the bill (where allowable) and preparing for attending the taxation;
  - (ii) Traveling and waiting.
- (b) Review
  - (i) preparing and delivering objections to decision of the Registrar on taxation or answers to objections, and consider opponent's answers or objections, as the case may be; attending hearing of review;
  - (ii) Travelling and waiting.

**Appendix 3****Fixed costs****Part I – Costs on the recovery of a liquidated sum without trial**

1. The scale of costs following paragraph 2 of this Part of this Appendix shall apply in relation to the following cases if the writ therein was issued on or after the date of commencement of these Rules, and was indorsed in accordance with Order 6, rule 2(1)(b) with a claim for a debt or liquidated demand only of \$1000 or upwards, that is to say—
  - (a) cases in which defendant pays the amount claimed or a sum of \$1000 or upwards within the time and in the manner required by the endorsement of the writ;
  - (b) cases in which the plaintiff obtains judgment for failure to give notice of intention to defend under Order 13, rule 1, or judgment in default of defence under Order 19, rule 2, being in any case judgment for a sum of \$1000 or upwards.
2. There shall be added to the basic costs set out in the said scale—
  - (i) if the amount recovered is less than \$5,000 the fee payable on applying for a summons in the Magistrate's Court for that amount, and
  - (ii) in any other case, the appropriate court fees.

### Scale of costs

A. Basic costs		
Amount to be allowed in cases under following sub-paragraphs of paragraph 1 of this Appendix		
If the amount recovered is	(a)	(b)
not less than \$1000 not less than \$5,0000	\$150	\$200
not less than \$5,000 not less than \$7,500	\$200	\$250
not less than \$7,500	\$250	\$300

<b>B. Additional costs</b>		
Amount to be allowed where the amount recovered is—		
	(i) not less than \$1000 but less than \$7,500	(ii) not less than \$7,500
(1) Where there is more than one defendant, in respect of each additional defendant served	\$50	\$100
(2) Where substituted service is ordered and effected, in respect of each defendant served	\$75	\$150
(3) Where service out of the jurisdiction is ordered and effected in any place out of the jurisdiction	\$100	\$200
(4) In the case of judgment in default of defence, where notice of intention to defend is given after the time limited therefor and the plaintiff makes an affidavit of service for the purpose of a judgment on failure to give notice of intention to defend (allowance to include the search fee)	\$50	\$75

## **Part II – Costs on judgment without trial for possession of land**

1. (1) Where the writ is indorsed with a claim for the possession of land and the plaintiff obtains judgment—
  - (a) under Order 13, rule 4 or 5, on failure to give notice of intention to defend, or
  - (b) under Order 19, rule 5 or 6, in default of defence,
 for possession of the land and costs, then, subject to sub-paragraph (2), there shall be allowed the costs prescribed by paragraph 2 of this Part of this Appendix.
- (2) Where the plaintiff is also entitled under the judgment to damages to be assessed, this part of this Appendix shall not apply.
2. The costs to be allowed under this Part of this Appendix shall be the costs which would be allowed under Part 1 (together with the fee paid on the writ) if judgment had been obtained in the same circumstances, that is to say, on failure to give notice of intention to defend or in default of defence but the writ has been indorsed with a claim for a debt or liquidated demand only of \$1000 or upwards and judgment for not less than \$7,500 has been obtained.

### Part III – Miscellaneous

1. Where a plaintiff or defendant is entitled to costs by virtue of the rule 5(3), (4) or (5) there shall be allowed—

Costs of judgment	\$50
-------------------	------

2. [blank]

- 2A. Where costs are allowed under the following paragraphs of this Part, the appropriate court fees shall be allowed in addition.

3. 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 due or accruing due from the debtor, the following costs shall be allowed—

(a)	to the garnishee to be deducted by him from any debt due by him as foresaid before payment to the applicant	\$200
(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—	
	(i) - Basic costs If the amounts recovered by the applicant from the garnishee is—	
	less than \$500	one half of the amount recovered
	not less than \$500	\$500
	(ii) - Additional costs Where the garnishee fails to attend the hearing of the application and an affidavit of service is required	\$75

4. [blank]

5. Where leave is given under Order 45, rule 3, to enforce a judgment or order for the giving 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—

Basic costs	\$50
Where notice of proceedings has been given to more than one person, in respect of each additional person	\$50

6. 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	\$200
----------------------------	-------

### Order 63 – The Registry

1. **Distribution of business in the Registry (O. 63, r. 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.

2. *[blank]*

3. **Date of filing to be marked, etc. (O. 63, r. 3)**

- (1) Any document filed in the Registry in any proceedings must be stamped or imprinted to show the date on which the document 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.
18. The Registrar shall keep a book in the Registry, to be known as the cause book, in which details of each writ or other originating process shall be entered at the time of issue, showing the names of the parties and their addresses for service, and every such matter shall be numbered in every year according to the order in which it is entered.

4. **Right to inspect, etc., certain documents filed in the Registry (O. 63, r. 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 of the copy of any such judgment or order, and
  - (c) with the leave of the Court, which may be granted on an application made *ex parte*, any other document.
- (2) Nothing in the foregoing provisions shall be taken as preventing any party 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 that cause or matter but made with a view to its commencement.

5. **Deposit of documents (O. 63, r. 5)**

Where the Court orders any documents to be lodged in court, they must, unless otherwise directed, be deposited in the Registry.

6.-8. *[blank]*

9. **Restriction on removal of documents (O. 63, r. 9)**

No document filed in or in the custody of the Registry shall be taken out of the Registry without the leave of the court unless the document is to be sent to another office of the Supreme Court.

10. **Enrolment of instruments (O. 63, r. 10)**

Any deed which by virtue of any Ordinance is required or authorized to be enrolled in the Supreme Court may be enrolled in the Registry.

## **Order 64 – Sittings, vacations and office hours**

1. **Sitting of Supreme Court (O. 64, r. 1)**

The sittings of the Supreme Court shall be four in every year, that is to say—

- (a) the Michaelmas sittings which shall begin on 1<sup>st</sup> October and end on 21<sup>st</sup> December;
- (b) the Hilary sittings which shall begin on 11<sup>th</sup> January and end on the Wednesday before Easter Sunday;
- (c) the Easter sittings which shall begin on the second Tuesday after Easter Sunday and end on the Friday before National Heroes Day; and
- (d) the Trinity sittings which shall begin on the second Tuesday after National Heroes Day and end on 31<sup>st</sup> July.

2. *[blank]*

3. **Vacation sittings (O. 64, r. 3)**

- (1) A judge shall sit in vacation as necessary, to hear such causes, matters or applications as require to be immediately or promptly heard other causes, matters or application if the Chief Justice determines that sittings are necessary for that purpose.
- (2) Any party to a cause or matter may at any time apply to the Court for an order that such cause or matter be heard in vacation and, if the Court is satisfied that the cause or matter requires to be immediately or promptly heard, it may make an order accordingly and fix a date for the hearing.
- (3) Any judge may hear such other causes or matters in the vacation as the Chief Justice may direct.

4.-6. *[blank]*

7. **Supreme Court offices: Days on which open and office hours (O. 64, r. 7)**

- (1) The registry shall be open on every day of the year except—
  - (a) Saturdays and sundays,

- (b) Public holidays,
  - (c) [blank]
  - (d) [blank]
  - (e) [blank]
  - (f) such other days as the Chief Justice may direct, and,
  - (g) any other day on which government offices are closed by order or permission of the Governor of the *Chief* Secretary.
- (2) The hours during which the Registry shall be open to the public shall be such as the Chief Justice may from time to time direct, and in the absence of such direction, shall be nonnal Government office hours.

## Order 65 – Service of documents

### 1. When personal service required (O. 65, r. 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 the personal service.

### 2. Personal service: How effected (O. 65, r. 2)

Personal service of a document is effected by leaving a copy of the document with the person to be served.

### 3. Service on body corporate (O. 65, r. 3)

Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it in accordance with rule 2 on the mayor, chairman or president of that body, or the town clerk, clerk, secretary, treasurer or other similar officer thereof.

### 4. Substituted service (O. 65, r. 4)

- (1) If, in the case of any document which by virtue of any provision of these rules is required to be served personally or is a document to which Order 10, rule 1, applies, it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed, the Court may make an order for substituted service of that document.
- (2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.
- (3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

### 5. Ordinary service: How effected (O. 65, r. 5)

- (1) Service of any document, not being a document which by virtue of any provision of these rules is required to be served personally or a document to which Order 10, rule 1, applies, may be effected—
  - (a) by leaving the document at the proper address of the person to be served, or
  - (b) by post, or
  - (c) through a document exchange in accordance with paragraph (2A), or
  - (d) by FAX in accordance with paragraph (2B), or

- (e) in such other manner as the Court may direct.
- (2) For the purposes of 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 attorney (if any) who is acting for him in the proceedings in connection with which service of the document in question is to be effected, or
  - (b) in the case of an individual, his usual or last known address, or
  - (c) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction, or
  - (d) in the case of a body corporate, the registered or principal office of the body.

(2A) Where—

- (a) the proper address for service includes a numbered box at a document exchange, or
- (b) there is inscribed on the paper of the party on whom the document is served (where such party acts in person) or on the writing paper of his attorney (where such a person acts by an attorney) a document exchange box number, and such a party or his attorney (as the case may be) has not indicated in writing to the party serving the document that he is unwilling to accept service through a document exchange,

service of the document may be effected by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents every business day to that document exchange, and any document which is left at a document exchange in accordance with this paragraph shall, unless the contrary is proved, be deemed to have served on the second business day following the day on which it is left.

(2B) Service by FAX may be effected where—

- (a) the party serving the document acts by an attorney,
- (b) the party on whom the document is served acts by an attorney and service is effected by transmission to the business address of such attorney,
- (c) the attorney acting for the party on whom the document is served has indicated in writing to the attorney serving the document that he is willing to accept service by 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 a writing paper of an attorney shall be deemed to indicate that such an attorney is willing to accept service by FAX at that number in that accordance with this paragraph unless he states otherwise in writing, and
- (d) as soon as practicable after service by FAX the attorney acting for the party serving the document dispatches a copy of it to the attorney acting for the other party by any of the other methods prescribed for service by paragraph (1), and if he fails to do so the document shall be deemed never to have been served by FAX.

Where the FAX is transmitted on a business day before 4 p.m., it shall, unless the contrary is shown, be deemed to be served on that day, and, in any other case, on the business day next following.

- (3) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any enactment which provides for the manner in which documents may be served on bodies corporate.



- (4) In this rule—
- (a) "document exchange" means any document exchange for the time being approved by the Chief Justice;
  - (b) "business day" means any day other than a Saturday a Sunday or a public as defined in Order 3, rule 2(5).
6. **Service on Minister, etc., in proceedings which are not by or against the crown (O. 65, r. 6)**
- Where for the purpose of or in connection with any proceedings in the Supreme Court, not being Civil proceedings by or against the Crown within the meaning of Part II of the Crown Proceedings Ordinance, any document is required by any Ordinance or these rules to be served on the Minister of a government department or on such a department or on the Attorney General, section 14 of the said Ordinance and Order 77, rule 4, shall apply in relation to the service of the document as they apply in relation to the service of documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown.
7. **Effect of service after certain hours (O. 65, r. 7)**
- Any document (other than a writ of summons or other originating process) service of which is effected under rule 2 or under rule 5(1)(a) between four o'clock in the afternoon on a Friday and midnight on the following Sunday or after 4 in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Friday or on the day following that other weekday, as the case may be.
8. **Affidavit of service (O. 65, r. 8)**
- An affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how.
9. **No service required in certain cases (O. 65, r. 9)**
- Where by virtue of these rules any document is required to be served on any person but is not required to be served personally and at the time when service is to be effected that person is in default as to acknowledgment of service or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these rules otherwise provides.
10. **Service of process on saturday or sunday (O. 65, r. 10)**
- (1) No process shall be served or executed within the jurisdiction on a Saturday or Sunday except, in the case of urgency, with the leave of the Court.
  - (2) For the purposes of this rule "process" includes a writ, judgment, notice, order, petition, originating or other summons or warrant.

## **Order 66 – Paper, printing, notices and copies**

1. **Quality and size of paper (O. 66, r. 1)**
- Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Supreme Court after the 1<sup>st</sup> June 2000, must be on letter sized paper (measuring 8 ½ by 11 inches) of durable quality, having a margin less than 1 ½ inches wide, to be left blank on the left side of the face of the paper and on the right side of the reverse:
2. **Regulations as to printing, etc. (O. 66, r. 2)**
- (1) Except where these rules otherwise provide, every document prepared by a party for use in the Supreme Court must be produced by one of the following means, . this is to say, printing, writing (which must be clear and legible) and typewriting otherwise by means of a carbon, and may be produced partly by one of those means and partly by another or others of them.

- (2) For the purpose of these rules, a document shall be deemed to be printed if it is produced by type lithography or stencil duplicating.
  - (3) Any type used in producing a document for use as aforesaid must be such to give a clear and legible impression and must be not smaller than 11 point type, or if written on a typewriter, must not be smaller than elite type.
  - (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.
- 3. Copies of documents for other party (O. 66, r. 3)**
- (1) Where a document has been prepared by a party for use in the Supreme Court, the party by whom it has been prepared must supply any party entitled to a copy of it with a copy of it and, where the document in question is an affidavit, of any document exhibited to it.
  - (2) Subject to paragraph (3), the document must be ready for delivery within 48 hours after a written request for it, together with an undertaking to pay any proper charges, is received and must be supplied immediately on payment of those charges.
  - (3) Where a party is joined to existing proceedings, the party joined shall be entitled to require the party joining him to supply, without charge, copies of all pleadings, affidavits and exhibits served in the proceedings by or upon the joining party which relate to any issues between the joining party and the party joined, and copies of all orders made in those proceedings.  
  
The documents must be supplied within 48 hours after a written request for them is received.
  - (4) Where a document to which paragraph (1) or (3) applies exists in electronic form, a copy must be supplied (at the option of the party entitled to a copy of it) either in electronic form or hard copy, or both, and if supplied in electronic form must be supplied with sufficient technical information to enable the party entitled to such copy to read the document.
- 4. Requirements as to copies (O. 66, r. 4)**
- (1) *[blank]*
  - (2) *[blank]*
  - (3) The party by whom a copy is supplied under rule 3, or, if he sues or appears by an attorney, his attorney shall be answerable for the copy being a true copy of the original or of a certified copy, as the case may be.

## Order 67 – Change of attorney

### 1. Notice of change of attorney (O. 67, r. 1)

- (1) A party to any cause or matter who sues who sues or defends by an attorney may change his attorney without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are lodged and served in accordance with this rule, the former attorney shall, subject to rules 5 and 6 be considered the attorney of the party until the final conclusion of the cause or matter.
- (2) Notice of a change of attorney must be filed, and a copy thereof lodged, in the registry.
- (3) The new attorney must serve on every other party to the cause or matter (not being a party in default as to the acknowledgment of service) and on the former attorney a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the Registry.

- (4) The party on whose behalf notice has been given may perform the duties prescribed by his rule in person or by his new attorney.
2. **Notice of change of agent attorney (O. 67, r. 2)**
- (1) Where an attorney for whom some other attorney is acting as agent in a cause or matter changes the attorney so acting, notice of the change must be given, and rule 1(2) shall apply in relation to a notice of change of agent as it applies in relation to a notice of change of attorney.
- (2) The attorney giving the notice must serve on every party to the cause or matter (not being the party for whom he is acting or a party in default as to acknowledgment of service) and on the attorney formerly acting as agent a copy of the notice indorsed with a memorandum stating that the notice has been duly filed in the Registry.
3. **Notice of appointment of attorney (O. 67, r. 3)**
- Where a party, after having sued or defended in person, appoints an attorney to act in the cause or matter on his behalf, the change may be made without an order for that purpose and rule 1(2), (3) and (4) shall, with the necessary modifications, apply in relation to a notice of appointment of an attorney as they apply in relation to a notice of change of attorney.
4. **Notice of intention to act in person (O. 67, r. 4)**
- Where a party, after having sued or defended by an attorney, intends and is entitled to act in person, the change may be made without an order for that purpose and rule 1 shall, with the necessary modifications, apply in relation to notice of intention to act in person as it applies in relation to a notice of change of attorney except that the notice of intention to act in person must contain an address for service within the jurisdiction of the patty giving it.
5. **Removal of attorney form record at instance of another party (O. 67, r. 5)**
- (1) Where—
- (a) An attorney 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 practicing certificate or has been struck off the roll of attorneys or has been suspended from practising or has for any other reason ceased to practice, and
- (b) the party has not given notice of change of attorney or notice of intention to act in person in accordance with the foregoing provisions of this Order,
- any other party to the cause or matter may apply to the court for an order declaring that the attorney has ceased to be the attorney acting for the first-mentioned party in the cause or matter, and the Court may make an order accordingly.
- (2) An application for an order under this rule must be made by summons and the swnmmons must, unless the Court otherwise directs, be served on the party to whose attorney the applications relates.
- The application must be supported by an affidavit stating the grounds of the application.
- (3) Where an order is made under this rule the party on whose application it was made must—
- (a) serve on every other party to the cause or matter (not being a party in default as to acknowledgment of service) a copy of the order, and
- (b) procure the order to be entered in the Registry and
- (c) leave at the Registry a copy of the order and a certificate signed by him or his attorney that the order has been duly served as aforesaid.
- (4) An order made under this rule shall not affect the rights of the attorney and the party for whom he acted as between themselves.

**6. Withdrawal of attorney who has ceased to act for party (O. 67. r. 6)**

- (1) Where an attorney who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with rule 1, or notice of intention to act in person in accordance with rule 4, the attorney may apply to the court for an order declaring that the attorney has ceased to be the attorney acting for the party in the cause or matter, and the Court may make an order accordingly, but unless and until the attorney—
- (a) serves on every party to the cause or matter (not being a party in default as to acknowledgment of service) a copy of the order, and
  - (b) procures the order to be entered in the Registry and
  - (c) leaves at the Registry a copy of the order and a certificate signed by him that the order has been duly served as aforesaid

he shall, subject to the foregoing provisions of this Order, be considered the attorney of the party till the final conclusion of the cause or matter.

- (2) An application for an order under this rule must be made by summons and the summons must, unless the Court otherwise directs, be served on the party for whom the attorney acted.

The application must be supported by an affidavit stating the grounds of the application.

- (3) An order made under this rule shall not affect the rights of the attorney and the party for whom he acted as between themselves.

**7. Address for service of party whose attorney is removed, etc. (O. 67. r. 7)**

- (1) Where—
- (a) an order is made under rule 5, or
  - (b) an order is made under rule 6, and the applicant for that order has complied with rule 6(1),
- then, unless and until the party to whose attorney or to whom, as the case may be, the order relates either appoints another attorney and complies with rule 3, or being entitled to act in person, gives notice of this intention so to do and complies with rule 4, his last known address within the jurisdiction 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.
- (2) Where such party has no last known address or registered or principal office (as the case may be) within the jurisdiction, and the party wishing to serve documents on him does not know, or may not reasonably be expected to know of any other address for service within the jurisdiction, he shall be deemed to have no address for service for the purposes of Order 65, rule 9.

**Order 68 –  
[blank]****Order 69 – Service of foreign process****1. Definitions (O. 69, r. 1)**

In this Order—

"a **convention country**" means foreign country in relation to which there subsists a civil procedure convention providing for service in that country of process of the Supreme Court, and which has been extended or otherwise applies to the Turks and Caicos Islands "a process" includes a citation;

"**process server**" means the process server appointed under rule 4.

**2. Applications (O. 69. r. 2)**

This Order applies to the service on a person in the Turks and Caicos Islands of any process in connection with civil or commercial proceedings in a foreign court or tribunal where the Registrar receives a written request for service—

- (a) from the Governor, with a recommendation by him that service should be effected, or
- (b) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country.

**3. Service of process (O. 69. r. 3)**

- (1) The request shall be accompanied by a translation thereof in English, two copies of the process and, unless the foreign court or tribunal certifies that the person to be served understands the language of the process, two copies of a translation thereof.
- (2) Subject to paragraph (3) and (5) and to any enactment providing for the manner of service of documents on corporate bodies, the process shall be served by the process server's leaving a copy of the process and a copy of the translation or certificate, as the case may be, with the person to be served.
- (3) *[blank]*
- (4) The process server shall send to the Registrar a copy of the process and an affidavit, certificate or report proving due service of process or stating the reason why service could not be effected, as the case may be, and shall, if the Court so directs, specify the costs incurred in effecting attempting to effect service.
- (5) Order 65, rule 4 (substituted service) shall apply to the service of foreign process as it applies to the service of writs, except that the Registrar may make an order for substituted service of foreign process on the basis of the process server's affidavit, certificate or report, without an application being made to him in that behalf.
- (6) The registrar shall send a certificate, together with a copy of the process, to the consular or other authority or the Governor, as the case may be, stating—
  - (i) when and how service effected or the reason why service could not be effected, as the case may be;
  - (ii) where appropriate, the amount certified by the Registrar to be the costs of effecting or attempting to effect service.
- (7) The certificate under paragraph (6) shall be sealed with the seal of the Supreme Court.

**4. Appointment of process server (O. 69, r. 4)**

The Registrar may appoint a process server for the purposes of this Order.

## **Order 70 – Obtaining evidence for foreign courts, etc.**

**1. Interpretation and exercise of jurisdiction (O. 70, r. 1)**

In this Order the Act of 1975 means the Evidence (Proceedings in Other Jurisdictions) Act 1975 as extended to the Turks and Caicos Islands by S. I. 1987, No. 1266, and expressions used in this Order which are used in that Act shall have the same meaning as in that Act.

**2. Application for order (O. 70, r. 2)**

- (1) Subject to paragraph (3) and rule 3 an application for an order under the Act of 1975 must be made *ex parte* and must be supported by affidavit.

- (2) There shall be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.

3. **Application by Attorney General in certain cases (O. 70, r. 3)**

Where a request

- (a) is received by the Governor 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 the Turks and Caicos Islands of any party to the matter pending or contemplated before the foreign 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 the Turks and Caicos Islands for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such party.

the registrar shall send the document to the Attorney General and the Attorney General may make an application for an order under the Act of 1975, and take such other steps as may be necessary to give effect to the request.

4. **Person to take and manner of taking examination (O. 70, r. 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 an examiner of the court or before such other qualified person as to the Court seems fit.
- (2) Subject to rule 6 and to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in manner provided by Order 39, rules 5 to 10 and 11 (1) to (3) and an order may be made under Order 39, rule 14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.
- (3) If the examination is directed to be taken before an the examiner of the court, Order 39, rules 17,18 and 19, shall apply on relation to the examination.

5. **Dealing with deposition (O. 70, r. 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 Supreme Court identifying the documents annexed thereto, that is to say the request, the order of the court for examination and the deposition taken in pursuance of the order, and
- (b) send the certificate with the documents annexed thereto to the Governor, or, where the request was sent to the Registrar by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to the court or tribunal out of the jurisdiction requesting the examination.

6. **Claim to privilege (O. 70, r. 6)**

- (1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 3(1)(b) of the Act of 1975 is not supported or conceded as mentioned in subsection (2) of that section.
- (2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so the Court may do so, on the *ex parte* application of the person who obtained the order under section 2.

- (3) If such evidence is taken—
- (a) it must be contained in a document separate from the remainder of the deposition of the witness;
  - (b) the examiner shall send to the Registrar with the deposition a statement signed by the examiner setting out the claim and the ground which it was made;
  - (c) on receipt of the statement the Registrar shall, notwithstanding anything in rule 5, retain the document containing the part of the witness's evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;
  - (d) if the claim is rejected by the foreign court or tribunal, the Registrar shall send to that court or tribunal the document containing that part of the witness's evidence to which the claim relates, but if the claim is upheld he shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 2 of the court or tribunal's determination.

### **Order 71 and 72 – [Blank]**

### **Order 73 – Arbitration proceedings**

**1. Application (O. 73, r. 1)**

This Order applies to applications under the Arbitration Ordinance, Parts I and III.

**2. Matters for a judge in court (O. 73, r. 2)**

- (1) Every application to the court—
- (a) to remove an arbitrator, umpire or referee under section 16(1) of that Ordinance or
  - (b) to set aside an award or report under section 16(2) thereof, or
  - (c) to determine, under section 18 any question of law arising in the course of a reference,
- must be made by originating motion to a single judge in court.
- (2) 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.

**3. Matters for judge in chambers (O. 73, r. 3)**

- (1) Subject to the foregoing provisions of this Order the jurisdiction of the court or a judge thereof under the Arbitration Ordinance may be exercised by a judge in chambers.
- (2) An application under section 6(2) shall be made by originating summons.
- (3) No appearance need be entered to an originating summons by which an application under the said section is made.

**4. Special provisions as to application to remit or set aside an award (O. 73, r. 4)**

- (1) An application to the court to set aside an award under section 16(2) of the Ordinance or otherwise must be made within six 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.
5. **Service out of the jurisdiction of summons, notice, etc. (O. 73, r. 5)**
- (1) Service out of the jurisdiction—
- (a) of an originating summons for the appointment of an arbitrator or umpire or to set aside an appointment or for leave to enforce an award, or
  - (b) of notice of an originating motion to remove an arbitrator or umpire 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 grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found, and no such leave shall be granted unless it shall be made sufficiently to appear to the court that the case is a proper one for service out of the jurisdiction under this rule,
- (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.

6. **Registration in Supreme Court of foreign arbitration awards (O. 73, r. 6)**

Where an award is made in proceedings on an arbitration in any country to which the Overseas Judgments (Reciprocal Enforcement) Ordinance extends, being a country to which the said Ordinance has been applied, then, if the award has, in pursuance of the law in force in the place where it is made, become enforceable in the same manner as a judgment given by a court in that place, the Overseas Judgments (Reciprocal Enforcement) Rules shall apply in relation to that award as they apply in relation to a judgment given by a court in that place, subject, however, to the following modifications—

- (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 5 of the said Rules 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.

**Order 74-75 –  
[blank]**

**Order 76 – Contentious probate proceedings**

1. **Application and interpretation (O. 76,r.1)**

- (1) This Order applies to probate causes and matters, and the other provisions of these rules apply to those causes and matters including applications for the rectification of a will subject to the provisions of this Order.
2. In these rules "probate action" means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.



- (3) In this Order, "will" includes a codicil.
2. **Requirements in connection with issue of writ (O. 76, r. 2)**
- (1) A probate action must be begun by writ.
- (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. **Parties to action for revocation of grant (O. 76, r. 3)**
- Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by a virtue of an unrevoked grant of probate of his will or letters of administration of his estate shall be made party to any action for revocation of the grant.
4. **Lodgment of grant in action for revocation (O. 76, r. 4)**
- (1) Where, at the commencement of an action for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration as the case may be have not been lodged in court, then—
- (a) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Registry within seven days after the issue of the writ;
- (b) if any defendant to the action has the probate or letters of administration in his possession or under this control, he shall lodge it or them in the Registry within 14 days after the service of the writ upon him.
- (2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action be ordered by the Court to lodge the probate or letters of administration in the Registry within a specified time, and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the Court until he has complied with the order.
5. **Affidavit of testamentary scripts (O. 76, r. 5)**
- (1) Unless the Court otherwise directs, the plaintiff and every defendant who has acknowledged service of the writ in a probate action must swear an affidavit—
- (a) describing any testamentary script of the deceased person, whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script, and
- (b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or is, if such be the case, stating that he does not know the name or address of that person.
- (2) Any affidavit required by this rule must be filed, and any testamentary script referred to therein which is in the possession or under the control of the deponent must be lodged in the Registry within 14 days after the acknowledgment of service by a defendant to the action or, if no defendant acknowledges service and the Court does not otherwise direct, before an order is made for the trial of the action.
- (3) Where any testamentary script required by this rule to be lodged in the Registry or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be lodged in the Registry and the words which appear in pencil in the original must be underlined in red ink in the copy.
- (4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script lodged by any party to the action under this rule, unless

and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

- (5) In the 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.

**6. Failure to acknowledge service (O. 76, r. 6)**

- (1) Order 13 shall not apply in relation to a probate action.
- (2) Where any of several defendants to probate action fails to acknowledge service of the writ, the plaintiff may, after the time for acknowledging service has expired and upon filing an affidavit proving due service of the writ on that defendant proceed with the action as if that defendant had acknowledged service.
- (3) Where the defendant, or all the defendants, to a probate action, fails or fail to acknowledge service of the writ, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for acknowledging service by the defendant apply to the Court for an order for trial of the action.
- (4) Before applying for an order under paragraph (3) the plaintiff must file an affidavit proving due service of the writ on the defendant and, if no statement claim is indorsed on the writ, he must lodge a statement of claim in the Registry.
- (5) Where the Court grants an order under paragraph (3), it may direct the action to be tried on affidavit evidence.

**7. Service of statement of claim (O. 76, r. 7)**

The plaintiff in a probate action must, unless the Court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who acknowledges service of the writ in the action and must do so before the expiration of six weeks after acknowledgment of service by that defendant or of eight days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

**8. Counterclaim (O. 76, r. 8)**

- (1) Notwithstanding anything 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 the subject of the action must add to his defence a counterclaim in respect of that matter.
- (2) If the plaintiff fails to serve a statement of claim, any such defendant may, with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

**9. Contents of pleadings (O. 76, r. 9)**

- (1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.
- (2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made herein are proved he would be entitled to an interest in the estate.
- (3) Without prejudice to Order 18, rule 7, any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say:—
  - (a) that the will was not duly executed,

- (b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding, and
- (c) that the execution of the will was obtained by undue influence or fraud, shall be made by that party unless that other plea is also pleaded.

**10. Default of pleadings (O. 76, r. 10)**

- (1) Order 19 shall not apply in relation to a probate action.
- (2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these rules to serve on that other party, then, unless the Court orders the action to be discontinued or dismissed, that other party may, after the expiration of the period fixed by or under these rules for service of the pleading in question, apply to the Court for an order for trial of the action; and if an order is made the Court may direct the action to be tried on affidavit evidence.

**11. Discontinuance and dismissal (O. 76, r. 11)**

- (1) Order 21 shall not apply in relation to a probate action.
- (2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or any party to the action who has acknowledged service of the writ therein, order the action to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action, be made to the person entitled thereto.
- (3) An application for an order under this rule may be made by motion or summons or by notice under Order 25, rule 7.

**12. Compromise of action: Trial of affidavit evidence (O. 76, r. 12)**

Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial of the action on affidavit evidence.

13. *[blank]*

14. *[blank]*

**15. Probate counterclaim in other proceedings (O. 76, r. 15)**

- (1) In this rule "probate counterclaim" means any counterclaim in any action other than a probate action by which the defendant claims any such relief as is mentioned in rule 1(2).
- (2) This Order shall apply with the necessary modifications to a probate counterclaim as it applies to a probate action.
- (3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.

**16. Rectification of wills (O. 76, r. 16)**

- (1) Where an application is made for the rectification of a will, and the grant has not been lodged in court, rule 4 shall apply, with the necessary modifications, as if the proceedings were a probate action.
- (2) A copy or memorandum of every order for the rectification of a will shall be endorsed on, or permanently annexed to, the grant under which the estate is administered.

## Order 77 – Proceedings by and against crown

### 1. Application and interpretation (O. 77, r.1)

- (1) These rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Order.
- (2) In this order—

"**civil proceedings by Crown**", "civil proceeding against the Crown" and "civil proceeding by or against the crown" have the same respective meanings as in Part III of the Crown Proceedings Ordinance, and do not include any of the proceedings specified in section 19(3) of that Ordinance;

"**civil proceedings to which the Crown is a party**" has the same meaning as it has for the purpose of Part V of the Crown Proceedings Ordinance, by virtue of section 2(3) of that Ordinance;

"**order against the Crown**" means any order (including an order for costs) made in any civil proceedings by or against the Crown or in connection with any arbitration to which the Crown is a party, in favor of any person against the Crown or against the government department or against an officer of the Crown as such;

"**order**" includes a judgment, decree, rule, award declaration.

### 2. [blank]

### 3. Particulars to be included in indorsement of claim (O. 77, r. 3)

- (1) In the case of a writ which begins civil proceedings against the Crown the indorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the Crown's liability is alleged to have arisen and as to the government department and officers of the Crown concerned.
- (2) If in civil proceedings against the Crown a defendant considers that the writ does not contain a sufficient statement as required by this rule, he may before the expiration of the time limited for acknowledging service of the writ, apply to the plaintiff by notice for further and better statement containing such information as may be specified in the notice.
- (3) Where a defendant gives a notice under this rule, the time limited for acknowledging service of the writ shall not expire until four days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied in compliance with the notice or four days after the court has, on the application of the plaintiff by summons served on the defendant not less than seven days before the return day, decided that no further information as to the matter referred to in paragraph (1) is reasonably required.

### 4. Service on the crown (O. 77, r. 4)

- (1) Order 10, Order 11 and any other provision of these rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown or begun.
- (2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite but where the proceedings are by or against the crown, service on the crown must be effected by leaving the document at the office of the Attorney General with a member of his staff.
- (3) In relation to the service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown, Order 65, rules 5 and 9, shall not apply, and Order 65, rule 7, shall apply as if the reference therein to rules 2 and 5(1)(a) of that Order were a reference to paragraph (2)(a) of this rule.

**6. Counterclaim and set-off (O. 77, r. 6)**

- (1) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, a person may not in any proceedings by the Crown make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes duties or penalties.
- (2) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, no counterclaim may be made, or set-off pleaded, without the leave of the Court by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown if the Crown is sued or sues in respect of a Government department and the subject-matter of the counterclaim or set-off does not relate to that department.
- (3) Any application for leave under this rule must be made by summons.

**7. Summary judgment (O. 77, r.)**

- (1) No application shall be made against the crown—
  - (a) under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Crown,
  - (b) under Order 14, rule 5, in any proceedings by the Crown, or
  - (c) under Order 14A, rule 1 in any proceedings by or against the Crown.
- (2) Where an application is made by the Crown under Order 14, rule 1, Order 14, rule 5, or Order 86, rule 1, the affidavit required in support of the application must be made by—
  - (a) the Attorney General, or
  - (b) an officer duly authorized by the Attorney General or by the department concernedand the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

**8. [blank]****9. Judgment in default (O. 77, r. 9)**

- (1) Except with the leave of the Court, no judgment in default of notice of intention to defend or of pleading shall be entered against the Crown in civil proceedings against the crown or in third party proceedings against the crown.
- (2) Except with the leave of the Court, Order 16, rule 5(1)(a) shall not apply in the case of third party proceedings against the Crown.
- (3) An application for leave under this rule may be made by summons and the summons must be served not less than seven days before the return day.

**10. Third party notices (O. 77, r. 10)**

- (1) Notwithstanding anything in Order 16, a third party notice (including a notice issuable by virtue of Order 16, rule 9) for service on the crown shall not be issued without the leave of the Court, and the application for the grant of such leave must be made by summons, and the summons must be served on the plaintiff and the Crown.
- (2) Leave to issue such a notice for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the crown has arisen and as to the departments and officers of the Crown concerned.

**11. Interpleader: Application for order against Crown (O. 77, r. 11)**

No order shall be made against the Crown under Order 17, rule 5(3) except upon an application by summons served not less than 7 days before the return day.

**12. Discover and interrogatories (O. 77, r. 12)**

- (1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the Crown is a party.
- (2) In any civil proceedings to which the crown is a party any order of the Court made under the powers conferred by section 24(1) of the Crown Proceedings Ordinance, shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of a Minister of the Crown, be injurious to the public interest to disclose.
- (3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for discovery against the Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the Court may direct.
- (4) Where in any such proceedings and order is made under the said section 24 for interrogatories to be answered by the Crown, the Court shall direct by what officer of the Crown the interrogatories are to be answered.

**13. [blank]****14. Evidence (O. 77, r. 14)**

- (1) Civil proceedings against the crown may be instituted under Order 39, rule 15, in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.
- (2) Any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

**15. Executio and satisfaction of orders (O. 77, r. 15)**

- (1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown.
- (2) An application under the proviso to subsection (1) of section 21 of the Crown Proceedings Ordinance for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant may be made to the Court *ex pane* without summons.
- (3) Any such certificate must be in Form No. 95 or 96 in Appendix A, whichever is appropriate.

**16. Attachment of debts, etc. (O. 77, r. 16)**

- (1) No order—
  - (a) for the attachment of debts under Order 49, or
  - (b) for the appointment of a sequestrator under Order 45, or
  - (c) for the appointment of receiver under Order 30 or 51,shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.
- (1A) No application shall be made under paragraph (2) unless the order of the Court to be enforced is for a sum of money amounting in value to at least \$100.
- (2) Every application to the Court for an order under section 23(1) of the Crown Proceedings Ordinance restraining any person from receiving money payable to him by the Crown and directing payment of

the money to the applicant or some other person must be made by summons and, unless the Court otherwise directs, served—

- (a) on the Crown at least 15 days before the return day, and
  - (b) on the person to be restrained or his attorney at least seven days after the summons has been served on the Crown and at least seven days before the return day.
- (2A) An application under paragraph (2) must be supported by an affidavit—
- (a) setting out the facts giving rise to the application;
  - (b) stating the name and last known address of the person to be restrained;
  - (c) identifying the order to be enforced and stating the amount of such order and the amount remaining unpaid under it at the time of the application, and
  - (d) identifying the particular debt from the Crown in respect of which the application is made.
- (3) Order 49, rules 5 and 6, shall apply relation to such an application as is mentioned in paragraph (2) for an order restraining a person from receiving money payable to him by the Crown as those rules apply to an application under Order 49, rule 1, for an order for the attachment of a debt owing to any person from a garnishee, except that the Court shall not have power to order execution to issue against the Crown.

**17. Proceeding relating to postal packets (O. 77, r. 17)**

- (1) An application by any person under section 7(9) of the Crown Proceedings Ordinance, for leave to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives must be made by originating summons.
- (2) The Crown and the person in whose name the applicant seeks to bring proceedings must be made defendants to a summons under this rule.
- (3) A summons under this rule shall be in Form No. 10 in Appendix A.

**18. Applications under section 25(2) of Crown Proceedings Ordinance (O. 77, r. 18)**

- (1) *[blank]*
- (2) An application such as is referred to in section 25(2) of the Crown Proceedings Ordinance may be made to the court at any time before trial by motion or summons, or may be made at the trial of the proceedings.

**Order 78 –  
*[blank]***

**Order 79 – Bail in criminal proceedings**

1.-8. *[blank]*

**9. Bail (O. 79, r. 9)**

- (1) Subject to the provisions of this rule, every application to the Chief Justice in respect of bail in any criminal proceeding made pursuant to Section 102 of the Magistrate's Court Ordinance—
  - (a) where the defendant is in custody, must be made by summons in chambers to show cause why the defendant should not be granted bail
  - (b) where the defendant has been admitted to bail, must be made by summons in chambers to show cause why the variation in the arrangements for bail proposed by the applicant should not be made.



- (2) Subject to paragraph (5), the summons must, at least 24 hours before the day named therein for the bearing, be served on the prosecutor and on the Attorney General. if the prosecution is being carried on by him, and Order 32, rule 5, shall apply in relation to the summons.
- (3) Subject to paragraph (5), every application must be supported by affidavit.
- (4) Where a defendant in custody who desires to apply for bail is unable through lack of means to instruct an attorney, he may give notice in writing to the Chief Justice in chambers stating his desire to apply for bail.
- (5) Where notice is given under paragraph (4) the Chief Justice may, if he thinks fits, dispense with the requirements of paragraphs (1) to (3) and deal with the application in a summary manner, or give such directions for its conduct as he sees fit.
- (6) Where the Chief Justice grants the defendant bail, a copy of the order shall be transmitted forthwith to the Magistrate's Court.
- (6A) *[blank]*
- (6B) Where the Chief Justice imposes a requirement to be complied with before a person's release on bail, he may give directions as to the manner in which and the person or person's before whom the requirement may be complied with.
- (7) *[blank]*
- (8) *[blank]*
- (9) *[blank]*
- (10) A copy of an order by the Chief Justice varying the arrangements under which the defendant has been granted bail shall be transmitted forthwith to the Magistrate's Court.
- (11) Where in pursuance of an order of the Chief Justice a person is released in bail in any criminal proceeding pending the determination of an appeal to the Supreme Court or Court of Appeal or an application, or an order of *certiorari*, then, upon the abandonment of the appeal or Magistrate or Justice of the Peace may issue process for enforcing the decision in respect of which such appeal or application was brought or, as the case may be, the decision of the Supreme Court or Court of Appeal.
- (12) *[blank]*
- (13) *[blank]*
- (14) In the case of a person whose return is sought under the Fugitive Offenders Act 1967 as extended to the Turks and Caicos Islands by S.I. 1968, No 185, this rule shall apply as if references to the defendant were references to that person and references to the prosecutor were references to the state seeking the return or surrender of that person.

## Order 80 – Disability

### 1. Interpretation (O. 80, r. 1)

In this order—

"**the Act**" means Part YIU of the Mental Health Act 1959, as applied by the Mental Health (Protection of Property) Ordinance;

"**patient**" means a person who, by reason of mental disorder within the meaning of the Act, is incapable of managing and administering his property and affairs;

"**person under disability**" means a person who is an infant or a patient.



**2. Person under disability must sue, etc., by next friend or guardian *ad litem* (O. 80, r. 2)**

- (1) A person under disability may not bring, or make a claim, in proceedings except by his next friend and may not acknowledge service, 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 authorized by a provision of these rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian *ad litem*.
- (3) A next friend or guardian *ad litem* of a person under disability must act by an attorney, unless he first obtains the leave of the Court to act in person.

Such leave will only be given upon the next friend or guardian *ad litem* satisfying the Court that he does not have the means to afford to instruct an attorney.

**3. Appointment of next friend or guardian *ad litem* (O. 80, r. 3)**

- (1) [blank]
- (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.
- (3) Where a person is authorized under Part VIII of the Act to conduct legal proceedings in the name of 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 (6) 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 a 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) service shall not be acknowledged in a cause or matter for a person under disability, and
  - (c) a person who is under disability shall not be entitled to appear by his guardian *ad litem* on the hearing of petition, summons or motion which, or notice of which, has been served on him, unless and until the documents listed in paragraph (8) have been filed in the Registry.
- (7) [blank]
- (8) The documents referred to in paragraph (6) are the following—
  - (a) a written consent to be next friend or guardian *ad litem*, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian;
  - (b) where the person proposing to be such friend or guardian of the person under disability, being patient, is authorized under Part VIII of the Act to conduct the proceedings in the cause or matter in question in the name of the patient or on his behalf, a certified copy of the

order or other authorisation made or given under the said Part vmby virtue of which he is so authorized; and

- (c) except where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorized as mentioned in subparagraph (b), and subject to paragraph 9, a certificate made by the attorney for the person under disability certifying—
  - (i) that he knows or believes, as the case may be, that the person to whom the certificate relates is 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 authorized as aforesaid; and
  - (iii) that the person so named has no interest in the cause or matter in question adverse to that person under disability.
- (9) When the next friend or guardian *ad litem* is acting in person pursuant to leave given under paragraph 3 of rule 2, he shall file an affidavit deposing to the matters set out in paragraph 8(c), instead of the certificate required by that sub-paragraph.
- 4. [blank]
- 5. [blank]
- 6. **Appointment of guardian where person under disability does not acknowledge service (O. 80, r. 6)**
  - (1) Where—
    - (a) in an action against a person under disability begun by writ, or by originating summons no acknowledgment of service is given in the action for that person, or
    - (b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no acknowledgment of service is given for that person,

an application for the appointment by the court of a guardian *ad litem* of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for acknowledging service and before proceedings further with the action or counterclaim.
  - (2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no acknowledgment of service is given for that person to the notice, an application for the appointment by the Court of a guardian *ad litem* of that person must be made by that party after the time limited (as respects that person) for acknowledging service and before proceedings further with the third party proceedings.
  - (3) Where in any proceedings against a person under disability begun by petition or originating motion, that person does not appear by a guardian *ad litem* at the hearing of the petition or motion, as the case may be, the Court hearing it may appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.
  - (4) At any stage in proceedings to which Order 44 applies, notice of which has been served on a person under disability, the Court may, if no acknowledgment of service is given for that person, appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made for the appointment of such a guardian.
  - (5) An application under paragraph (1) or (2) must be supported by evidence proving—
    - (a) that the person to whom the application relates is a person under disability,
    - (b) that the person proposed as guardian *ad litem* is willing and a proper person to act as such and has no interest in the proceedings adverse to that of that person under disability;

- (c) that he 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 acknowledging service 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).
7. **Application to discharge or vary certain orders (O. 80, r. 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 the cause or matter, within 14 days after the appointment of such a friend or guardian to act for him.
8. **Admission not to be implied from pleadings of person under disability (O. 80, r. 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 apposite party by reason only that he has not traversed it in his pleadings.
9. **Discover and interrogatories (O. 80, r. 9)**
- Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian *ad litem*.
10. **Compromise, etc, by person under disability (O. 80, r. 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.
11. **Approval of settlement (O. 80, r. 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 as 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) [blank]
  - (3) [blank]
  - (4) An originating summons under this rule shall be in Form No. 10 in Appendix A.
  - (5) In this rule "settlement" includes a compromise.

**12. Control of money recovered by person under disability (O. 80, r. 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.
  - (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 under this rule and not otherwise.
- (2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the Supreme Court and invested or otherwise dealt with there.
- (3) Without prejudice to the foregoing provision 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 attorney in respect of costs.
- (4) Where in pursuance of directions given under this rule money is paid into the Supreme Court to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of the court, except in accordance with an order of the Court.
- (5) The foregoing provision of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, 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.

13. [blank]

14. [blank]

**15. Proceedings under Fatal Accidents Act: Apportionment by court (O. 80, r. 15)**

Where a single sum of money is paid into court under Order 22, rule 1, in satisfaction of a causes of action arising under the Fatal Accidents Ordinance and that sum is accepted, the money shall be apportioned by the Court between the different parties for whom and for whose benefit the action is brought, either when giving directions for dealing with it under rule 12 (if that rule applies) or when authorising its payment out of court.

**16. Service of certain documents on person under disability (O. 80, r. 16)**

- (1) Where in any proceedings a document is required to be served or in accordance with Order 10, rule 1(2) 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 6(3) the document must be served—
  - (a) in the case of an infant who is not also patient, on his parent or guardian or, if he has no parent or guardian, on the person with whom he resides or in whose care he is;
  - (b) in the case of a patient, on the person (if any) who is authorised under Part proceedings in connection with which the document is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is;

and must be served in the manner required by these rules with respect to the document in question.
- (3) Notwithstanding anything in paragraph (2) the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

- (4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a Writ of *subpoena* against any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders.

This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

## Order 81 – Partners

### 1. Actions by and against firms within jurisdiction (O. 81, r. 1)

Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

### 2. Disclosure of partners' names (O. 81, r. 2)

- (1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their attorney a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their attorney 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 name 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.

### 3. Service of writ (O. 81, r. 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 (3) 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,
- (2) [blank]
- (3) 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.
- (4) Every person on whom a writ is served under paragraph (1)(a) or (b) must at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as 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.

**4. Acknowledgment of service in an action against firm (O. 81, r. 4)**

- (1) Where persons are sued as partners in the name of their firm, service may not be acknowledged in the name of the firm but only by the partners thereof in their own names, but the action shall nevertheless continue in the name of the firm.
- (2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may acknowledge service of the writ and state in his acknowledgment that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An acknowledgment of service given in accordance with this paragraph shall, unless and until it is set aside, be treated as an acknowledgment by the defendant firm.

- (3) Where an acknowledgment of service has been given by a defendant in accordance with paragraph (2) then—
  - (a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;
  - (b) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either liability as a partner or the liability of the defendant firm or both.
- (4) The Court may at any stage of the proceedings in an action in which a defendant has acknowledged service in accordance with paragraph (2) on the application of the plaintiff or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.
- (5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not acknowledge service of the writ unless he is a member of the firm sued.

**5. Enforcing judgment or order against firm (O. 81, r. 5)**

- (1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.
- (2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to rule 6 and to the next following paragraph, issue against any person who—
  - (a) acknowledged service of the writ in the action as a partner, or
  - (b) having been served as a partner with the writ of summons, failed to acknowledge service of it 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) acknowledged service of the writ in the action as a partner, or
  - (b) was served within the jurisdiction with the writ as a partner, or

- (c) was, with the leave of the Court given under Order 11, served out of the jurisdiction with the writ, as a partner;

and, except as provided by paragraph (1) and by the foregoing provisions 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 it 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 bearing 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.
6. **Enforcing judgment or order in actions between partners, etc. (O. 81, r. 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 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.

7. **Attachment of debts owed by firm (O. 81, r. 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 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 if the firm constitutes a sufficient compliance with the order.

8. **Actions begun by originating summons (O. 81, r. 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.

9. **Application to person carrying on business in another name (O. 81, r. 9)**

An individual carrying on business within the jurisdiction in a name or style other than his own name, may whether or not he is within the jurisdiction 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.

## Order 82 – Defamation actions

1. **Application (O. 82, r. 1)**

These rules apply to actions for libel or slander subject to the following rules of this Order.



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

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

## 3. **Obligation to give particulars (O. 82, r. 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 in which he relies in support 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.
  - (2A) Without prejudice to Order 18, rule 8, but subject to paragraph (2B) where the defendant makes an allegation as described in paragraph (2), the plaintiff shall serve a reply specifically admitting or denying any such allegation raised by the defendant and specifying any fact or matter upon which he relies in opposition to the defendant's allegations.
  - (2B) No reply shall be required under paragraph (2A) where all the facts or matters on which the plaintiff intends to rely in opposition to the defendant's allegations as described in paragraph (2) are already particularized elsewhere in the dealings.
  - (3) Where 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 these 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 fact and matters from which the malice is to be inferred.
- (3A) Without prejudice to Order 18, rule 12, the plaintiff must give full particulars in the statement of claim of the facts and matters on which he relies in support of his claim for damages, including details of any conduct by the defendant which it is alleged has increased the loss suffered and of any loss which is peculiar to the plaintiff's own circumstances.
- (4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

## 3A. **Ruling on meaning (O. 81, r. 3A)**

- (1) At any time after the service of the statement of claim either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a particular meaning or meanings attributed to them in the pleadings.
- (2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the pleadings, he may dismiss the claim or make such other or give such judgment in the proceedings as may be just.
- (3) Subject to paragraph (4), each party to the proceedings may make only one application under paragraph (1).
- (4) Where a party has made an application under paragraph (1) and the respondent to that application subsequently amends his pleadings to allege a new meaning, the Court may allow the other party to make a further application under paragraph (1) in relation to that new meaning.



- (5) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant, and as if the counterclaim were the statement of claim.
4. **Provisions as to payment into court (O. 82, r. 4)**
- (1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with Order 22, rule 3(1) accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in rule 3(4) of that Order, the action shall be stayed as against that defendant only, but—
- (a) the sum recoverable under any judgment given in the plaintiffs 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 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 and accepted by *him* or the judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.
- (2) Where in an action for libel a party pleads the defence for which section 2 of the Libel Act, 1843, as extended to the Turks and Caicos Islands by the Imperial Statutes Extension Act 1847, provides, Order 22, rule 7, shall not apply in relation to the pleading.
5. **Statement in open court (O. 82, r. 5)**
- (1) Where a party wishes to accept money paid into Court in satisfaction of a cause of action for libel or slander, malicious prosecution or false imprisonment, that party may before or after accepting the money apply to a Judge in Chambers by summons for leave to make in open Court a statement in terms approved by the judge.
- (2) Where a party to an action for libel or slander, malicious prosecution or false imprisonment which is settled before trial desires to make a statement in open Court, an application must be made to 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.
- (3) A Judge in Chambers may approve a statement under paragraph (1) or (2) which refers not only to a cause of action mentioned in those paragraph but also to any other cause of action joined thereto.
6. **Interrogatories not allowed in certain cases (O. 82, r. 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.

**Order 83 –  
[blank]**

**Order 84 –  
[blank]**

**Order 85 – Administration and similar actions**

1. **Interpretation (O. 85, r. 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.

**2. Determination of questions, etc., without administration (O. 85, r. 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 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 questions as to the rights or interest 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 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.

**3. Parties (O. 85, r. 3)**

- (1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.
- (2) Notwithstanding anything in order 15, rule 4(2), and without prejudice to the powers of the court under that order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such action as is mentioned in paragraph (1) relates need not be parties to the action; but the plaintiff may take 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 part to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

**4. Grant of relief in action begun by originating summons (O. 85, r. 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, willful 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.

**5. Judgment and orders in administration (O. 85, r. 5)**

- (1) A judgment or order for the administration or execution under the direction of the court of an estate or trust need not be given or made unless in the opinion of the court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.
- (2) Where an administration action is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by executors, administrators or trustees, as the case may be, then, without prejudice to its 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 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 administration of 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.

**6. Conduct of sale of trust property (O. 85, r. 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 86 – Actions for specific performance: Summary judgment**

**1. Application by plaintiff for summary judgment (O. 86, r. 1)**

- (1) In any action begun by writ indorsed writ indorsed with a claim—
  - (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase, exchange, mortgage or charge of any property, with or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or
  - (b) for rescission of such an agreement, or
  - (c) for the forfeiture or return of any deposit made under such agreement the plaintiff may, on the ground that the defendant has no defense to the action, apply to the court for judgment.
- (2) An application may be made against a defendant under this rule whether or not he has acknowledged service of the writ in the action.

**2. Manner in which application under rule 1 must be made (O. 86, r. 2)**

- (1) An application under rule 1 shall be made by summons supported by an affidavit verifying the facts on which the cause of action is based and stating that in the deponent's belief there is no defense to the action.

Unless the court otherwise directs, an affidavit for the purposes of this paragraph may contain statements of information or belief with the sources and grounds thereof.

- (2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.
- (3) The summons, a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than four clear days before the return day.

**3. Judgement for the plaintiff (O. 86, r. 3)**

Unless on the hearing of an application under rule 1 either the court dismisses the application or the defendant satisfies the court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the court may give judgment for the plaintiff in the action.

**4. Leave to defend (O. 86, r. 4)**

- (1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the court.
- (1A) Unless the court otherwise orders, an affidavit for the purposes of paragraph (1) may contain statements of information or belief with the sources and grounds thereof.
- (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 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.

**5. Directions (O. 86, r. 5)**

Where the court orders that a defendant have leave to defend the action, the court shall give directions as to the further conduct of the action, 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 orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 were a summons for directions.

**6. Costs (O. 86, r. 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 62, and, in particular, to paragraphs (1) and (2) of rule 8 of that Order, the Court may dismiss the application with costs and may require the costs to be paid by him forthwith.

**7. Setting aside judgement (O. 86, r. 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.

**8. Application for summary judgment on counterclaim (O. 86, r. 8)**

- (1) where a defendant to proceedings has served a counterclaim on the plaintiff including any claim such as is specified in rule 1(1), the defendant may apply to the court for judgment on the grounds that the plaintiff has no defence to the claim.

- (2) Rules 2 to 7 shall apply in relation to an application under paragraph (I) as if the counterclaim were an action.

### **Order 87 – Debenture holders' action: Reciever's register**

#### **1. Receiver's register (O. 87, r. 1)**

Every receiver appointed by the court in an action to enforce registered debentures or registered debenture stock shall, if so directed by the court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (in this Order referred to as "the receiver's register").

#### **2. Registration of transfers, etc. (O. 87, r. 2)**

- (1) Where a receiver is required 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 seven 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.

#### **3. Application for rectification of register (O. 87, r. 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 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.

#### **4. Reciever's register evidence of transfers, etc (O. 87, r. 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.

**5. Proof of title of holder of bearer debenture, etc. (O. 87, r. 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 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 certificate, 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 debenture or certificate as is referred to in paragraph (1) is produced in chambers, the attorney 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 chambers as the holder of the debenture or debenture stock certificate, as the case may be, and
  - b) that 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 of a new holder proves his *title* in accordance with paragraph (2), and
  - c) that if a new holder neglects to prove his title as foresaid he may incur additional delay, trouble and expense in obtaining payment.
- (4) The attorney of the plaintiff in the action must preserve any certificates 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 address of the persons producing them and of the holders thereof, and if the court requires it, must verify the record by Affidavit.

**Order 88 –  
[blank]**

**Order 89 – Proceedings between husband and wife**

**1. [blank]**

**2. Provisions as to actions in tort (O. 89, r. 2)**

- (1) This rule applies to any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage.
- (2) [blank]
- (3) Notwithstanding anything in Order 13 or Order 19, judgment on failure to give notice of intention to defend or in default of defence shall not be entered in an action to which this rule applies except with the leave of the Court.
- (4) An application for the grant of leave under paragraph (3) must be made by summons and the summons must, notwithstanding anything in Order 65 rule 9, be served on the defendant.
- (5) If the summons is for leave to enter judgment on failure to give notice of intention to defend, the summons shall not be issued until after the time limited for acknowledging service of the writ.

## Order 90 – Proceedings relating to infants

### 1. Wards of court (O. 90, r. 1)

- (1) No infant shall be made a ward of court except by virtue of an order to that effect made by the court.
- (2) Where application is made for such an order in respect of an infant, the infant shall become a ward of the court on the making of the application, but shall cease to be a ward of the court as provided in PARA 3.

### 2. Application to make infant a ward of court (O. 90, r. 2)

- (1) Where an action to which an infant is a party is proceeding, application to make that infant a ward of court may be made by summons in the action; but except in that case an application to make an infant a ward of court must be made by originating summons.
- (2) Where there is no person other than the infant who is a suitable defendant an application may be made *ex parte* to a judge in chambers for leave to issue either an *ex parte* originating summons or an originating summons with the infant as defendant thereto: and, except where such leave is granted, the infant shall not be made a defendant to an originating summons under this rule in the first instance.
- (3) Immediately after the issue of any summons under this rule the applicant must produce the summons at the Registry for recording in the register of wards, and the Registrar shall mark it as having been so produced and recorded.

### 3. When infant ceases to be ward of court (O. 90, r. 3)

- (1) An infant who becomes a ward of court on the issue of a summons under *rule 2* shall cease to be a ward of court—
  - (a) if an application for an appointment for the hearing of the summons is not made within the period of twenty-one days after the issue of the summons, at the expiration of that period;
  - (b) if an application for such an appointment is made within that period, on the determination of the application made by the summons unless the Court hearing it orders that the infant be made a ward of the court.
- (2) Nothing in paragraph (1) shall be taken as affecting the power of the Court to order that any infant who is for the time being a ward of court shall cease to be ward of court.
- (3) If no application for an appointment for the hearing of a summons under this rule 2 is made within the period of 21 days after the issue of the summons, a notice stating whether the application intends to proceed with the application made by the summons must be left at the Registry immediately after the expiration of the period.

## Order 91 – [blank]

## Order 92 – Lodgment, investment, etc, of funds in court

1.-4. [blank]



**5. Application is with respect to funds in court (O. 52, r. 5)**

- (1) Where an application to the court—
  - (a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities of money comprised in such funds;
  - (b) for the investment or change of investment of any funds in court;
  - (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or
  - (d) for the payment or transfer out of court of any such funds as are mentioned in 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 \$20,000 in value, the application may be made *ex parte* to the Registrar and the Registrar may dispose of the application or may direct it to be made by originating summons.

Unless otherwise directed, *ex parte* applications under this paragraph shall be made by affidavit.

- (4) [blank]
- (5) This rule does not apply to any application for an order under Order 22.

**Order 93**

[blank]

**Order 94 – Applications and appeals to supreme court under various enactments****I. Jurisdiction of Supreme Court to quash certain orders, schemes, etc. (O. 94, r. 1)**

- (1) Where by virtue of any enactment the Supreme Court has jurisdiction, on the application of any person, to quash or prohibit any order, scheme, certificate or plan, any amendment or approval of a plan, any decision of a Minister or government board or department or any action on the part of a Minister or government board or department, the jurisdiction shall be exercised by a single judge.
- (2) The application must be made by originating motion and, without prejudice to Order 8, rule 3(2) the notice of such motion must state the grounds of the application.

**2. Entry and service of notice of motion (O. 94, r. 2)**

- (1) Notice of a motion under rule 1 must be entered at the Registry, and served within the time limited by the relevant enactment for making the application made by the motion.
- (2) Subject to paragraph (4) notice of the motion must be served on the appropriate Minister or government board or department.
- (3) In paragraph (2) "the appropriate Minister or government board or department" means the Minister or government board or department by whom the order, scheme, certificate, plan, amendment, approval or decision in question was or be made, authorized, confirmed, approved or given or on whose part the action in question was or may be taken.



**3. Filing of affidavits, etc. (O. 94, r. 3)**

- (1) Without prejudice to the powers of the court under Order 38, rule 2(3) evidence at the hearing of a motion under rule 1 shall be by affidavit.
- (2) Any affidavit in support of the application made by such motion must be filed by the applicant in the Registry within 14 days after service of the notice of motion and the applicant must, at the time of filing, serve a copy of the affidavit and of any exhibit thereto on the respondent
- (3) Any affidavit in opposition to the application must be filed by the respondent in the Registry within 21 days after the service on him under paragraph (2) of the applicant's affidavit and the Respondent must, at the time of filing, serve a copy of his affidavit and of any exhibit thereto on the applicant.
- (4) When filing an affidavit under this rule a party must leave a copy thereof and of any exhibit thereto at the Registry for the use of the court.
- (5) Unless the Court otherwise orders, a motion under rule 1 shall not be heard earlier than 14 days after the time for filing an affidavit by the respondent has expired.

**Order 95-98**

[blank]

**Order 99 – Inheritance (Family Provisions) Ordinance****1. Interpretations (O. 99, r. 1)**

In this order "the ordinance" means the Inheritance (Family Provisions) Ordinance and a section referred to by number means the section so numbered in that Ordinance.

2. [blank]

**3. Application for financial provision (O. 99, r. 3)**

- (1) An application under section 3 shall be made by originating summons.
- (2) The summons shall be in Form No. 10 in Appendix A.
- (3) There shall be lodged with the court an affidavit by the applicant in support of the summons, exhibiting an official copy of the grant of representation to the deceased's estate and of every testamentary document admitted to proof, and a copy of the affidavit shall be served on every defendant with the summons.

**4. Powers of court as to parties (O. 99, r.4)**

- (1) Without prejudice to its powers under Order 15, the Court may at any stage of proceedings under the Ordinance direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.
- (2) Order 15, rule 13, shall apply to proceedings under the Ordinance as it applies to the proceedings mentioned in paragraph (1) of the rule.

**5. Affidavit in answer (O. 99, r. 5)**

- (1) A defendant to an application under section 3 who is a personal representative of the deceased shall and any other defendant may, within 21 days after service of the summons on him, inclusive of the day of service, lodge with the court an affidavit in answer to the application.
- (2) The Affidavit lodged by a personal representative pursuant to paragraph (1) shall state to the best of the deponent's ability—
  - (a) full particulars of the value of the deceased's net estate, as defined by section 2(1);

- (b) the person or classes of persons beneficially interested in the estate, giving the names and (in the case of those who are not already parties) the address of all living beneficiaries, and the value of their interests so far as ascertained;
  - (c) if such be the case, that any living beneficiary (naming him) is a minor or a patient within the meaning of Order 80, rule 1; and
  - (d) any facts known to the defendant which might affect the exercise of the Court's powers under the Ordinance.
- (3) Every defendant who lodges an affidavit shall at the same time serve a copy on the plaintiff and on every other defendant who is not represented by the same attorney.
6. **Separate representation (O. 99, r. 6)**
- Where an application under section 3 is made jointly by two or more applicants and the originating summons is accordingly issued by one attorney on behalf of all of them, they may, if they have conflicting interests, appear on any hearing of the summons by separate attorneys or in person, and where at any stage of the proceedings it appears to the court that one of the applicants is not but ought to be separately represented, the court may adjourn the proceedings until he is.
7. **Endorsement of memorandum on grant (O. 99, r. 7)**
- On the hearing of an application under section 3 the personal representative shall produce to the court the probate or letters of administration to the deceased's estate and, if an order is made under the Ordinance, the grant shall remain in the custody of the Court until a memorandum of the Order has been endorsed on or permanently annexed to the probate or letters of administration in accordance with section 5(3).
8. **Disposal of proceedings in chambers (O. 99, r. 8)**
- Any proceedings under the Ordinance may, if the Court so directs, be disposed of in chambers.

## Order 100-112

[blank]

## Order 113 – Summary proceedings for possession of land

1. **Proceedings to be brought by originating summons (O. 113, r. 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.
2. **Forms of originating summons (O. 113, r. 2)**
- (1) The originating summons shall be in Form No. 1 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.
3. **Affidavit in support (O. 113, r. 3)**
- The plaintiff shall file in support of the originating summons an affidavit stating—
- (a) his interest in the land and its value;
  - (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

**4. Service of originating summons (O.113, r. 4)**

- (1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him—
  - (a) personally; or
  - (b) by leaving a copy of the summons and of the affidavit or sending them to him, at the premises; or
  - (c) in such other manner as the Court may direct.
- (2) Where any person not named as a defendant is in occupation of the land, the summons shall be served (whether or not it is also required to be served in accordance with paragraph (1)), unless the Court otherwise directs, by—
  - (a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises 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) Order 28, rule 3 shall not apply to proceedings under this Order.

**5. Application by occupier to be made a party (O. 113, r. 5)**

Without prejudice to Order 15, rules 6 and 10, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at a stage of the proceedings to be joined as a defendant.

**6. Order for possession (O. 113, r. 6)**

- (1) A final order for possession in proceedings under this Order shall, except in case of emergency and by leave of the Court, not be made—
  - (a) in the case of residential premises, less than five clear days after the date of service, and
  - (b) in the case of other land, less than two clear days after the date service.
- (2) An order for possession in proceedings under this Order shall be in Form No. 42A.
- (3) 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.

**7. Writ of possession (O. 113, r. 7)**

- (1) Order 45, rule 3(2) shall not apply in relation to an order for possession under this Order but no writ of possession to enforce such an order shall be issued after the expiry of 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. 66A.

**8. Setting aside order (O. 113, r. 8)**

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

**Appendix A to the Rules of the Supreme Court (Order 1, rule 9)****Prescribed forms****No. 1 – Writ of summons (O. 6, r. 1)**

*In the Supreme Court of* \_\_\_\_\_ *[Year]* \_\_\_\_ *No.* \_\_\_\_

***In the Turks and the Caicos Islands***

Between \_\_\_\_\_ Plaintiff and \_\_\_\_\_ Defendant

To the Defendant *[name]* \_\_\_\_\_ of *[address]* \_\_\_\_\_

This writ of summons has been issued against you by the above-named Plaintiff in respect of the claim set out on the back.

Within [14 days] after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office mentioned below the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued from the Registry of the Supreme Court this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Note: This writ may not be served later than 12 calendar months after the above date unless renewed by order of the Court.

***Important***

Directions for Acknowledgment of Service are given with the accompanying form.

*[Back of No. 1]*

***\*[Statement of Claim]***

The Plaintiffs claim is for \_\_\_\_\_

*\*Where words appear between square brackets delete if inapplicable*

*\*[Signed if statement of claim indorsed]*

*[Where the Plaintiff's claim is for a debt or liquidated demand only:*

If within the time for Acknowledgment of Service, the Defendant pays the amount claimed and \$ \_\_\_\_, for costs and, if the Plaintiff obtains an order for substituted service, the additional sum of \$ \_\_\_\_, further proceedings will be stayed. The money must be paid to the Plaintiff, his Attorney or Agent.]

**This writ** was issued by \_\_\_\_\_

of

*\*[Agent for \_\_\_\_\_ of \_\_\_\_\_]*

Attorney for the said plaintiff whose address is \_\_\_\_\_

*\*[or where the Plaintiff sues in person]*

**This writ** was issued by the said plaintiff who resides at \_\_\_\_\_

and *(if the Plaintiff does not reside within the jurisdiction)* whose address for service is \_\_\_\_\_.]

**No. 8 – Originating summons-General form (O. 7, r. 2)**

***In the Supreme Court of \_\_\_\_\_ [Year] \_\_\_\_ No. \_\_\_\_***

***In the Turks and Caicos Islands***

Between A.B. \_\_\_\_\_ Plaintiff

and C.D. \_\_\_\_\_ Defendant

To C. D. of \_\_\_\_\_ Let the defendant, within [14 days] after service of this summons on him, counting the day of service, return the accompanying Acknowledgment of Service to the Registry.

By this summons, which is issued on the application of the plaintiff A. B. of \_\_\_\_\_ 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 acknowledge service, 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 \_\_\_\_, \_\_\_\_.

Note: This summons may not be served later than 12 calendar months after the above date unless renewed by order of the Court.

This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_ attorney for the said plaintiff \_\_\_\_\_ whose address is as stated above *[or This summons was taken out by \_\_\_\_\_ of agent for \_\_\_\_\_ of attorney for the said plaintiff whose address is as stated above] [or where the plaintiff sues in person. This summons was taken out by the said plaintiff who resides at the above-named address or as may be and (if the plaintiff does reside within the jurisdiction) whose address for service is \_\_\_\_\_].*

**Important**

Directions for Acknowledgement of Service are given with the accompanying form.

**No. 10 – Originating summons-Expedited (O. 7, r. 2)**

*In the Supreme Court of* \_\_\_\_\_ *[Year]* \_\_\_\_\_ *No.* \_\_\_\_\_

***In the Turks and Caicos Islands***

Between A.B. \_\_\_\_\_ Plaintiff

and C.D. \_\_\_\_\_ Defendant

Let C. D. of \_\_\_\_\_ attend before the Judge in chambers at the Supreme Court, Court house, pond street, grand turk, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, [or, if no application has yet been made for a day to be fixed, on a day to be fixed] on the hearing of an application by the plaintiff A. B. of \_\_\_\_\_ that

And let the defendant within [14 days] after service of this summons on him counting the day of service, return the accompanying Acknowledgment of Service to the Registry.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Note: This summons may not be served later than 12 calendar months after the above date unless renewed by order of the Court.

This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_ attorney for the said plaintiff whose address is as stated above [or This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_ agent for \_\_\_\_\_ of \_\_\_\_\_ attorney for the said plaintiff whose address is as stated above] [or where the plaintiff sues in person: This summons was taken out by the said plaintiff who resides at \_\_\_\_\_ and (if the plaintiff does not reside within the jurisdiction; whose address for service is \_\_\_\_\_].

Note: If a defendant does not attend personally or by his attorney at the time and place above-mentioned such order will be made as the Court may think just and expedient.

**Important**

Directions for Acknowledgment of Service are given with the accompanying form.

**No. 11 – Ex Parte originating summons (O. 7, r. 2)**

*In the Supreme Court of* \_\_\_\_\_ *[Year]* \_\_\_\_\_ *No.* \_\_\_\_\_

***In the Turks and Caicos Islands***

Let all parties concerned attend before the judge in chambers at the supreme court, Court House, Pond Street, Grand Turk, on \_\_\_\_\_ day, the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ at \_\_\_\_\_ o'clock, on the hearing of an application by A. B. that

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_ [agent for \_\_\_\_\_ of \_\_\_\_\_] attorney for the applicant whose address is \_\_\_\_\_.

**No. 11A – Originating summons for possession under Order 113 (O. 113, r. 2)***In the Supreme Court of \_\_\_\_\_ [Year] \_\_\_\_\_ No. \_\_\_\_\_****In the Turks and Caicos Islands***

In the matter of [A.B. \_\_\_\_\_] Plaintiff

C.D. \_\_\_\_\_ Defendant (if any) whose name is known to the plaintiff]

To [C. D. and] every [other] person in occupation of \_\_\_\_\_

Let all persons concerned attend before \_\_\_\_\_ the Supreme Court, Court House, Pond Street, Grand Turk, on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock. on the hearing of an application by A. B. for an order that he do recover possession of \_\_\_\_\_ on the ground that he is entitled to possession and that the person(s) in occupation is(are) in occupation without licence or consent.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

This summons was taken out by \_\_\_\_\_ of [agent for \_\_\_\_\_ of \_\_\_\_\_] attorney for the applicant whose address is \_\_\_\_\_. [or This summons was taken out by \_\_\_\_\_ of \_\_\_\_\_ agent for \_\_\_\_\_ of attorney for the said plaintiff whose address is as stated above]

*[or when the plaintiff acts in person]*

This summons was taken out by the said plaintiff who resides at \_\_\_\_\_ and (if the plaintiff does not reside within the jurisdiction whose address for service is \_\_\_\_\_).

**No. 12 – Notice of appointment to hear originating summons (O. 28, r. 2)*****[Heading as in summons]***

To [name of defendant] of \_\_\_\_\_

- (a) Take notice that the originating summons issued herein on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, will be heard by a Judge of the Supreme Court, Court House, Pond Street, Grand Turk on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock.
- (b) And take notice that at that hearing [name of plaintiff] will seek [an order in the terms of paragraphs of the originating summons] [the following directions or orders:—
  - 1.
  - 2. etc.]
- (c) You may attend in person or by your attorney. If you fail to attend or to be represented, the Court may proceed in your absence.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed)

[Agent for \_\_\_\_\_] Attorney for the plaintiff

*[Note: At paragraph (b) above the notice must state the substance of the orders sought by setting out the proposed wording for these orders or by referring to the relevant paragraphs of the originating summons or to a draft order attached to the notice. Failure to comply with this note renders the notice defective.]*

**No. 13 – Notice of originating motion (O. 8, r. 3)***In the Supreme Court of \_\_\_\_\_ [Year] \_\_\_\_ No. \_\_\_\_\_****In the turks and caicos islands***

In the matter of \_\_\_\_\_

and

In the matter of \_\_\_\_\_

Take notice that the Supreme Court, Court House, Pond Street, Grand Turk, will be moved [before his Lordship the Chief Justice \_\_\_\_\_] at the expiration of days from the service upon you of this notice [or on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at the sitting of the Court] or so soon thereafter as counsel can be heard by counsel on behalf of A. B. for an order that \_\_\_\_\_ [or for the following relief, namely \_\_\_\_\_]. And that the costs of and incidental to this [application] [appeal] may be paid by \_\_\_\_\_ [And further take notice that the grounds of this [application] [appeal] are:

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

(Signed)

C.D. of \_\_\_\_\_ [agent for \_\_\_\_\_ of \_\_\_\_\_] attorney for the above named [applicant] [appellant] A.B. whose address is \_\_\_\_\_ or A. B. whose address for service is \_\_\_\_\_ [applicant] [appellant] in person

To \_\_\_\_\_ of \_\_\_\_\_

**No. 14 – Acknowledgment of service of writ of summons (O. 12, r. 3)****Guidance notes for the Plaintiff****Read these notes carefully**

The notes explain what you have to do before this form is sent to ("served" on) the defendant.

**Form heading**

You must fill in the heading of the form with:

- the action number,
- the names of the parties in the action (the "title") as they appear on the writ.

**Parts 1 and 2**

Please leave blank for the defendant to complete.

**Part 3**

If the claim is not for a fixed amount, you must delete part 3 and the notes relating to it.

**Part 4**

Please leave blank for the defendant to complete.

**At the end of the form****Plaintiffs (Plaintiff's attorney's) details**

Fill in your name and the address to which papers about the case should be sent.



**Detach these guidance notes before the form is sent to the defendant.**

## **Acknowledgment of service of writ of summons guidance notes for the defendant**

### **Read these notes carefully**

They will help you to fill in the form attached and tell you what other steps you need to take.

### **Act quickly**

You have only a limited time to return the form. If you do not return the form promptly, the plaintiff may obtain a court order that you pay what is being claimed immediately (called "entering judgment by default").

### **Help and advice**

You can get help and legal advice from an attorney (who can fill in the form and return it to the court for you.)

Staff at the Registry (the Supreme Court, Court House, Pond Street, Grand Turk) will also help you to fill in the form.

### **Time for returning the form**

You have 14 days from the day you receive the writ of summons **to return the completed form to the court.**

If the writ was served on you outside the Turks and Caicos Islands, the writ will tell you how long you have to return the acknowledgment form.

## **How to fill in the form**

**Read these notes carefully.** They will help you fill in the form and tell you what other steps you need to take.

**You can use the same form of acknowledgment for two (or more) defendants provided the form makes this clear and they all wish to reply in the same way.**

**If you are under 18 or suffering certain mental disorders** ("under a disability") you must ask an adult to act for you. The adult, who is called a "next friend" or "guardian *ad litem*", can be any friend or relative who is not a co-defendant in the same claim. But they must act on your behalf with the help of an attorney. **The attorney must fill out the form of acknowledgment.**

**Part 1** Write in your full name. If your name was incorrect on the writ, add the words "sued as" followed by the name stated on the writ.

If you are:

- a person trading in a name other than your own. write in your name followed by the words "trading as" and the name under which you trade:
- a partner in a firm, write in your name followed by the words "partner in the firm of" and the name of the firm.

**If you are sued as a partner but are not, say so.**

**Part 2** Tick the appropriate box to show whether you intend to contest all, or part, of the claim. **If you contest any part of the claim, read note 2 on preparing your defence.**

**Part 3 Should only be filled in if the plaintiff is claiming a fixed amount of money and you do not contest the claim.** Tick the appropriate box to show whether you intend to ask the court to make an order preventing the plaintiff from enforcing any order for you to pay the amount claimed (called asking for a "stay of execution"). A stay of execution will allow you to pay the debt, perhaps by installments: **If you wish to apply for a stay of execution, read note 3. This tells you how to make your application.**

**Part 4** Unless your attorney is filling in the form on your behalf you must sign the form and give an address to which court documents should be sent, and any reference, telephone or fax numbers. If you are being sued as an

individual (that is in your own name rather than that of your firm or company) the address you give must be one in the Turks and Caicos islands. If you are a **limited company**, the form may be filled in by an authorised officer who must state his position in that company, or an attorney.

An attorney may give his firm's address; an authorised officer must give the registered or principal office of the company.

### **What to do when you have filled in the form.**

**1. Return the form**

Detach these guidance notes and send or take the acknowledgment form to the Registry of the Supreme Court, Court House, Pond Street, Grand Turk.

**2. Preparing the defence**

If you contest the plaintiffs claim you must set out your reasons for doing so in writing (called a "defence"). You must send or take a copy of your defence to the plaintiff (or the plaintiff's attorney). The time in which you have to do this will depend on whether you were given full particulars of the plaintiffs claim, (called a "statement of claim") with the writ.

If a statement of claim was included in the writ or accompanied it, you must serve your defence within 14 days after the time for acknowledging service of the writ. If a statement of claim is served on you after you received the writ, you must serve your defence 14 days from the date you received the statement of claim.

**3. Applying for a stay of execution**

If you agree that you owe the plaintiff the amount of money claimed but want a stay of execution to allow you time to pay, you must issue a summons asking the court to make this order. Your summons must be accompanied by a sworn statement (an "affidavit") setting out details of your income and liabilities and any offer of payment you are making, for example, by installments.

You must issue your summons at the Registry within 14 days of the court receiving your form of acknowledgment of service.

### **Acknowledgment of service of writ of summons (O. 12, r. 3)**

*In the Supreme Court of \_\_\_\_\_ [Year] \_\_\_\_\_ No. \_\_\_\_\_*

***In the Turks and Caicos Islands***

Use black ink and capital letters

Plaintiff

Defendant

**Part 1** (Your) (Defendant's) full name

\_\_\_\_\_

**Part 2** (Do you) (Does the defendant) intend to contest

the whole of the plaintiffs claim?#

part of the plaintiff's claim?#

none of the plaintiff's claim?#

\_\_\_\_\_

**Part 3** If you have said that you do not intend to contest the whole or part of the plaintiff's claim will you (the defendant) be asking the court for a stay of execution?

yes #

no #

\_\_\_\_\_

**Part 4** I acknowledge that (I have) (the defendant has) been served with a copy of the writ of summons

Signed \_\_\_\_\_ Date \_\_\_\_\_

Defendant (Attorney for the defendant) (Authorised officer)

**Defendant's (Defendant's attorneys) details**

Address to which papers about this case should be sent

\_\_\_\_\_

Attorney's Ref. \_\_\_\_\_

Telephone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

When completed this form should be returned to:

The Registrar

Supreme court

Court house

Pond street

Grand Turk

Turks and Caicos Islands

**Plaintiff's (Plaintiff's Attorney's) details**

Address to which papers about this case should be sent

\_\_\_\_\_

Attorney's Ref. \_\_\_\_\_

Telephone No. \_\_\_\_\_

## No. 15 – Acknowledgment of Service of Originating Summons (O. 10, r. 5)

### Guidance notes for the Plaintiff

**Read these notes carefully.** The notes explain what you have to do before this form is sent to ("served" on) the defendant.

#### Form heading

You must fill in the heading of the form with:

- the action number and
- the names of the parties in the action (the "title") as they appear on the writ.

**At the end of the form: Plaintiffs (Plaintiff's attorney's) details** Fill in your name and the address to which papers about the case should be sent.

**Detach these guidance notes before the form is sent to the defendant.**

### Guidance notes for the defendant

**Read these notes carefully** They will help you to fill in the form attached and tell you what other steps you need to take.

**Act quickly** You have only a limited time to return the form.

**Help and advice** You can get help and legal advice from an attorney. Staff at the Registry, the Supreme Court, Court House, Pond Street, Grand Turk, will also help you to fill in the form.

#### Time for returning the form

You have **14 days** from the day you receive the originating summons **to return the completed form to the court.**

Note: You may have less than 14 days to return the form in certain kinds of proceedings where an early hearing date has been fixed. If in doubt, seek advice.

If the summons was served on you outside the Turks and Caicos Islands, the summons will tell you how long you have to return the acknowledgment form.

### How to fill in the form

**Read these notes carefully.** They will help you fill in the form and tell you what other steps you need to take.

**You can use the same form of acknowledgment for two (or more) defendants provided the form makes this clear and they all wish to reply in the same way.**

If you are **under 18 or suffering certain mental disorders** ('under a disability') you must ask an adult to act for you. The adult who is called a "next friend" or 'guardian *ad litem*' can be any friend or relative who is not a co-defendant in the same claim. But they must act on your behalf with the help of an attorney. **The attorney must fill in the form of acknowledgment.**

**Part 1** Write in your full name. If your name was incorrect on the summons, add the words "sued as" followed by the name stated on the summons.

If you are:

- a person trading in a name other than your own, write in your name followed by the words "trading as" and the name under which you trade:

- a partner in a firm, write in your name followed by the words 'partner in the firm of' and the name of the firm.

**If you are sued as a partner but are not, say so.**

**Part 2** Tick the appropriate box to show whether you intend to contest all, or part, of the claim. **If you contest any part of the claim, read note 2 on preparing your defence.**

**Part 3** Unless your attorney is filling in the form on your behalf you must sign the form and give an address to which court documents should be sent, and any reference, telephone or fax numbers. If you are being sued as an individual (that is in your own name rather than that of your firm or company) the address you give must be one in the Turks and Caicos Islands. If you are **a limited company**, the form may be filled in by an authorised officer who must state his position in that company, or an attorney. An attorney may give his firm's address; an authorised officer must give the registered or principal office of the company.

**What do to when you have filled in the form.**

1. Return the form Detach these guidance notes and send or take the acknowledgment form to the Registry the Supreme Court, Court House, Pond Street, Grand Turk.
2. Preparing the defence If you wish to object to the plaintiff's claim in writing (that is, by affidavit) you must send or give a copy of the affidavit to the other parties and file a copy at the Registry. You must serve your affidavit within 28 days from the date you received the plaintiff's affidavit in support of his claim.

Note: You may have less than 28 days to serve the affidavit in certain kinds of proceeding where an early hearing date has been fixed. If in doubt, seek advice.

### Acknowledgment of service of originating summons

In the Supreme Court of \_\_\_\_\_ [Year] \_\_\_\_\_ No. \_\_\_\_\_

In the Turks and Caicos Islands

Use black ink and capital letters

Plaintiff

Defendant

**Part 1** (Your) (Defendant's) full name

\_\_\_\_\_

**Part 2** (Do you) (Does the defendant) intend to contest

the whole of the plaintiffs claim?#

part of the plaintiff's claim?#

none of the plaintiff's claim?#

\_\_\_\_\_

**Part 3** I acknowledge that (I have) (the defendant has) been served with a copy of the writ of originating summons

Signed \_\_\_\_\_ Date \_\_\_\_\_

Defendant's (Defendant's attorneys) details

**Defendant's (Defendant's attorneys) details**

Address to which papers about this case should be sent

Attorney's Ref. \_\_\_\_\_

Telephone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

When completed this form should be returned to:

The Registrar, Supreme court Court house Pond street grand Turk Turks and Caicos Islands

Plaintiff's (Plaintiff's Attorney's) details Address to which papers about this case should be sent

\_\_\_\_\_

Attorney's Ref. \_\_\_\_\_

Telephone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

### **No. 17 – Notice to be indorsed on copy of counterclaim (O. 15, r. 3(6))**

To X. Y.

Take notice that, within [14 days] after service of this defence and counterclaim on you, counting the day of service, you must acknowledge service and state in your acknowledgment whether you intend to contest the proceedings. If you fail to do so or if your acknowledgment does not state your intention to contest the proceedings judgment may be given against you without further notice.

#### ***Important***

Directions for acknowledgment of service are given with the accompanying form.

### **No. 20 – Third party notice claiming contribution or indemnity or other relief or remedy(O. 16) In the Supreme Court of \_\_\_\_\_ [Year] \_\_\_\_\_ No. \_\_\_\_\_**

#### **In the Turks and Caicos Islands**

Between

A. B Plaintiff

and

C.D. Defendant

T.P. Third party

### Third party notice

[Issued pursuant to the order of \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_]

To T.P. of \_\_\_\_\_

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant *[here 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 *[here state the nature of the claim against the third party as for instance to be indemnified against the plaintiffs claim and the costs of this action or contribution to the extent of [one half] of the plaintiffs claim or the following relief or remedy namely on the grounds that (state the grounds of the claim)]*.

And take notice that within [14 days] after service of this notice on you, counting the day of service, you must acknowledge service and state in your acknowledgment whether you intend to contest the proceedings. If you fail to do so, or if your acknowledgment does not state your intention to contest the proceedings, you will be deemed to admit the plaintiffs claim against the defendant and the defendant's claim against you and your liability to *[indemnify 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 1999.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed)

Attorney for the defendant.

### Important

Directions for acknowledgment of service are given with the accompanying form.

### No. 21 – Third party notice where question or issue to be determined (O. 16)

*[Title, etc. as in No. 20 down to end of first paragraph]*

The defendant requires that the following question or issue, viz., *[here 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 *[as in No. 20 down to the words "intention to contest the proceedings"]* you will be bound by any judgment or decision in the action 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 1999.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

(Signed)

Attorney for the defendant

### Important

Directions for acknowledgment of service are given with the accompanying form.

### No. 23 – Notice of payment into court (O. 22, rr. 1. 2)

*[Heading 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 above-named 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 claims, namely \_\_\_\_\_, [and after taking into account *as above*].

or

Of the said \$ \_\_\_\_\_, \$ \_\_\_\_\_ is in satisfaction of the plaintiffs cause[s] of action for [and after taking into account *as above*] and \$ \_\_\_\_\_ is in satisfaction of the plaintiffs cause[s] of action for \_\_\_\_\_ [and after taking into account *as above*].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

### **No. 24 – Notice or acceptance of money paid into court (O. 22, r. 3)**

*[Heading as in action]*

Take notice that the plaintiff accepts the sum of \$ \_\_\_\_\_ paid in by the defendant C. D. 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 \_\_\_\_\_, \_\_\_\_\_.

### **No. 26 – Notice or acceptance of money paid into court (O. 22, r. 3)**

*[Heading as in cause or matter]*

### **List of documents**

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 above-named plaintiff [or defendant] A. B. and which is served in compliance with Order 24, rule 2 [or the order herein dated the day of \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_].

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 that schedule were last in the plaintiff's [or defendant's] possession, custody or power on *[stating when]* and the remainder on *[stating when]*.

*[Here state what has become of the said documents and in whose possession they now are].*

5. Neither the plaintiff [or defendant], nor his attorney 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 action, other than the documents enumerated in schedules 1 and 2 hereto.



## Schedule 1

### Part I

*[Here 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

[Here enumerate as aforesaid the documents in the possession, custody or power of the party in question which he objects to produce.]

## Schedule 2

*[Here 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 \_\_\_\_, \_\_\_\_.

### 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 attorney of the above named [plaintiff] [defendant] (*insert address*) or as *may be*] on the \_\_\_\_ day of \_\_\_\_ between the hours of \_\_\_\_ and \_\_\_\_.

To the defendant [or plaintiff] C. D. and his attorney.

Served the \_\_\_\_ day of \_\_\_\_, by \_\_\_\_ of \_\_\_\_ attorney for [plaintiff] [defendant].

### No. 27 – Affidavit verifying list of documents (O. 24, r. 5)

*[Heading as in cause or matter]*

I, the above-named plaintiff *[or defendant]* A, B., make oath and say as follows:—

1. The statements made by me in paragraphs 1, 3 and 4 of the list of documents now 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.

Sworn, etc.

This affidavit is filed on behalf of the plaintiff *[or defendant]*.

### No. 28 – Writ of subpoena (O. 38, r. 14)

*[Heading as in cause or matter]*

Elizabeth the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith.

To *[names of witnesses]* \_\_\_\_\_

We command you to attend at the sittings of the Supreme Court, Court House, Pond Street, Grand Turk, on the day fixed for the trial of the above-named cause, notice of which will be given to you, and from day to day thereafter until the end of the trial, to give evidence on behalf of the [plaintiff] *or* [defendant].

Witness the Chief Justice of the Turks and Caicos Islands the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

Issued on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ by \_\_\_\_ [agent for] attorney for the etc.

*\*If duces tecum add: And we also command you to bring with you and produce at the place aforesaid on the day notified to you [here describe the documents or things to be produced.]*

### **No. 29 – Writ of subpoena: proceedings in chambers (O. 38, r. 14)**

*[Heading as in cause or matter]*

Elizabeth the Second *[as in No. 28]*

To *[names of witnesses]* \_\_\_\_\_

We command you to attend before [Mr. Justice \_\_\_\_\_] in chambers the Supreme Court, court house, pond street, Grand Turk on \_\_\_\_ day, the \_\_\_\_ day of \_\_\_\_, at \_\_\_\_ o'clock and so from day to day until your evidence shall have been taken, to give evidence on behalf of the [plaintiff] *or* [defendant] in the above-named cause [and we also command you to bring with you and produce at the time and place aforesaid *describe the documents or things to be produced.*]

Witness *[as in No. 28]*.

Issued *[as in No. 28]*.

### **No. 30 – Writ of subpoena issued under enactment (O. 8, r. 4)**

In the matter of C. D. and

In the matter of the \_\_\_\_\_ ordinance

Elizabeth the Second *[as in No. 28]*

To *[name of witnesses]* \_\_\_\_\_

We command you to attend before the \_\_\_\_ at \_\_\_\_ *[address]* on \_\_\_\_ day, the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ at o'clock and so from day to day until the application in the above matter is heard, to give evidence on behalf of \_\_\_\_ [And we also command you to bring with you and produce at the time and place aforesaid *describe documents or things to be produced.*]

Witness *[as in No. 28]*

Issued *[as in No. 28]*

### **No. 31 – Summons for examination within jurisdiction of witness before trial (O. 39, r. 1)**

*[Heading as in cause or matter]*

Let all parties concerned attend the judge in chambers the supreme court, court house, Pond street, Grand Turk on the \_\_\_\_ day of \_\_\_\_, at \_\_\_\_ o'clock on the hearing of an application on the part of \_\_\_\_ that A. B. a

witness on behalf of the be examined forthwith before one of the Examiners of the Court [or an examiner to be agreed upon or the Registrar] upon the usual terms, and that the costs of this application be [costs in the cause].

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

This summons was taken out by \_\_\_\_ of \_\_\_\_ attorney for the his attorney]. To the above named \_\_\_\_ [and \_\_\_\_].

### **No. 32 – Order for examination within jurisdiction of witness before trial (O. 39, r. 1)**

*[Heading as in cause or matter]*

On hearing [the attorneys on both sides] and on reading the affidavit of filed herein the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

It is ordered that \_\_\_\_ a witness on behalf of the \_\_\_\_ be examined *viva voce* on oath or affirmation before one of the examiners of the Court \_\_\_\_ [or \_\_\_\_ Esq., the examiner agreed upon or an examiner to be agreed upon or the Registrar]. the plaintiffs [or defendant's] attorney giving to the defendant's [or plaintiffs attorney] \_\_\_\_ days' notice in writing of the time and place where the examination is to take place [or state the time and place fixed by the order]. And it is ordered that the depositions taken at the examination be filed in the Registry of the Supreme Court, and that office copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the attorney or agent of the party using the same, as to his belief, and that the costs of this application [and of the examination] be [costs in the cause].

Dated the \_\_\_\_ day of \_\_\_\_.

### **No. 33 – Summons for issue of letter of request to judicial authority out of jurisdiction (O. 39, r. 2)**

*[Heading as in cause or matter]*

Let all parties [as in No. 31] on the hearing of an application on the part of \_\_\_\_ for an order that a letter of request shall issue to the proper judicial authority of \_\_\_\_ for the examination of E.F. and G.H. and other witnesses on the plaintiffs [or the defendant's] behalf at \_\_\_\_ in [name of country], and that the action be stayed until the return of the said letter of request and examination, and that the costs of and incidental to this application and the said letter of request and examination be costs in the cause.

Dated, etc. [conclude at in No. 31].

### **No. 34 – Order for issue of letter or request to judicial authority out of jurisdiction (O. 39, r. 2)**

*[Heading as in cause or matter]*

On hearing [as in No. 32].

It is ordered that a letter of request do issue directed to the proper judicial authority for the examination of the following witnesses, namely:

E.F. of \_\_\_\_

G.H. of \_\_\_\_

And it is ordered that the depositions taken pursuant thereto when received be filed in the Registry of the Supreme Court 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 witnesses than the affidavit of the attorney or agent 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 \_\_\_\_, \_\_\_\_.

### **No. 35 – Letter of request for examination of witness out of jurisdiction (O. 39, r. 3)**

To the competent judicial authority of \_\_\_\_ in the \_\_\_\_ of \_\_\_\_.

I, Registrar of the Supreme Court of the Turks and Caicos Islands, respectfully request the assistance of your Court with regard to the following matters.

1. An action is now pending in the Supreme Court of the Turks and Caicos Islands entitled as follows:—  
(Set out full title and Action No.)  
in which of \_\_\_\_ of \_\_\_\_ is plaintiff and \_\_\_\_ of \_\_\_\_ is defendant.
2. The names and addresses of the representatives or agents of the parties are as follows:—
3. The action concerns a claim by the plaintiff for:—  
(Set out  
(a) the nature of the proceedings,  
(b) the relief sought, and  
(c) a summary of the facts.)
4. It is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that you cause the following witnesses, who are resident within your jurisdiction, to be examined. The names and addresses of the witnesses are as follows:—
5. The witnesses should be examined on oath or if that is not possible within your laws or is impossible of performance by reason of the internal practice and procedure of your court or by reason of practical difficulties, they should be examined in accordance with whatever procedure your laws provide for in these matters.
6. Either/  
The witnesses should be examined in accordance with the list of questions annexed hereto.  
Or/  
The witness should be examined regarding [set out full details of evidence sought.]  
NB. Where the witness is required to produce documents. these should be clearly identified.
7. I would ask that you 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.
8. Finally, I request that you will cause the evidence of the said witnesses to be reduced into writing and all documents produced on such examinations to be duly marked for identification and that you will be further pleased to authenticate such examinations by the seal of your court or in such other way as is in accordance with your procedure and return the written evidence and documents produced to me addressed as follows:—  
The registrar  
supreme court  
the court hous

pond street

Grand Turk

### **No. 36 – Summons for appointment of examiner to take evidence of witness out of jurisdiction (O.39. r.2)**

*[Heading as in cause or matter]*

Let all parties [as in No. 31] on the hearing of an application on the part of \_\_\_\_ for an order that [the British Consul at \_\_\_\_ in *(name of country)* or his deputy) [\_\_\_\_ 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 \_\_\_\_ and \_\_\_\_, witnesses on behalf of the \_\_\_\_, at in *name of country*] on the usual terms and that the costs of and incidental to this application and the said examination be costs in the cause.

Dated, etc. *[conclude as in No. 31]*

### **No. 37 – Order for appointment of examiner to take evidence of witness out of jurisdiction (O. 39. r. 2)**

*[Heading as in cause or matter]*

On hearing the attorneys on both sides and on reading the affidavit of \_\_\_\_ filed the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

It is ordered that the 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 examination shall be taken in accordance with the English procedure.

The \_\_\_\_ attorneys to give to the \_\_\_\_ attorneys 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 attorneys 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 maybe 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, the Supreme Court, Court House, Pond Street, Grand Turk, Turks and Caicos Islands, on or before the day of \_\_\_\_ next, or such further or other day as may be ordered, there to be filed in the proper office. 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 \_\_\_\_, \_\_\_\_.

### **No. 38 – Notice of motion (O. 8, r. 3)**

*[Heading as in cause or matter]*

Take notice that [pursuant to the leave of \_\_\_\_ given on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_, the Court [or Mr. Justice \_\_\_\_] will be moved on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_, at \_\_\_\_ o'clock, or so soon thereafter as counsel can be heard, [at the Court House, Pond Street, Grand Turk, Turks and Caicos Islands *or wherever*] by [Mr. \_\_\_\_ of \_\_\_\_] counsel for the above-named plaintiff *[or defendant]* that \_\_\_\_ and that the costs of the application be \_\_\_\_.

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

(signed)

To \_\_\_\_\_, \_\_\_\_\_ Attorney for the \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ [agent for of Attorney for the \_\_\_\_\_]

**No. 39 – Default judgment in action for liquidated demand (O. 13, r. 1; O. 19, r. 2; O. 42, r. 1)**

*[Heading as in action]*

The \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

No notice of intention to defend having been given *[or no defence having been served]* by the defendant herein, it is this day adjudged that the 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 \_\_\_\_\_.]*

**No. 40 – Default judgment in action for unliquidated damages (O. 13, r. 2; O. 19, r. 3; O. 42, r. 1)**

*[Heading as in action]*

The \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

No notice of intention to defend having been given *[or no defence having been served]* by the defendant herein, it is this day adjudged that the defendant to 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 or as may be]* filed the \_\_\_\_\_ day of \_\_\_\_\_.

It is adjudged that the defendant to pay the plaintiff \$\_\_\_\_\_ and costs to be taxed.

The above costs, etc. *[as in No. 39]*

**No. 41 – Default judgment in action relating to detention of goods (O. 13, r. 3; O. 19, r. 4; O. 42, r. 1)**

*[Heading as in action]*

The \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

No notice of intention to defend having been given *[or no defence having been served]* by the defendant herein.

It is this day adjudged that the defendant do deliver to the plaintiff the goods described in the writ of summons *[or statement of claim]* as *[description of goods]* or pay the plaintiff the value of the said goods to be assessed *[and also damages for their detention to be assessed]*.

It is this day adjudged that the defendant do pay the plaintiff the value of the goods 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 goods having been assessed at \$\_\_\_\_\_ *[and damages at \$\_\_\_\_\_]* as appears by the *[Registrar's certificate or as may be]* filed the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

It is adjudged that the defendant do pay the plaintiff \$\_\_\_\_\_ and costs to be taxed.

The above costs, etc. *[as in No. 39]*.

**No. 42 – Default judgment in action for possession  
of land (O. 13, r. 4; O. 19, r. 5; O. 42, 4. 1)**

*[Heading as in action]*

The \_\_\_\_ day of \_\_\_\_, \_\_\_\_

No notice of intention to defend having been given *[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 land 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 No. 39]*

**No. 42A – Order for possession under order 113(O. 113, r. 6)**

*[Heading as in summons]*

Upon hearing \_\_\_\_ and upon reading the affidavit of \_\_\_\_ filed the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ it is ordered that the plaintiff A. B. do recover possession of the land described in the originating summons as \_\_\_\_ *[and the defendant do give possession of the said land on]* (and that the defendant \_\_\_\_ do pay the plaintiff \$ \_\_\_\_ costs *[or to be taxed]*.) The above costs, etc. *[as in No. 39]*.

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_

**No. 43 – Final judgment after assessment of damages, etc. (O. 42, r. 1)**

*[Heading as in action]*

The \_\_\_\_ day of \_\_\_\_, \_\_\_\_

The plaintiff having on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ 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 or as may be]* filed \_\_\_\_ the day of \_\_\_\_, \_\_\_\_.

It is this day adjudged that the defendant do pay the plaintiff \$ \_\_\_\_ and costs to be taxed.

The above costs, etc. *[as in No. 39]*.

**No. 44 – Judgment under order 14 (O. 14, r. 3; O. 42, r. 1)**

*[Heading as in action]*

The \_\_\_\_ day of \_\_\_\_, \_\_\_\_

The defendant having given notice of intention to defend 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 *[in the assessment]* *or as may be according to the Court's order.*

*or*

Deliver to the plaintiff the goods described in the writ of summons *[or statement of claim]* as *[or pay the plaintiff the value of the said goods to be assessed]* *[and also damages for their detention to be assessed]* and costs *[in the assessment]* *or as may be according to the Court's order.*

*or*

Give the plaintiff possession of the land described in the writ of summons [or statement of claim] as and costs to be taxed.

The above costs, etc. [as in No. 39].

### **No. 45 – Judgment after trial before judge without jury (O. 42, r. 1)**

[Heading as in action]

Dated and entered the \_\_\_\_ day of \_\_\_\_, \_\_\_\_

This action having been tried before the Honourable Chief Justice [Mr. Justice] without a jury, at the supreme Court of the Turks and Caicos Islands and the said Chief Justice [Mr. Justice \_\_\_\_, \_\_\_\_] having on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ ordered that judgment as hereinafter provided be entered for the plaintiff [or defendant] [and directed that execution be stayed for the period and on the terms hereinafter provided].

It is adjudged that the defendant do pay the plaintiff \$\_\_\_\_ and his costs of the action to be taxed [or that the plaintiff do pay the defendant his costs of defence 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 and sets down the 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 No. 39].

### **No. 46 – Judgment after trial before judge with jury (O. 42, r. 1)**

[Heading as in action]

Dated and entered the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

This action having been tried before the Honourable Chief Justice [Mr. Justice \_\_\_\_] with a jury and the jury having found [state findings as in Registrar's Certificate] and the said Chief Justice [Mr. Justice \_\_\_\_] having on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ ordered that judgment as hereinafter provided be entered for [etc as in No. 45].

### **No. 47 – Judgment after trial before master or referee (O. 42, r. 1)**

[Heading as in action or matter]

Dated and entered the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

This action by an order dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ having been ordered to be tried before \_\_\_\_ as a Referee appointed by the Court, and the said Referee having tried the said action and having by his certificate dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ directed that judgment as hereinafter provided be entered for the plaintiff [or defendant].

It is adjudged that [as in No. 45 according to the Referee's certificate]

### **No. 48 – Judgment after decision of preliminary issue**

[Heading as in cause or matter]

Dated and entered the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

The issue [or question] arising in this cause [or matter] by the order dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ ordered to be tried before \_\_\_\_ having on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ 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.



**No. 49 – Judgment for liquidated sum against personal representative (O. 42, r.1)***[Heading as in action]*

Dated and entered the \_\_\_\_ day of \_\_\_\_, \_\_\_\_

*[Recital as in No. 39, 43-18 according to the circumstances in which judgment was obtained.]*

It is adjudged that the defendant as executor *[or administrator]* of the above-name deceased do pay the plaintiff \$\_\_\_\_ and costs to be taxed, the said sum and costs to be levied of the real and personal estate 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 goods, chattels and other property of the defendant authorised by law to be seized in execution *[or as may he according to the order made]*.

The above costs, etc. *[as in No. 39]*.**No. 50 – Judgment for defendant's costs on discontinuance (O. 45, r. 15)***[Heading as in action]*

The \_\_\_\_ day of \_\_\_\_, \_\_\_\_

The plaintiff having by a notice in writing dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ 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 \_\_\_\_, \_\_\_\_ and the plaintiff not having paid the sum within 4 days after taxation.

It is this day adjudged that the plaintiff do pay the defendant \$\_\_\_\_ the said taxed costs.

**No. 51 – Judgment for costs after acceptance of money paid into court (O. 45, r. 15)***[Heading as in action]*

The \_\_\_\_ day of \_\_\_\_, \_\_\_\_

The defendant having paid into court in this action the sum of \$\_\_\_\_ in satisfaction of the plaintiff's cause(s) of action *[or satisfaction of the plaintiffs cause of action for \_\_\_\_]* and the plaintiff having by his notice dated the \_\_\_\_ day of \_\_\_\_, 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 \_\_\_\_, \_\_\_\_ and the defendant not having paid the sum within 4 days after taxation, It is this day adjudged that the defendant do pay the plaintiff \$\_\_\_\_ the said taxed costs.

**No. 52 – Notice of action (O. 15, r. 13A)***[Heading as in action]*

Take notice that:

- (1) An action has been begun in the Supreme Court in accordance with the [writ of summons] [originating summons] attached hereto.
- (2) You are or may be one of the persons who are interested in the [estate] [trust property] to which the action relates.

- (3) You may within 14 days after service of this notice acknowledge service of the [writ] [originating summons] by properly completing the attached acknowledgment and handing it in at the Registry of the Supreme Court, Court House, Pond Street, Grand Turk and thereby become a party to the action.
- (4) If you do not acknowledge service of the [writ] [originating summons] you will be bound by any judgment given in the action as if you were a party to it.

Dated to signed \_\_\_\_\_

### **No. 52A – Notice of judgment or order (O. 44, r. 2)**

*[Heading as in cause or matter]*

Take notice that a judgment [or order] of this Court was given [or made] on the \_\_\_\_ day \_\_\_\_, \_\_\_\_ 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 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 acknowledging service of this notice at the Registry of the Supreme Court, Court House, Pond Street, Grand Turk you *[or the said infant or patient]* may attend the proceedings under the said judgment *[or order]*.

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

To \_\_\_\_ (signed) \_\_\_\_

### **No. 53 – Writ of search and seizure (O. 45, r. 12)**

*[Heading as in action]*

Elizabeth the second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth Defender of the Faith.

To the Bailiff of the Supreme Court, greeting:

Whereas in the above-named action it was on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ adjudged *[or ordered]* in this Court that the defendant C. D. do pay the plaintiff A. B. \$ \_\_\_\_ [and \$ \_\_\_\_ costs *or* costs to be taxed which costs have been taxed and allowed at \$ \_\_\_\_ as appears by the certificate of the Registrar dated the day of \_\_\_\_, \_\_\_\_]:

We command you that of the goods, chattels and other property of C. D. authorised by law to be seized in execution you cause to be made the sum[s] of \$ \_\_\_\_ [and \$ \_\_\_\_ for costs of execution] and also interest on \$ at the rate of \$ per cent *per annum* from the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ until payment together with bailiffs fees, costs of levying and all other legal, incidental expenses and that immediately after execution of this writ you pay A. B. in pursuance of the said judgment *[or order]* the amount levied in respect of the said sums and interest.

And we also command you that you indorse-on this writ immediately after execution thereof a statement of the manner in which you have executed it and send a copy of the statement to A. B.

Witness the chief justice of the Turks and Caicos Islands, the \_\_\_\_ day of \_\_\_\_, \_\_\_\_

This writ was issued by \_\_\_\_ of \_\_\_\_ [agent for \_\_\_\_ of \_\_\_\_] attorney for \_\_\_\_ [or this writ was issued by A. B. the plaintiff in person] who resides at The defendant resides *(or as the case may be)* at \_\_\_\_

### **No. 54 – Writ of search and seizure on order for costs (O. 45, r. 12)**

*[Heading as in cause or matter]*

Elizabeth the second *[as in No. 53]*.

To the Bailiff of the Supreme Court, greeting:

Whereas in the above-named cause *[or matter]* it was on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ ordered in this Court that the \_\_\_\_ C. D. do pay \_\_\_\_ the A. B. costs [to be taxed, which costs have been taxed and allowed at] \_\_\_\_ \$ \_\_\_\_ [as appears by the Registrar's certificate dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_]

We command you that of the goods, chattels and other property of C. D. authorised by law to be seized in execution you cause to be made the sum of \$ \_\_\_\_ and \$ \_\_\_\_ for costs of execution, and also interest on \$ \_\_\_\_ at the rate of \$ \_\_\_\_ per cent *per annum* from the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ until payment together with bailiffs fees, costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay A. B. in pursuance of the said order the amount levied in respect of the said sum and interest.

And we also *[as in No. 53]*.

Witness *[as in No. 53]*.

This writ *[as in No. 53]*.

### **No. 56 – Writ of search and seizure after levy of part (O. 45, r.12)**

*[Heading as in action]*

Elizabeth the second *[as in No. 53]*

To the Bailiff of the Supreme Court, greeting:

Whereas *[as in No. 53]*

And whereas by our writ issued the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ we commanded you that of the goods, chattels and other property of C. D. you should cause to be made the sums of \$ \_\_\_\_ and \$ \_\_\_\_ for costs of execution and also interest on \$ \_\_\_\_ per cent *per annum* from the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ until payment and should pay A. B. in pursuance of the said judgment *[or order]* the amount levied in respect of the said sums and interest and should indorse on the writ a statement of the manner in which you *[or he]* had executed it and send a copy of the statement to A. B. And whereas the indorsement of the said writ states that by virtue thereof you caused to be made of the property aforesaid the sum of \$ \_\_\_\_.

We command you that of the goods, chattels and other property of C. D. authorised by law to be seized in execution you cause to be made the sum of \$ \_\_\_\_, the residue of the said \$ \_\_\_\_, and \$ \_\_\_\_ for costs of execution and also interest on \$ \_\_\_\_ at the rate of \$ \_\_\_\_ per cent *per annum* from the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ until payment *[continue as in No. 53]*

### **No. 57 – Writ of search and seizure against personal representative (O. 45, r. 12)**

*[Heading as in action]*

Elizabeth the Second *[as in No. 53]*.

To the Bailiff of the Supreme Court, greeting.

Whereas in the above-named action it was on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ adjudged *[or ordered]* that the defendant C. D. as executor *[or administrator]* of E. F. deceased do pay the plaintiff A. B. \$ \_\_\_\_ and \$ \_\_\_\_ costs *[or costs to be taxed which costs have been taxed and allowed at \$ \_\_\_\_ as appears by the certificate of the Registrar dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_]*, the said sums and interest to be levied of the real and personal estate of the said E. F. at the time of his death in the hands of the defendant C. D. as his executor *[or administrator]* to be administered if he had or should thereafter have so much thereof in his hands to be administered, *[and if he had not then the said costs to be levied of the goods, chattels and other property of the defendant C. D. authorised by law to be seized in execution]*:

We command you that of the real and personal estate of E. F. deceased, at the time of his death, and in the hands of C.D. as his executor *[or administrator]* to be administered you cause to be made the sums of \$ \_\_\_\_ and \$ \_\_\_\_ for costs of execution and also interest on \$ \_\_\_\_ at the rate of \$ \_\_\_\_ *[insert /he appropriate]*

rate of interest at date of entry of judgment] *per annum* from the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ until payment [together with bailiffs fees, cost of levying and all other legal incidental expenses] [and if the said C. D. has not so much thereof in his hands to be administered that you cause to be made of the goods, chattels and other property of C.D. in your county authorised by law to be seized in execution the sum of \$ \_\_\_\_ for costs] and that immediately after execution of this writ you pay A. B. in pursuance of the said judgment [or order] the amount levied in respect of the said sums and interest. And we also command you [*remainder as in No. 53*].

#### **No. 64 – Writ of delivery: delivery of goods, damages and costs (O. 45, r. 12)**

[*Heading as in action*]

Elizabeth the Second [*as in No. 53*].

To the Bailiff of the Supreme Court, greeting:

Whereas in the above-named action it was on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ adjudged [or ordered] that the defendant C. D. do deliver to the plaintiff A. B. the following goods, namely [*describe the goods delivery of which has been adjudged or ordered*] [and & S damages] and \$ \_\_\_\_ costs [or // costs to be taxed, which costs have been taxed and allowed at \$ \_\_\_\_ as appears by the certificate of the Registrar dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_]:

We command you that you cause the said goods to be delivered to A. B. and that of the goods chattels and other property of C. D. authorised by law to be seized in execution you cause to be made the sums of \$ \_\_\_\_ and \$ \_\_\_\_ for costs of execution and also interest on \$ \_\_\_\_ at the rate of \$ \_\_\_\_ [*insert the appropriate rate of interest at date of entry of judgment*] *per annum* from the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ until payment together with bailiffs fees, costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay A. B. in pursuance of the said judgment]] [or order] the amount levied in respect of the said sums and interest.

And we also command that you indorse [*remainder as in No. 53*].

#### **No. 65 – Writ of delivery: delivery of goods or value, damages, costs (O. 45, r. 12)**

[*Heading as in action*]

Elizabeth the Second [*as in No. 53*].

To the Bailiff of the Supreme Court, greeting:

Whereas in the above-named action it was on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ adjudged [or ordered] that the defendant C.D. do deliver to the plaintiff A.B. the following goods, namely [*describe the goods delivery of which has been adjudged or ordered*] or do pay him \$ \_\_\_\_ being the assessed value of the said goods, [and \$ \_\_\_\_ damages] and \$ \_\_\_\_, costs [or costs to be taxed, which costs have been taxed and allowed at \$ \_\_\_\_ as appears by the certificate of the Registrar dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_].

We command you that you cause the said goods to be delivered to A. B. and that if possession of the said goods cannot be obtained by you, you cause to be made of the goods, chattels and other property of C. D. authorised by law to be seized in execution \$ \_\_\_\_ the assessed value of the said goods to pay it to A. B.

And we also command you that of the said property of C.D. you cause to be made the sums of \$ \_\_\_\_ for [damages and] costs and \$ \_\_\_\_ for costs of execution and also interest on \$ \_\_\_\_ at the rate of \$ \_\_\_\_ [*insert the appropriate rate of interest at date of judgment*] *per annum* from the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ until payment together with bailiffs fees, costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment [or order] the amount levied in respect of the said sums and interest.

And we also command you that you indorse [*remainder as in No. 53*].

**No.66 – Writ of Possession (O. 45, r. 12)***[Heading as in action]*Elizabeth the Second *[as in No. 53]*.

To the Bailiff of the Supreme Court, greeting:

Whereas in the above-named action it was on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ adjudged *[or ordered]* that the defendant C. D. do give the plaintiff A. B. possession of *[describe the land delivery of which has been judged or ordered in your county]* and do pay him [\$\_\_\_\_ and] \$\_\_\_\_ costs *[or costs to be taxed, which costs have been taxed and allowed at \$\_\_\_\_ as appears by the Registrar's certificate dated the \_\_\_\_, day of \_\_\_\_, \_\_\_\_.]*

We command you that you enter the said land and cause A. B. to have possession of it. And we also command you that of the goods, chattels and other property *[remainder as in No. 53]*

**No. 66A – Writ of possession under order 113 (O. 113. r. 7)***[Heading as in summons]*Elizabeth the Second *[as in No. 53]*

To the Bailiff of the Supreme Court, greeting:

Whereas it was on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ ordered that the plaintiff A. B. do recover possession of *[describe the and recovery of which has been ordered]* *[and that the defendant C. D. do pay him \$\_\_\_\_ costs [or costs to be taxed, which costs have been taxed and allowed at \$\_\_\_\_ as appears by the Registrar's certificate dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_];*

We command you that you enter the said land and cause A. B. to have possession of it.

*[And we also command you that of the goods, chattels and other property [remainder as in No. 531]*

**No. 67 – Writ of sequestration (O. 45, r. 12)***[Headings as in cause or matter]*Elizabeth the Second *[as in No. 53]*.TO *[names of Collector or Collectors]* greeting:

Whereas in the above-named action *[or matter]* in our Supreme Court it was on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ adjudged *[or ordered]* that C. D. should *[pay into Court the sum of \$\_\_\_\_ or as may be]*:

Know ye, therefore, that we, in confidence of your prudence and fidelity, do by this writ authorise and command one or more of you to enter upon and take possession of all the real and personal estate of the said C. D. and to collect, receive and get into your hands the rents and profits of his real estate and all his personal estate and keep the same under sequestration in your hands until the said C. D. shall *[pay into Court to the credit of the said action or matter the sum of \$\_\_\_\_ or as may be]* and clear his contempt and our said Court make other order to the contrary.

Witness *[as in No. 53]*.This writ was issued *[as in No. 53]*.**No. 68 – Writ of restitution (O. 46. r. 1)***[Heading as in action]*Elizabeth the Second *[as in No. 53]*.

To the Bailiff of the Supreme Court, greeting:

Whereas in the above-named action it was on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ adjudged *[or ordered]* that the defendant C. D. do give the plaintiff A. B. possession of *[describe the land delivery of which was adjudged or ordered]*:

And whereas on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ a writ of possession was issued pursuant to the said judgment *[or order]* directing you to give possession of the said land to the said A. B., but it appearing to our Supreme Court that certain other persons have wrongfully taken possession of the said land and our said Court having on the \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_, ordered that a writ of restitution should be issued in respect of the said land:

We command you that you enter the said land and cause A. B. to have restitution thereof.

And we also command you that you indorse *[remainder as in No. 53]*.

### **No. 69 – Writ of assistance(O. 46. r. I)**

*[Heading as in action]*

Elizabeth the Second *[as in No. 53]*.

To the present and any future Bailiff of the Supreme Court, greeting:

Whereas by an order dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ made in an action in our Supreme Court between A. B., plaintiff, and C. D., defendant, the said C.D. was ordered to give to the said A. B. possession of the land *[or goods]* therein described, namely *[describe the land or goods]*, but he the said C. D. and other persons have refused to obey the order and keep the possession of the land *[or goods]* in contempt of us and our said Court:

And whereas by an order made in the said action dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ it was ordered that a writ of assistance should issue to give the said A. B. possession of the said land *[or goods]*:

We command you that you *[enter the said land and eject the said C.D., his tenants, servants and accomplices, each and every of them, from the said land and every part thereof and put the said A. B. and his assigns into full, peaceable and quiet possession thereof]* *[or put the said A. B. and his assigns into full, peaceable and quiet possession of the said goods]* and defend and keep him and his assigns in such peaceable and quiet possession, when and as often as any interruption thereof is at any time effected, according to the intent of the said orders. And herein you are not in any wise to fail Witness *[as in No 53]*.

This writ *[as in No. 53]*

### **No. 71 – Notice of renewal of writ of execution (O. 46, r. 8)**

*[Heading as in cause or matter]*

Take notice that the writ of \_\_\_\_\_ issued in this cause *[or matter]* directed to the bailiff and bearing date the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ has by order dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ been renewed for one year beginning with the \_\_\_\_\_ date of the said order.

To the bailiff of the supreme court

(Signed)

attorney for \_\_\_\_\_

**No. 72 – Garnishee order to show cause (O. 49. r. 1)**

**In the Supreme Court of \_\_\_\_\_ [Year] \_\_\_\_\_ No. \_\_\_\_\_**

**In the Turks and Caicos Islands**

Mr. Justice \_\_\_\_\_ [Judge in Chambers]

Between

A.B. - Judgment creditor

and

C.D. - Judgment debtor

F.G. - Garnishee

Upon reading the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

It is ordered by [Mr. Justice \_\_\_\_\_] that all debts due or accruing due from the abovementioned garnishee to the above-mentioned judgment debtor [in the sum of \$ \_\_\_\_\_] be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the Supreme Court on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ the sum *for* to answer an order made in the Supreme Court on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, ordering payment by the said judgment debtor to the above-named 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 Mr. Justice \_\_\_\_\_ in Chambers the Supreme Court, Court House, Pond Street, Grand Turk, [*or as may be*] on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ at o'clock, 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. [*Add where appropriate* The name and address of the branch of the garnishee institution at which the debtor's account is believed to be held is \_\_\_\_\_. The number of that account is believed to be \_\_\_\_\_].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

To the above-named garnishee and Judgment debtor.

**No. 73 – Garnishee order absolute where garnishee  
owes more than a judgment debt (O. 49, rr 1-4)**

[*Heading as in No. 72*]

Upon hearing the attorneys for the judgment creditor and the garnishee, and upon reading the affidavit of \_\_\_\_\_ filed herein, and the order to show cause made herein dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, whereby it was ordered that all debts due or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the Supreme Court on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ for the sum \_\_\_\_\_ [*or to answer an order made in the Supreme Court dated the \_\_\_\_\_ day of \_\_\_\_\_, ordering payment by the said judgment debtor to the above-named 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 \_\_\_\_, \_\_\_\_.

**No. 74 – Garnishee order absolute where garnishee  
owes less than Judgment debt (O. 49, rr. 1, 4)**

*[Heading as in No. 72]*

Upon hearing *[as in No. 73]*

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 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 \_\_\_\_, \_\_\_\_.

**No. 82 – Summons for appointment of receiver (O. 51, r. 3)**

*[Heading as in action]*

Let the defendant C. D. attend the [Judge in chambers at the Supreme Court, Court House, Pond Street, Grand Turk] on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ at \_\_\_\_ o'clock on the hearing of an application on the part of the plaintiff for an order that a receiver be appointed *[or that P. R. be appointed receiver]*-in this action to receive the rents, profits and moneys receivable in respect of the interest of the defendant C. D. 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 \_\_\_\_, \_\_\_\_ and for an order as to the costs of this application.

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

This summons was taken out by \_\_\_\_ of \_\_\_\_.

To the above named \_\_\_\_ *[and his attorney]*.

**No. 83 – Order directing summons for appointment of  
receiver and granting injunction meanwhile (O. 51, r. 3)**

*[Heading as in action]*

Upon reading the affidavit of \_\_\_\_ filed the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

Let the defendant C. D. attend the [Judge in chambers at the Supreme Court, Court House, Pond Street, Grand Turk] on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ at \_\_\_\_ o'clock on the hearing of an application on the part of the plaintiff for the appointment of P. R. 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]* in or towards satisfaction of the sum of \$ \_\_\_\_ debt and \$ \_\_\_\_ costs, and interest on the said sums at the rate of \$ \_\_\_\_ *[insert the appropriate rule of interest at date of entry of judgment]* per annum from the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ due under the judgment *[or order]* in this action dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

And the plaintiff *[by his attorney]* 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 servant, 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 \_\_\_\_, \_\_\_\_.



**No. 84 – Order appointing receiver byway of equitable  
execution (Supreme Court Act 1981, s. 37; O. 51)**

*[Heading as in action]*

Upon hearing \_\_\_\_ and upon reading the affidavit of \_\_\_\_ filed the \_\_\_\_ day of \_\_\_\_, \_\_\_\_;

*[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 that P.R. 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 not the plaintiff]* The plaintiff being answerable for the acts and defaults of the receiver, it is ordered that P.R. 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 may 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 arrears 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 \$ \_\_\_\_.

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 percent of the amount due under the said judgment or the amount recovered by the receiver, whichever is the less, provided that not less than \$ 50 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 \_\_\_\_, \_\_\_\_.

**No. 85 – Order of committal (O. 52)***[Heading as in action]*

Upon motion this day made unto this court by counsel for the plaintiff and upon reading [an affidavit of filed the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ of service on the defendant C.D. of a copy of the order of the Court dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ and of notice of this motion]

And it appearing to the satisfaction of the Court that the defendant C. D. 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 Her Majesty's Prison in Grand Turk for a period of *[state the period]* from the date of his apprehension. [It is: further ordered that this order shall not be executed if the defendant C.D. complies with the following terms, namely, \_\_\_\_.)

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_

**No. 86 – Notice of motion for Judicial review (O. 53, r. 5)**

**In the Supreme Court of \_\_\_\_\_ *[Year]* \_\_\_\_\_ No. \_\_\_\_\_**

**In the turks and caicos islands**

In the matter of an application for judicial review and

In the matter of

Take Notice that pursuant to the leave of the Honourable Mr. Justice given on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ the Court will be moved as soon as counsel can be heard on the applicant's behalf for an order for relief in the terms, and on the grounds, set out in Form 86A, herewith.

And that the costs of and occasioned by this motion be and take notice that on the hearing of this motion the applicant will use the affidavit and exhibits copies of which accompany this notice.

[And also take notice that the Honourable Mr. Justice \_\_\_\_\_ by order dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ directed that all proceedings in *[or on]* the said \_\_\_\_\_ be stayed until after the hearing of this motion or further order].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed) \_\_\_\_\_

of

Attorney for \_\_\_\_\_

To attorney for \_\_\_\_\_

***Important***

Any respondent who intends to use an affidavit at the hearing should inform the Registry of his intention within 10 days of the service of this notice. Any such affidavit must be filed in the Registry as soon as practicable and in any event within 56 days of service.

**No. 86A – Notice of application for leave to apply for judicial review (O. 53, r. 3)**

**In the Supreme Court of \_\_\_\_\_ [Year] \_\_\_\_\_ No. \_\_\_\_\_**

**In the Turks and Caicos Islands**

To the Registrar, Supreme Court, Court House, Pond Street, Grand Turk

Name, address and description of applicant(s)	
Judgment, order, decision or other proceeding in respect of which relief is sought	

Relief Sought

Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant

Signed \_\_\_\_\_

Dated \_\_\_\_\_

(Second page)

**Grounds on which relief is sought**

(If there has been any delay, include reasons here)

Note-Grounds must be supported by an affidavit which verifies the facts relied on.

**No. 87 – Notice of motion for writ of *Habeas ad subjiciendum* (O. 54, r. 2)**

**In the Supreme Court of \_\_\_\_\_ [Year] \_\_\_\_\_ No. \_\_\_\_\_**

**In the Turks and Caicos Islands**

In the matter of A.B.

and

In the matter of an application for a writ of *habeas corpus ad subjiciendum*

Take notice that pursuant to the direction of the Honourable Mr. Justice \_\_\_\_\_ the Supreme court will be moved on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ or so soon thereafter as counsel can be heard on behalf of A. B. for an order that a writ of *habeas corpus* do issue directed to \_\_\_\_\_ to have the body of the said A. B. before the Supreme Court at such time as the Court or judge may direct upon the grounds set out in the affidavits of the said A. B. and \_\_\_\_\_ and the exhibits therein respectively referred to used on the application to the Honourable Mr. Justice \_\_\_\_\_ for such order, copies of which affidavits and exhibits are served herewith.

And that the costs of and occasioned by this motion be the applicant's to be taxed and paid by the respondents to the applicant.

And take notice that on the hearing of this motion the said A. B. will use the affidavits of himself and the said \_\_\_\_\_ and the exhibits therein referred to.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

(Signed) of

Attorney for \_\_\_\_\_

To

Attorney for \_\_\_\_\_

### **No. 88 – Notice directed by court of adjourned application for writ of */habeas corpus* (O. 54, r. 2)**

*[Heading as in No. 87]*

Take notice that an application for the above writ was made to the Supreme Court of the Turks and Caicos Islands [or to the Honourable Mr. Justice \_\_\_\_\_] in the above matter on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ when the said application was adjourned so that notice could be given to you.

Notice is hereby given to you that the said application will be made to the supreme court [or to the Honourable Mr. Justice \_\_\_\_\_] on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock,

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

(Signed) of

Attorney for \_\_\_\_\_

To

Attorney for \_\_\_\_\_

### **No.89 – Writ of *habeas corpus ad subjiciendum* (O. 54, r. 10)**

Elizabeth the Second

*[as in No. 53].*

To the Prisons Superintendent greeting:

We command you that you have in the Supreme Court, Court House, Pond Street, Grand Turk, on the day and at the time specified in the notice served with this writ, the body of A.B. 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.

Witness the Chief Justice of the Turks and Caicos Islands the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

*Indorsement*

By order of court [or of Mr. Justice \_\_\_\_\_]

This writ was issued by of attorney for \_\_\_\_\_

### **No. 90 – Notice to be served with writ of *habeas corpus ad subjiciendum* (O. 54, r. 6)**

In the Supreme Court of the Turks and Caicos Islands

*[If in a cause already begun, here insert the title, not otherwise]*

Whereas this Court [*or the Honourable Mr. Justice \_\_\_\_\_*] 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 A.B. before the said Court [*or before a judge in chambers*] at the Supreme Court, Court House, Pond Street, Grand Turk, 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 A. B. before this court [*or before the judge aforesaid*] on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock 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 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 \_\_\_\_\_, \_\_\_\_\_

(Signed) of

Attorney for \_\_\_\_\_

To

Attorney for \_\_\_\_\_

### **No. 91 – Writ of *habeas corpus ad testificandum* (O. 54, r. 10)**

Elizabeth the Second [*as in No. 53*].

To the Prisons Superintendent greeting:

We command you that you have before [*description of court*] on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ the body of \_\_\_\_\_, being committed and detained in Our prison under your custody, as is said, then and there to testify the truth and give evidence [on Our behalf against A. B. for (*describe the offence*) *or otherwise describing the proceedings*], and so from day to day until the said shall have given his evidence as aforesaid. And when he shall have given his evidence, then you take him back without delay to Our said prison under your custody and cause him to be detained therein under safe custody, until he shall be from thence discharged by due course of law.

Witness [*as in No. 89*]

*Indorsement*

By order of court [*or of Mr. Justice \_\_\_\_\_*]

This writ was issued by \_\_\_\_\_ of \_\_\_\_\_ attorney for \_\_\_\_\_

### **No. 92 – Writ of *habeas corpus Ad respondendum* (O. 54, r. 10)**

Elizabeth the Second [*as in No. 53*].

To the Prisons Superintendent greeting:

We command you that you have before [*description of court*] on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock the body of \_\_\_\_\_ being committed and detained in Our prison 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, then and there to answer to a charge of \_\_\_\_\_ to be then and there made against him and so from day to day until he shall have answered the said charge, and to be dealt with according to law. And have you then and there this writ.

Witness [*as in No. 89*].

*Indorsement*

*[As in No. 91]*

### **No. 93 – Order under the evidence (Proceedings in Other Jurisdictions) Act 1975 (O. 70, r. 1)**

In the Supreme Court

Turks and Caicos Islands

In the matter of the Evidence (Proceedings in Other Jurisdictions) Act 1975 as extended to the Turks and Caicos Islands

and

In the matter of a civil [or commercial or criminal] proceeding now pending [or contemplated] before *[description of court or tribunal]* entitled as follows:—

*[give title of proceedings in foreign court or tribunal or state in proceedings contemplated between plaintiff and \_\_\_\_\_ defendant].*

Upon reading the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and the request exhibited thereto and it appearing that proceedings are pending [or contemplated] in the *[description of foreign court or tribunal]* in *[name of country]* and that such court wishes to obtain the testimony of *[name of witness]*.

It is ordered that the said witness \_\_\_\_\_ do attend before *[name and address of examiner]* who is hereby appointed examiner herein, at *[place appointed for examination]* on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock, or such other day and time as the said examiner 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, to be produced]*. It is also ordered that the said examiner do take down or cause to be taken down in writing the evidence of the said witness according to the rules and practice of the Supreme Court of the Turks and Caicos Islands pertaining to the examination and cross-examination of witnesses *[or as may be otherwise directed]* and do request the said witness *[or each and every witness]* to sign his deposition in the said examiner's presence and do sign the depositions taken in pursuance of this Order, and when so completed do send them together with this order and the request, to the Registrar' the Supreme Court, Court House, Pond Street, Grand Turk for transmission to the court desiring the evidence of the said witness.

### **No. 95 – Certificate of order against the crown (O. 77, r. 15)**

*[Heading as in cause or matter]*

By a judgment *[or order]* of this Court dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ it was adjudged *[or ordered]* that *[give particulars of the judgment or order]*.

I hereby certify that the amount payable to \_\_\_\_\_ by \_\_\_\_\_ in pursuance of the said judgment *[or order]* is \$ \_\_\_\_\_ [together with interest thereon at the rate of \$ \_\_\_\_\_ per cent *per annum* until payment and together with costs which have been taxed and certified by the Registrar at \$ \_\_\_\_\_. Interest is payable on the said costs at the rate of \$ \_\_\_\_\_ per cent *per annum* from the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ until payment].

[This certificate does not include the amount payable under the said judgment or order in respect of costs).

Dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed) \_\_\_\_\_, \_\_\_\_\_

### **No. 96 – Certificate of order for costs against the crown (O. 77, r.15)**

*[Heading as in cause or matter]*

By a judgment *[or order]* of this Court dated \_\_\_\_\_ the day of \_\_\_\_\_, \_\_\_\_\_ it was adjudged *[or ordered]* that *[give particulars of the judgment or order]*.

I hereby certify that the costs payable to \_\_\_\_ by \_\_\_\_ in pursuance of the said judgment [or order] have been taxed and certified by the Registrar at \$ \_\_\_\_ [and interest is payable thereon at the rate of \$ \_\_\_\_ per cent *per annum* from the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ until payment].

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_

(Signed) \_\_\_\_\_

### **No. 97 – Summons to grant bail (O. 79,r.9)**

In the Supreme Court

Turks and Caicos Islands

Let all parties concerned attend the chief justice in chambers on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ at \_\_\_\_ o'clock on the hearing of an application on behalf of A.B. to be granted bail as to his commitment on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ magistrates' court sitting at \_\_\_\_

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

This summons was taken out by \_\_\_\_ of \_\_\_\_ [agent for \_\_\_\_ of] attorney for the said A. B.

### **No. 97A – Summons to vary arrangements for bail in aa criminal proceedings(O. 79, r. 9)**

In the Supreme Court

Turks and Caicos Islands

Let all parties concerned attend the chief justice in chambers on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ at \_\_\_\_ o'clock on the hearing of an application [on behalf of A.B.] [by \_\_\_\_] that the terms on which A. B. was granted bail by \_\_\_\_ on should be varied as follows—

Terms on which A. B. was granted bail—

Proposed variation—

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_

This summons was taken out by [ \_\_\_\_ of \_\_\_\_ ] [agent for \_\_\_\_ of \_\_\_\_ [attorney for \_\_\_\_ of \_\_\_\_ attorney for the said A. B.] \_\_\_\_ [as prosecutor) [a constable] of \_\_\_\_ of Police Force]].

### **No. 98 – Order of chief justice to release prisoner on bail (O. 79. r. 9)**

In the supreme Court

Turks and Caicos Islands

The honourable chief justice

Whereas on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ [state the circumstances in which the *applicant was remanded in custody as. for example*, A. B. was remanded in custody or A.B. was convicted by a magistrates court sitting at \_\_\_\_ of \_\_\_\_ and sentenced to and the said A.B. has given notice of appeal to the Supreme Court against such conviction or sentence):

And whereas the said A. B. is in the custody of Her Majesty's prison \_\_\_\_ at \_\_\_\_ and has applied to the judge in chambers to be granted bail:

Upon hearing counsel [or the attorney] for the said A. B. and upon reading the affidavit of \_\_\_\_ filed the \_\_\_\_ day of \_\_\_\_, \_\_\_\_:

It is ordered that the said A.B., after complying with the condition(s) specified in Schedule 1 hereto shall be released on bail, subject to the condition specified in Schedule II hereto, and with a duty to surrender to the custody of [the magistrates' court at \_\_\_\_ on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ at \_\_\_\_ a.m./p.m.] [the Supreme Court on such day at such time and place as may be notified to the said A.B. by the appropriate officer of that court).

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_

### **Schedule I**

*\*Conditions to be complied with before release on bail*

To provide \_\_\_\_ suret[y][ies] in the sum of \$ \_\_\_\_ [each] before a justice of the peace [ or as may *be*] to secure A.B.'s surrender to custody at the time and place appointed.

### **Schedule II**

*\*Conditions to be complied with after release on bail*

*\*Insert condition(s) as appropriate (including in Schedule I directions under O. 79, r. 9(6B), in respect of any pre-release conditions).*

## **No. 98A – Order of judge varying arrangements for bail (O. 79, r. 9)**

In the Supreme Court

Turks and Caicos Islands

The honourable chief justice

Whereas on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ [*state the circumstances in which the applicant was remanded in custody, for example, A.B. was remanded in custody or A.B. was convicted by a magistrates' court sitting at \_\_\_\_ of \_\_\_\_ and sentenced \_\_\_\_ and the said A.B. has given notice of appeal to the Supreme Court against such conviction or sentence*]:

And whereas the said A.B. was granted bail with a duty to surrender to the custody of (the magistrates' court at \_\_\_\_ on the \_\_\_\_ of \_\_\_\_, \_\_\_\_ at \_\_\_\_ o'clock.] (the Supreme Court on a day and at a time and place to be notified by the appropriate officer of that court] and subject to the following conditions-*[state conditions imposed on the grant of bail]*

And whereas [the said A.B.] [[ \_\_\_\_ as prosecutor] [a constable of \_\_\_\_ Police Force] has applied to the Chief Justice for a variation in the said arrangements for bail:

Upon hearing counsel [or the attorney] for the applicant and upon reading the affidavit of \_\_\_\_ filed the \_\_\_\_ day of \_\_\_\_, \_\_\_\_:

It is ordered that the said arrangements for bail be varied as follows—

Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_

## **No. 100 – Notice of Bail**

Whereas on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ of A.B. was [*state circumstances in which A.B. was committed, as in No. 98 or 99*]:

And whereas the honourable chief justice has made an order dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ that [*recite order for bail*]

Take notice that in pursuance of the said order [sufficient suret[y][ies] will enter into such recognisance] [\_\_\_\_ will give security] as aforesaid before \_\_\_\_ at \_\_\_\_ on the \_\_\_\_ day of \_\_\_\_, \_\_\_\_ at \_\_\_\_ o'clock [And the names and description of such suret[y][ies] are]



Dated the \_\_\_\_ day of \_\_\_\_, \_\_\_\_

(Signed)

\_\_\_\_\_

Attorney for the said A.B.

## **Appendix B To the Rules of the Supreme Court (*Ord. 1, rule 12*)**

### **Savings and transitional**

#### **1. Interpretation**

In this appendix-

"**commencement date**" means 1st March 2000;

"**existing proceedings**" means proceedings issued under the previous rules;

"**new rules**" means the Rules of the Supreme Court 2000 and the Civil Procedure Ordinance as amended by the Civil Procedure (Amendment) Ordinance 1999;

"**previous rules**" means the provisions of the Civil Procedure Ordinance and of the Supreme Court Practice and Procedure Rules before the coming into operation of the Civil Procedure (Amendment) Ordinance 1999 and the Rules of the Supreme Court 2000.

#### **2. Continuance and validity of existing proceedings**

- (1) Any existing proceedings shall not abate by reason of the repeal or revocation of the previous rules, but shall, subject to the following provisions of this appendix, continue under the provisions of the new rules as if begun under them.
- (2) Any judgment, order or appointment made under the previous rules shall not be affected by their revocation or repeal, but shall continue in full force and effect.
- (3) Where a party has taken any step in existing proceedings in accordance with the previous rules that step will remain valid after the commencement date.

#### **3. Application of the new rules**

- (1) Subject to the following provisions of this appendix, where a new step is to be taken in any existing proceedings on or after the commencement date, it is to be taken under the new rules.
- (2) An application made on or after the commencement date to extend the validity of originating process issued before the commencement date, shall be made in accordance with the new rules.
- (3) When proceedings come before a judge for the first time on or after the commencement date, he may direct how the new rules are to apply to the proceedings.

#### **4. Continued application of previous rules**

- (1) A party who is served with existing proceedings on or after the commencement date shall respond in accordance with the previous rules.
- (2) In the case of existing proceedings filing and service of pleadings will continue according to the previous rules.

#### **5. Default judgments in existing proceedings**

- (1) Default judgment may only be entered in existing proceedings in accordance with the previous rules, but any application for leave to enter such judgment, and any proceedings on or under such judgment, shall be made in accordance with the new rules.

- (2) An application to set aside judgment entered in default in existing proceedings shall be made under the new rules.

**6. Application issued before the commencement date**

Where an application has been issued before the commencement date and the hearing is set for a date on or after the commencement date, the application shall proceed under the previous rules, and any step which a party must take in response to something done by another party shall be done in accordance with the previous rules.

**7. Costs**

Any taxation of costs that takes place after the commencement date shall be conducted in accordance with the new rules, save that costs for work undertaken before the commencement date shall be taxed on the basis of the previous rules.

**8. Cross references**

Where a reference in legislation or a document is made expressly or by implication to legislation amended or repealed by the Civil Procedure (Amendment) Ordinance 1999 the reference shall except where the context otherwise requires be construed as a reference to that legislation as amended by that Ordinance or to the corresponding provision in these rules.