



**BERMUDA**

**RULES OF THE SUPREME COURT 1985**

**GN 470 / 1985**

*[made under section 62 of the Supreme Court Act 1905 and brought into operation on 4 January 1988]*

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- 3 53/3 Grant of leave to apply for judicial review
- 4 53/4 Delay in applying for relief
- 5 53/5 Mode of applying for judicial review
- 6 53/6 Statements and affidavits
- 7 53/7 Claim for damages
- 8 53/8 Application for discovery, interrogatories, cross-examination, etc.
- 9 53/9 Hearing of application for judicial review
- 10 53/10 Saving for person acting in obedience to mandamus
- 13 53/13 Appeal from Judge's order
- 14 53/14 Meaning of "Court"

### ORDER 54

#### APPLICATIONS FOR WRIT OF HABEAS CORPUS

- 1 54/1 Application for writ of habeas corpus ad subjiciendum
- 2 54/2 Power of Court to whom ex parte application made
- 3 54/3 Copies of affidavits to be supplied
- 4 54/4 Power to order release of person restrained
- 5 54/5 Directions as to return to writ
- 6 54/6 Service of writ and notice
- 7 54/7 Return to the writ
- 8 54/8 Procedure at hearing of writ
- 9 54/9 Bringing up prisoner to give evidence, etc.
- 10 54/10 Form of writ

### ORDER 55

#### APPEALS TO SUPREME COURT FROM COURT, TRIBUNAL OR PERSON: GENERAL

## **RULES OF THE SUPREME COURT 1985**

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- 1        55/1    Application
- 3        55/3    Bringing of appeal
- 4        55/4    Service of notice of motion and entry of appeal
- 5        55/5    Date of hearing of appeal
- 6        55/6    Amendment of grounds of appeal etc.
- 7        55/7    Powers of Court hearing appeal
- 8        55/8    Right of Minister, etc. to appear and be heard

### ORDER 58

#### APPEALS FROM THE REGISTRAR

- 1        58/1    Appeals from certain decisions of the Registrar, etc. to judge in chambers
- 8        58/8    Appeal from judgment, etc. of judge in interpleader proceedings

### ORDER 59

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### ORDER 60

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### ORDER 61

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### ORDER 62

#### COSTS

#### *Part 1:*

#### *Preliminary*

- 1        62/1    Interpretation
- 2        62/2    Application

#### *Part II:*

#### *Entitlement to Costs*

- 3        62/3    General principles
- 4        62/4    Cases where no order for costs is to be made
- 5        62/5    Cases where order for costs deemed to have been made
- 6        62/6    Cases where costs do not follow the event
- 7        62/7    Special circumstances in which costs shall not or may not be taxed
- 8        62/8    Stage of proceedings at which costs to be taxed
- 9        62/9    Matters to be taken into account in exercising discretion
- 10       62/10   Misconduct or neglect in the conduct of any proceedings
- 11       62/11   Personal liability of attorney for costs

#### *Part III:*

#### *Taxation and Assessment of Costs*

- 12       62/12   Basis of taxation
- 14       62/14   Costs payable to a trustee or estate representative out of any fund
- 16       62/16   Costs payable to an attorney where money claimed by or on behalf of a minor or a patient

**RULES OF THE SUPREME COURT 1985**

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- 17 62/17 Provisions for ascertaining costs on a taxation  
18 62/18 Litigants in person

*Part IV:  
Powers of Registrar*

- 19 62/19 Who may tax costs  
20 62/20 Supplementary powers of Registrar  
21 62/21 Extensions of time  
22 62/22 Certificates  
23 62/23 Power of Registrar where party liable to be paid and to pay costs  
24 62/24 Taxation of bill of costs comprised in an account  
25 62/25 Registrar to fix certain fees payable to conveyancing counsel  
26 62/26 Powers of Registrar on taxation of costs out of a fund  
27 62/27 Powers of Registrar in relation to costs of taxation proceedings  
28 62/28 Powers of Registrar in relation to misconduct, neglect, etc.

*Part V:  
Procedure on Taxation*

- 29 62/29 Commencement of proceedings  
30 62/30 Subsequent procedure  
32 62/32 Short and urgent taxations  
34A 62/34A Scales of costs

*Part VI:  
Review of Taxation*

- 35 62/35 Review of Registrar's decision by a judge

SCHEDULE TO ORDER 62 (RULE 34A)  
PART I

GENERAL AND ADMINISTRATIVE PROVISIONS

ORDER 63  
REGISTRY OF THE SUPREME COURT

- 3 63/3 Date of filing to be marked, etc.  
5 63/5 Deposit of documents  
9 63/9 Restriction on removal of documents

ORDER 64  
OFFICE HOURS

- 7 64/7 Supreme Court offices: days on which open and office hours

ORDER 65  
SERVICE OF DOCUMENTS

- 1 65/1 When personal service required  
2 65/2 Personal service: how effected  
3 65/3 Personal service on body corporate  
4 65/4 Substituted service

## **RULES OF THE SUPREME COURT 1985**

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- 5        65/5    Ordinary service: how effected
- 6        65/6    Service on Minister, etc. in proceedings which are not by or against the  
Crown
- 7        65/7    Effect of service after certain hours
- 8        65/8    Affidavit of service
- 9        65/9    No service required in certain cases
- 10       65/10   Service of process on Sunday

### ORDER 66

#### PAPER, PRINTING, NOTICES AND COPIES

- 1        66/1    Quality and size of paper
- 2        66/2    Regulations as to printing, etc.
- 3        66/3    Copies of documents for other party
- 4        66/4    Requirements as to copies

### ORDER 67

#### CHANGE OF ATTORNEY

- 1        67/1    Notice of change of attorney
- 3        67/3    Notice of appointment of attorney
- 4        67/4    Notice of intention to act in person
- 5        67/5    Removal of attorney from record at instance of another party
- 6        67/6    Withdrawal of attorney who has ceased to act for party
- 7        67/7    Address for service of party whose attorney is removed, etc.

### ORDER 68

[blank]

#### PROVISIONS AS TO FOREIGN PROCEEDINGS

### ORDER 69

#### SERVICE OF FOREIGN PROCESS

- 1        69/1    Definition
- 2        69/2    Service of foreign legal process
- 3        69/3    Service of foreign legal process under Civil Procedure Convention
- 4        69/4    Costs of service, etc. to be certified by Registrar

### ORDER 70

#### OBTAINING EVIDENCE FOR FOREIGN COURTS ETC.

- 1        70/1    Interpretation and exercise of jurisdiction
- 2        70/2    Application for order
- 3        70/3    Application by Attorney General in certain cases
- 4        70/4    Person to take and manner of taking examination
- 5        70/5    Dealing with deposition

### ORDER 71

[blank]

### ORDER 72

#### COMMERCIAL ACTIONS

## **RULES OF THE SUPREME COURT 1985**

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- 1 72/1 Application and Interpretation
- 2 72/2 The Commercial List
- 4 72/4 Entry of action in commercial list when action begun
- 5 72/5 Transfer of action to commercial list after action begun
- 6 72/6 Removal of action from commercial list
- 7 72/7 Pleadings in commercial list actions
- 8 72/8 Directions in commercial list actions
- 10 72/10 Production of certain documents in marine insurance actions

### **SPECIAL PROVISIONS AS TO PARTICULAR PROCEEDINGS**

#### **ORDER 73**

#### **ARBITRATION PROCEEDINGS**

- 1 73/1 [blank]
- 2 73/2 Matters for a judge in court
- 3 73/3 Matters for judge in chambers
- 5 73/5 Time limits and other special provisions as to appeals and applications under the Arbitration Acts
- 6 73/6 Applications to be entered on commercial list
- 7 73/7 Service out of the jurisdiction of summons, notice, etc.
- 8 73/8 Registration in court of foreign awards
- 9 73/9 Registration of awards under the United Kingdom Arbitration (International Investment Disputes) Act 1966 as extended to Bermuda
- 10 73/10 Enforcement of arbitration awards

#### **ORDER 74**

[blank]

#### **ORDER 75**

#### **ADMIRALTY PROCEEDINGS**

- 1 75/1 Application and interpretation
- 3 75/3 Issue of writ and entry of appearance
- 4 75/4 Service of writ out of jurisdiction
- 5 75/5 Warrant of arrest
- 6 75/6 Caveat against arrest
- 7 75/7 Remedy where property protected by caveat is arrested (without good and sufficient reason)
- 8 75/8 Service of writ in action in rem
- 9 75/9 Committal of attorney failing to comply with undertaking
- 10 75/10 Execution, etc. of warrant of arrest
- 11 75/11 Service on ships, etc.; how effected
- 12 75/12 Application with respect to property under arrest
- 13 75/13 Release of property under arrest
- 14 75/14 Caveat against release and payment
- 15 75/15 Duration of caveats
- 16 75/16 Bail
- 17 75/17 Interveners
- 18 75/18 Preliminary acts

## **RULES OF THE SUPREME COURT 1985**

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19	75/19	Failure to lodge preliminary act: proceedings against party in default
20	75/20	Special provisions as to pleadings in collision, etc. actions
21	75/21	Judgment by default
22	75/22	Order for sale of ship: determination of priority of claims
23	75/23	Appraisalment and sale of property
23A	75/23A	Undertaking as to expenses, etc.
24	75/24	Payments into and out of court
25	75/25	Summons for directions
26	75/26	Fixing date of trial, etc.
27	75/27	Stay of proceedings in collision, etc. actions until security given
28	75/28	Inspection of ship, etc.
30	75/30	Examination of witnesses and other persons
31	75/31	Trial as an Admiralty short cause
33	75/33	Proceedings for apportionment of salvage
34	75/34	Filing and service of notice of motion
35	75/35	Agreement between attorneys may be made order of court
36	75/36	Originating summons procedure
37	75/37	Limitation action: parties
38	75/38	Limitation action: summons for decree or directions
39	75/39	Limitation action: proceedings under decree
40	75/40	Limitation action: proceedings to set aside decree
41	75/41	References to Registrar
42	75/42	Hearing of reference
43	75/43	Objection to decision on reference
44	75/44	Drawing up and entry of judgments and orders

### **ORDER 76**

#### **CONTENTIOUS PROBATE PROCEEDINGS**

1	76/1	Application and interpretation
2	76/2	Requirements in connection with issue of writ
3	76/3	Parties to action for revocation of grant
4	76/4	Lodgment of grant in action for revocation
5	76/5	Affidavit of testamentary scripts
6	76/6	Default of appearance
7	76/7	Service of statement of claim
8	76/8	Counterclaim
9	76/9	Contents of pleadings
10	76/10	Default of pleadings
11	76/11	Discontinuance and dismissal
12	76/12	Compromise of action: trial on affidavit evidence
15	76/15	Administration pendente lite

### **ORDER 77**

#### **PROCEEDINGS BY AND AGAINST THE CROWN**

1	77/1	Application and interpretation
3	77/3	Particulars to be included in indorsement of claim
4	77/4	Service on the Crown

## **RULES OF THE SUPREME COURT 1985**

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- 6 77/6 Counterclaim and set-off
- 7 77/7 Summary judgment
- 9 77/9 Judgment in default
- 10 77/10 Third party notices
- 11 77/11 Interpleader: application for order against Crown
- 12 77/12 Discovery and interrogatories
- 14 77/14 Evidence
- 15 77/15 Execution and satisfaction of orders
- 16 77/16 Attachment of debts, etc
- 17 77/17 Proceedings relating to postal packets
- 18 77/18 Applications under sections 14 and 20 of the Crown Proceedings Act 1966

### ORDER 78

[blank]

### ORDER 79

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### ORDER 80

#### DISABILITY

- 1 80/1 Interpretation
- 2 80/2 Person under disability must sue, etc. by next friend or guardian ad litem
- 3 80/3 Appointment of next friend or guardian ad litem
- 6 80/6 Appointment of guardian where person under disability does not appear
- 7 80/7 Application to discharge or vary certain orders
- 8 80/8 Admission not to be implied from pleading of person under disability
- 9 80/9 Discovery and interrogatories
- 10 80/10 Compromise, etc. by person under disability
- 11 80/11 Approval of scheme
- 12 80/12 Control of money recovered by person under disability
- 15 80/15 Proceedings under Fatal Injuries (Actions for Damages) Act 1949: apportionment by Court
- 16 80/16 Service of certain documents on person under disability

### ORDER 81

#### PARTNERS

- 1 81/1 Actions by and against firms within jurisdiction
- 2 81/2 Disclosure of partners' names
- 3 81/3 Service of writ
- 4 81/4 Entry of appearance in an action against a firm
- 5 81/5 Enforcing judgment or order against firm
- 6 81/6 Enforcing judgment or order in actions between partners, etc.
- 7 81/7 Attachment of debts owed by firm
- 8 81/8 Actions begun by originating summons
- 9 81/9 Application to person carrying on business in another name

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- 10      81/10 Applications for orders charging partner's interest in partnership property, etc.

### **ORDER 82 DEFAMATION ACTIONS**

- 1      82/1 Application  
2      82/2 Indorsement of claim in libel action  
3      82/3 Obligation to give particulars  
4      82/4 Provisions as to payment into court  
5      82/5 Statement in open Court  
6      82/6 Interrogatories not allowed in certain cases  
7      82/7 Evidence in mitigation of damage

### **ORDER 83 [blank]**

### **ORDER 84 [blank]**

### **ORDER 85 ADMINISTRATION AND SIMILAR ACTIONS**

- 1      85/1 Interpretation  
2      85/2 Determination of questions, etc. without administration  
3      85/3 Parties  
4      85/4 Grant of relief in action begun by originating summons  
5      85/5 Judgments and orders in administration actions  
6      85/6 Conduct of sale of trust property

### **ORDER 86 ACTIONS FOR SPECIFIC PERFORMANCE, ETC.: SUMMARY JUDGMENT**

- 1      86/1 Application by plaintiff for summary judgment  
2      86/2 Manner in which application under rule 1 must be made  
4      86/4 Judgment for plaintiff  
5      86/5 Leave to defend  
6      86/6 Directions  
7      86/7 Costs  
8      86/8 Setting aside judgment

### **ORDER 87 [blank]**

### **ORDER 88 MORTGAGE ACTIONS**

- 1      88/1 Application and interpretation  
4      88/4 Documents to be lodged on taking appointment for hearing  
5      88/5 Claim for possession: non-appearance by defendant  
6      88/6 Action for possession or payment  
7      88/7 Action by writ: judgment in default  
8      88/8 Foreclosure in redemption action

**RULES OF THE SUPREME COURT 1985**

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ORDER 89  
PROCEEDINGS UNDER THE LAW REFORM (HUSBAND AND WIFE) ACT 1977

1        89/1    Provisions as to actions in tort

ORDER 90  
PROCEEDINGS RELATING TO INFANTS

3        90/3    Application to make infant a ward of court

4        90/4    When infant ceases to be ward of court

ORDER 91  
[blank]

ORDER 92  
LODGMET, INVESTMENT, ETC., OF FUNDS IN COURT

2        92/2    Payment into court under Trustee Act 1975

4        92/4    Notice of lodgement

5        92/5    Applications with respect to funds in court

ORDER 93  
APPLICATION UNDER SECTION 48 OF TRUSTEE ACT 1975

6        93/6    Application under section 48 of the Trustee Act 1975

ORDER 94  
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ORDER 95  
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ORDER 96  
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ORDER 97  
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ORDER 98  
[blank]

ORDER 99  
THE SUCCESSION ACT 1974

2        99/2    Assignment to Chancery List

4        99/4    Powers of Court as to parties

5        99/5    Affidavit in support to be filed

8        99/8    Disposal of application in chambers, etc.

12      99/12   Applications in proceedings under section 13 or 15 of Act

13      99/13   Indorsement of memorandum on probate, etc.

ORDER 100  
THE TRADE MARKS ACT 1974

1        100/1   Assignment to Chancery List

## **RULES OF THE SUPREME COURT 1985**

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- 2 100/2 Appeals and applications under the Trade Marks Act 1974  
3 100/3 Proceedings for infringement of registered trade mark: validity of  
registration disputed

ORDER 101  
[blank]

ORDER 102  
THE COMPANIES ACT 1981

- 1 102/1 Interpretation  
2 102/2 Applications to be made by originating summons  
3 102/3 Application to be made by originating summons or motion  
4 102/4 Application to be made by originating motion  
5 102/5 Applications to be made by petition  
6 102/6 Assignment and entitlement of proceedings  
7 102/7 Summons for directions

ORDER 103  
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ORDER 104  
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ORDER 105  
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ORDER 106  
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ORDER 107  
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ORDER 108  
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ORDER 109  
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ORDER 110  
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ORDER 111  
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ORDER 112  
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ORDER 113

SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

- 1 113/1 Proceedings to be brought by originating summons  
2 113/2 Forms of originating summons  
3 113/3 Affidavit in support

## **RULES OF THE SUPREME COURT 1985**

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- 4 113/4 Service of originating summons
- 5 113/5 Application by occupier to be made a party
- 6 113/6 Order for possession
- 7 113/7 Writ for possession
- 8 113/8 Setting aside order

### ORDER 114

#### FUNDAMENTAL RIGHTS AND FREEDOMS PROCEEDINGS

- 1 114/1 Institution of proceedings
- 2 114/2 Issue of contents of summons
- 3 114/3 Service of summons and fixing of hearing date
- 4 114/4 Reference of questions by other Courts

### ORDER 115

#### PROCEEDINGS UNDER THE LIFE INSURANCE ACT 1978

- 1 115/1 Payment into court by insurance companies
- 2 115/2 Notice to be given of payment into court
- 3 115/3 Interested persons may apply to the Court
- 4 115/4 Copies of applications to be sent to interested parties
- 5 115/5 Money to be paid to sole claimant
- 6 115/6 Summons for directions to issue where more than one claimant
- 7 115/7 Order 25 to apply
- 8 115/8 Application for money to be paid into court
- 9 115/9 Notice of applications under section 43(1) to be given
- 10 115/10 Summons for directions to be applied for if money not paid  
into court
- 11 115/11 Procedure if money is paid into court

### ORDER 115A

#### CONFISCATION AND FORFEITURE IN CONNECTION WITH CRIMINAL PROCEEDINGS

- 1 Interpretation
- 2 Proceedings to be heard in chambers
- 2A Title of proceedings
- 2B Application for confiscation order
- 3 Application for restraint order or charging order
- 4 Restraint order and charging order
- 5 Discharge or variation of order
- 6 Further application by Attorney-General
- 7 Realisation of property
- 8 Receivers
- 9 Certificate of inadequacy
- 9A Certificate of increase in realisable property
- 10 Compensation
- 11 Disclosure of information
- 11A Compensation for, discharge and variation or confiscation order
- 13 Application for registration of external confiscation order
- 15 Evidence in support of application under section 54

## **RULES OF THE SUPREME COURT 1985**

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- 16 Register of orders
- 17 Notice of registration
- 18 Application to vary or set aside registration
- 19 Enforcement of order
- 20 Variation, satisfaction and discharge of registered order
- 21 Rules to have effect subject to orders made by the Minister
- 21A Criminal Justice (International Co-operation) (Bermuda) Act 1994: external forfeiture orders

### ORDER 115B Civil Recovery Proceedings

- 1 Scope and Interpretation

#### *Part I Civil Recovery Proceedings Under Part IIIA of the Act*

- 2 Claim for a recovery order
- 3 Applications for a property freezing order, an interim receiving order or a management receiving order
- 4 Property freezing order or interim receiving order made before commencement of claim for recovery order
- 5 Exclusions when making a property freezing order or an interim receiving order
- 6 Interim receiving order or management receiving order: application for directions
- 7 Application to vary or set aside an order
- 8 Exclusions for the purpose of meeting legal costs: general provisions
- 9 Assessment of costs where recovery order is made

#### *Part II Applications Under Part IV of The Act in Respect of Civil recovery Investigations*

- 10 Application for an order or warrant
- 11 Confidentiality of Court documents
- 12 Summons and evidence
- 13 Hearing of the application
- 14 Variation or discharge of order or warrant

#### *Part III Further Provisions About Specific Applications Under Part IV of the Act*

- 15 Production order
- 16 Search warrant
- 17 Customer information order
- 18 Monitoring order

### ORDER 116 REFERENCES UNDER SECTION 53(2) OF THE STAMP DUTIES ACT 1976

- 1 116/1 Manner of making reference
- 2 116/2 Order upon summons
- 3 116/3 Disposal of matters in summary manner
- 4 116/4 Costs

## **RULES OF THE SUPREME COURT 1985**

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### ORDER 117

#### PROCEEDINGS UNDER THE LAW REFORM (MISCELLANEOUS PROVISIONS) (No. 2) ACT 1977

- 1 117/1 Application under section 2 of the Law Reform (Miscellaneous Provisions)  
(No. 2) Act 1977
- 2 117/2 Directions on application under rule 1
- 3 117/3 Non-disclosure of order for interim payment
- 4 117/4 Payment into court
- 5 117/5 Adjustment on final judgment or order
- 6 117/6 Interim order on a counterclaim
- 7 117/7 Application under section 5 of the Act

### ORDER 118

#### PROCEEDINGS UNDER THE INTERNATIONAL CHILD ABDUCTION ACT 1998

- 1 118/1 Interpretation
- 2 118/2 Mode of application
- 3 118/3 Contents of originating summons: general provisions
- 4 118/4 Contents of originating summons: particular provisions
- 5 118/5 Defendants
- 6 118/6 Acknowledgement of service
- 7 118/7 Evidence
- 8 118/8 Hearing
- 9 118/9 Dispensing with service
- 10 118/10 Adjournment of summons
- 11 118/11 Interim directions

### ORDER 119

#### PROCEEDINGS RELATING TO ORDERS MADE

#### BY THE BERMUDA MONETARY AUTHORITY WITH RESPECT TO TAKEOVERS

- 1 119/1 Interpretation
- 2 119/2 Application
- 3 119/3 Form of application
- 4 119/4 Form of originating summons
- 5 119/5 Contents of summons
- 6 119/6 Service of summons
- 7 119/7 Service out of the jurisdiction
- 8 119/8 Service - general provisions
- 9 119/9 Hearing for directions etc, by Court
- 10 119/10 Affidavit evidence
- 11 119/11 Adjournment of summons
- 12 119/12 Proceeding in absence of party failing to attend
- 13 119/13 Counterclaim by defendant
- 14 119/14 Order for hearing or trial
- 15 119/15 Failure to prosecute proceedings with despatch
- 16 119/16 Abatement etc. of action

## **RULES OF THE SUPREME COURT 1985**

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17	119/17 Court expert
18	119/18 Costs
19	119/19 Application to have order of Authority registered
20	119/20 Form of application
21	119/21 Affidavit in support
22	119/22 Title
23	119/23 Order for registration
24	119/24 Register of orders
25	119/25 Notice of registration
26	119/26 Application to set aside

### **ORDER 120**

#### **OBTAINING EVIDENCE FOR TAX INFORMATION EXCHANGE AGREEMENT TREATIES**

1	120/1 Interpretation and exercise of jurisdiction
2	120/2 Application for production order or other relief
3	120/3 Application for review of a production order

#### **APPENDIX A FORMS**

#### **APPENDIX B SPECIAL ADMIRALTY FORMS**

## **PRELIMINARY**

### **ORDER 1**

#### **CITATION, COMMENCEMENT, APPLICATION, INTERPRETATION, FORMS AND REVOCATION**

##### **1/1 Citation, commencement and revocation**

1 (1) These Rules may be cited as the Rules of the Supreme Court 1985 and shall come into operation on such day as the Chief Justice may appoint by notice published in the Gazette.

(2) On the date on which these Rules come into operation the Rules of the Supreme Court 1952 shall be revoked.

##### **1/2 Application**

2 (1) Subject to the following provisions of this rule, 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 of the kinds specified in the first column of the following Table (being proceedings in respect of which rules may be made under enactments specified in the second column of that Table):—

TABLE

## RULES OF THE SUPREME COURT 1985

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<b>Proceedings</b>	<b>Enactments</b>
1 Bankruptcy proceedings	Bankruptcy Act 1876 section 58 [ <i>title 8 item 49</i> ]
2 Proceedings relating to the winding up of companies	Companies Act 1981 section 288 [ <i>title 17 item 5</i> ]
3 Non-contentious or common form probate proceedings	Administration of Estates Act 1974 section 57 [ <i>title 26 item 12</i> ]
4 Proceedings in Supreme Court when acting as Prize Court	Colonial Courts of Admiralty Act 1890 section 7
5 Proceedings before the judge within the meaning of Part IV of the Mental Health Act 1968	Mental Health Act 1968 section 60 [ <i>title 11 item 36</i> ]
6 Matrimonial proceedings	Supreme Court Act 1905 section 62 [ <i>title 8 item 1</i> ]
7 Controverted election proceedings	Legislature (Appointment, Election and Membership Controversies) Act 1968 section 43 [ <i>title 2 item 3</i> ]
8 Proceedings relating to appeal against cancellation of licence or permit	Hotels (Licensing and Control) Act 1969 section 18 [ <i>title 17 item 2</i> ]
	Companies Act 1981 sections 141 and 276A, [ <i>title 17 item 35</i> ] under section 62 of the Supreme Court Act 1905
9 Civil appeals proceedings	Civil Appeals Act 1971 section 18 [ <i>title 8 item 85</i> ]
10 Planning appeals proceedings	Development and Planning Act 1974 section 54 [ <i>title 20 item 1</i> ]
11 Workmen's compensation proceedings	Workmen's Compensation Act 1965 section 41 [ <i>title 18 item 3</i> ]
12 Acquisition of land proceedings	Acquisition of Land Act 1970 section 26 [ <i>title 19 item 2</i> ]

(3) These Rules shall not have effect in relation to any criminal proceedings.

(4) In the case of the proceedings mentioned in paragraph (2), nothing in that paragraph shall be taken as affecting any provision of any rules (whether made under the Act or any other Act) by virtue of which the Rules of the Supreme Court 1985 or any provisions thereof are applied in relation to any of those proceedings.

(5) These Rules shall not have effect in relation to any proceedings taken in any cause or matter which was pending before the Court or a judge thereof immediately before the date appointed under rule 1(1) and any proceedings taken in such cause or matter shall be continued to final determination in accordance with the rules in force immediately before the date so appointed.

[Order 1/2 amended by BR81/1999 effective 1 January 2000 and by BR55/2005 effective 1 January 2006]

## **RULES OF THE SUPREME COURT 1985**

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### **1/3 Application of Interpretation Act 1951**

3 The Interpretation Act 1951 [*title 1 item 1*] shall apply to the interpretation of these rules as it applies to the interpretation of an Act.

### **1/4 Definitions**

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

“The Act” means the Supreme Court Act 1905 [*title 8 item 1*];

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

“attorney” means a person duly admitted and enrolled under the Act as a barrister and attorney and entitled under the Bermuda Bar Act 1974 [*title 30 item 3*] to practise law in Bermuda;

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

“enactment” means any statutory provision including any Act of Parliament of the United Kingdom having effect as part of the law of Bermuda;

“folio” means 72 words, each figure being counted as one word;

“the Matrimonial Causes Rules” means the Matrimonial Causes Rules 1974 [*title 8 item 1(b)*];

“officer” means an officer of the Supreme Court;

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

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

“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 and except in relation to the jurisdiction of the Registrar under Order 32 rule 11, includes an Assistant Registrar;

“Registry” means the Registry of the Supreme Court;

“statutory rate” means seven per centum per annum or such other rate as may be prescribed under the Interest and Credit Charges (Regulation) Act 1975 [*title 17 item 22*];

“writ” means a writ of summons.

## **RULES OF THE SUPREME COURT 1985**

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(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 are defined and regulated.

### **1/5 Construction of references to Orders, rules, etc.**

5 (1) Unless the context otherwise requires, any reference in these rules to a specified Order, rule or Appendix is a reference to that Order or rule of, or that Appendix to, these rules and any reference to a specified rule, paragraph or sub-paragraph is a reference to that rule of the Order, that paragraph of the rule, or that sub-paragraph of the paragraph, in which the reference occurs.

(2) Any reference in these Rules to anything done under a rule of these Rules includes a reference to the same thing done before the commencement of that rule under any corresponding rule of 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 construed as a reference to that enactment as amended, extended, or applied by or under any other enactment.

### **1/6 Construction of references to action etc. for possession of land**

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.

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### **1/9 Forms**

9 (1) The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case require.

(2) In cases where no form is prescribed by these Rules the forms in the Appendices of the Rules of the Supreme Court of England 1965 (appearing in the White Book known as the Supreme Court Practice 1979) may be used with such variations as circumstances may require.

## **ORDER 1A**

### **THE OVERRIDING OBJECTIVE**

#### **1A/1 The Overriding Objective**

1 (1) These Rules shall have the overriding objective of enabling the court to deal with cases justly.

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- (2) Dealing with a case justly includes, so far as is practicable—
  - (a) ensuring that the parties are on an equal footing;
  - (b) saving expense;
  - (c) dealing with the case in ways which are proportionate—
    - (i) to the amount of money involved;
    - (ii) to the importance of the case;
    - (iii) to the complexity of the issues; and
    - (iv) to the financial position of each party;
  - (d) ensuring that it is dealt with expeditiously and fairly; and
  - (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

### **1A/2 Application by the Court of the Overriding Objective**

- 2 The court must seek to give effect to the overriding objective when it—
  - (a) exercises any power given to it by the Rules; or
  - (b) interprets any rule.

### **1A/3 Duty of the Parties**

- 3 The parties are required to help the court to further the overriding objective.

### **1A/4 Court's Duty to Manage Cases**

- 4 (1) The court must further the overriding objective by actively managing cases.
- (2) Active case management includes—
  - (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
  - (b) identifying the issues at an early stage;
  - (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
  - (d) deciding the order in which issues are to be resolved;
  - (e) encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
  - (f) helping the parties to settle the whole or part of the case;
  - (g) fixing timetables or otherwise controlling the progress of the case;

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- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as it can on the same occasion;
- (j) dealing with the case without the parties needing to attend at court;
- (k) making use of technology; and
- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

*[Order 1A inserted by BR55/2005 effective 1 January 2006]*

### **ORDER 2**

#### **EFFECT OF NON-COMPLIANCE**

##### **2/1 Non-compliance with rules**

1 (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any steps taken in those proceedings or any document, judgment or order therein or exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these rules to be begun by an originating process other than the one employed.

##### **2/2 Application to set aside for irregularity**

2 (1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

(2) An application under this rule may be made by summons or motion and the grounds of objection must be stated in the summons or notice of motion.

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### **ORDER 3**

#### **TIME**

##### **3/1 “month” means calendar month**

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

##### **3/2 Reckoning periods of time**

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 seven days or less, would include a Saturday or a public holiday, as defined in the Public Holidays Act 1947 [*title 28 item 8*], that day shall be excluded.

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##### **3/4 Time expires on Sunday, etc.**

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

##### **3/5 Extension, etc. of time**

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

(2) The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.

(3) The period within which a person is required by these rules, or by any order or direction, to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose.

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### **3/6 Notice of intention to proceed after year's delay**

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

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

## **COMMENCEMENT AND PROGRESS OF PROCEEDINGS**

### **ORDER 4**

#### **CONSOLIDATION OF PROCEEDINGS**

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### **4/10 Consolidation, etc. of causes or matters**

10 Where two or more causes or matters are pending in the Court, then, if it appears to the Court—

- (a) that some common question of law or fact arises in both or all of them, or
- (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions, or
- (c) that for some other reason it is desirable to make an order under this rule,

the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

### **ORDER 5**

#### **MODE OF BEGINNING CIVIL PROCEEDINGS IN COURT**

### **5/1 Mode of beginning civil proceedings**

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

### **5/2 Proceedings which must be begun by writ**

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

- (a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;

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- (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 any enactment or independently of any contract or any such provision), where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;
- (d) in which a claim is made by the plaintiff in respect of the infringement of a patent.

### **5/3 Proceedings which must be begun by originating summons**

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

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

### **5/4 Proceedings which may be begun by writ or originating summons**

4 (1) Except in the case of proceedings which by these Rules or by or under any enactment 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 the sole or principal question at issue is, or is likely to be, one of the construction of any enactment or of any instrument made under any enactment 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.

### **5/5 Proceedings to be begun by motion or petition**

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

### **5/6 Right to sue in person**

6 (1) Subject to paragraph (2) and to Order 80, rule 2, any person (whether or not he sues as a trustee or estate representative or in any other representative capacity) may begin and carry on proceedings in the Court by an attorney or in person.

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(2) Except as expressly provided by or under any enactment, a body corporate may not begin or carry on any such proceedings otherwise than by an attorney.

### **ORDER 6**

#### **WRITS OF SUMMONS: GENERAL PROVISIONS**

##### **6/1 Form of writ**

1 Every writ must be in Form No. 1, 3, 4 or 5 in Appendix A, whichever is appropriate.

##### **6/2 Indorsement of writ**

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

- (a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;
- (b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for appearing, the defendant—
  - (i) pays the amount so claimed to the plaintiff or his attorney;
  - (ii) pays that amount into court;
- (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 it is subject to the Rent Increases (Domestic Premises) Control Act 1978 [*title 29 item 3*];
- (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) A defendant who pays money into court under this rule must give notice (in Form No. 23 in Appendix A) to the plaintiff, his attorney or agent.

##### **6/3 Indorsement as to capacity**

3 Before a writ is issued it must be indorsed—

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

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### **6/5 Indorsement as to attorney and address**

- 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.
  - (b) where the plaintiff sues in person, with—
    - (i) the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent, and
    - (ii) his occupation.
- (2) The address for service of a plaintiff shall be—
- (a) where he sues by an attorney, the business address of the attorney indorsed on the writ;
  - (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 entered an appearance to the writ requests him in writing so to do, declare in writing whether the writ was issued by him or with his authority or privity.
- (4) If an attorney whose name is indorsed on a writ declares in writing that the writ was not issued by him or with his authority or privity, the Court may on the application of any defendant who has been served with or who has entered an appearance to the writ, stay all proceedings in the action begun by the writ.

### **6/6 Concurrent writs**

- 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 at any time thereafter before the original writ ceases to be valid.
- (2) Without prejudice to the generality of paragraph (1), a writ for service within the jurisdiction may be issued as a concurrent writ with one which, or notice of which, is to be served out of the jurisdiction and a writ which, or notice of which, is to be served out of the jurisdiction may be issued as a concurrent writ with one for service within the jurisdiction.
- (3) A concurrent writ is a true copy of the original writ with such differences only (if any) as are necessary having regard to the purpose for which the writ is issued.

### **6/7 Issue of writ**

- 7 (1) No writ which, or notice of which, is to be served out of the jurisdiction shall be issued without the leave of the Court:

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Provided that if every claim made by a writ is one which by virtue of an enactment the Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the foregoing provision shall not apply to the writ.

(2) A writ must be issued out of the Registry.

(3) Issue of a writ takes place upon its being sealed by an officer of the Registry.

(4) The officer by whom a concurrent writ is sealed must mark it as a concurrent writ with an official stamp.

(5) No writ shall be sealed unless at the time of the 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, who may sign either in his own name or in the name of the firm to which he belongs.

### **6/8 Duration and renewal or writ**

8 (1) For the purpose 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 and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 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**

#### **7/1 Application**

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 enactment.

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### **7/2 Form of summons, etc.**

2 (1) Every originating summons must be in Form No. 8, 10 or 11 in Appendix A, whichever is appropriate.

(2) The party taking out an originating summons (other than an *ex parte* summons) shall be described as a plaintiff and the other parties shall be described as defendants.

### **7/3 Contents of summons**

3 (1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the Court or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy.

(2) Order 6, rules 3 and 5, shall apply in relation to an originating summons as they apply in relation to a writ.

### **7/4 Concurrent summons**

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

### **7/5 Issue of summons**

5 An originating summons shall be issued out of the Registry.

### **7/6 Duration and renewal of summons**

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

### **7/7 Ex parte originating summons**

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

(2) Order 6, rule 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**

#### **8/1 Application**

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 enactment.

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### **8/2 Notice of motion**

2 (1) Except where an application by motion may properly be made *ex parte*, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief may make an order *ex parte* on such terms as to costs or otherwise, and subject to such undertaking, if any, as it thinks just; and any party affected by such order may apply to the Court to set it aside.

(2) Unless the Court gives leave to the contrary there must be at least two clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

### **8/3 Form and issue of notice of motion**

3 (1) The notice of an originating motion must be in Form No. 13 in 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 sealed by the Registrar.

### **8/4 Service of notice of motion with writ, etc.**

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

### **8/5 Adjournment of hearing**

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

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### **ORDER 9**

#### **PETITIONS: GENERAL PROVISIONS**

##### **9/1 Application**

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

##### **9/2 Contents of petition**

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

(2) Every petition must include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.

(3) Order 6, rule 5, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

##### **9/3 Presentation of petition**

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

##### **9/4 Fixing time for hearing petition**

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 not less than seven days before the day fixed for the hearing of the petition.

### **ORDER 10**

#### **SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS**

##### **10/1 General provisions**

1 (1) Subject to the provisions of any enactment and these Rules, a writ must be served personally on each defendant by the plaintiff or his agent.

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

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

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

### **10/2 Service of writ on agent of overseas principal**

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

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

(2) An order under this rule authorising service of a writ on a defendant's agent must limit a time within which the defendant must enter an appearance.

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

### **10/3 Service of writ in pursuance of contract**

- 3 (1) Where—
- (a) a contract contains a term to the effect that the court shall have jurisdiction to hear and determine any action in respect of the contract or, apart from any such term, the Court has jurisdiction to hear and determine any such action, and
  - (b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner, or at such place (whether within or out of the jurisdiction), as may be so specified,

then, if an action in respect of the contract is begun in the Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to paragraph (2), be deemed to have been duly served on the defendant.

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(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, or notice thereof, out of the jurisdiction has been granted under Order 11, rule 1 or 2.

### **10/4 Service of writ in certain action for possession of land**

- 4 Where a writ is indorsed with a claim for the 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.

### **10/5 Service of originating summons, petition and notice of motion**

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

## **ORDER 11**

### **SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION**

#### **11/1 Principal cases in which service of writ out of jurisdiction is permissible**

1 (1) Provided that the writ does not contain any claim to which Order 75, r. 4 applies, and is not a writ to which paragraph (2) of this rule applies, 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 who has been or will be duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;

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- (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 Bermuda, or
  - (iv) contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract;
- (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
- (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;
- (ff) the claim is brought against a person who is or was a director, officer or member of a company registered within the jurisdiction or who is or was a partner of a partnership, whether general or limited, which is governed by the law of Bermuda and the subject matter of the claim relates in any way to such company or partnership or to the status, rights or duties of such director, officer, member or partner in relation thereto;
- (g) the whole subject-matter of the claim relates to property located within the jurisdiction;
- (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;
- (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over moveable property, or to obtain authority to dispose of moveable property, situate within the jurisdiction;
- (j) the claim is brought to execute the trusts of a written instrument being trusts that ought to be executed according to the law of Bermuda and of which the person to be served with the writ is a trustee, or for any relief or remedy which might be obtained in any such action;
- (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;

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- (l) the claim is brought in a probate action within the meaning of Order 76;
- (m) the claim is brought to enforce any judgment or arbitral award;
- (n) the claim is brought for a declaration that no contract exists where, if the contract was found to exist, it would comply with the conditions set out in paragraph (1) (d) of this rule;
- (o) and (p) [blank]
- (q) the claim is made under the Drug Trafficking Suppression Act 1988;
- (r) [blank]
- (s) the claim is made under the Proceeds of Crime Act 1997;
- (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 brought under any one or more of the following United Kingdom Acts as applied to Bermuda, that is to say—
  - (i) the Carriage by Air Act 1961,
  - (ii) the Carriage by Air (Supplementary Provisions) Act 1962,
  - (iii) the Merchant Shipping (Oil Pollution) Act 1971.

(2) Service of a writ out of the jurisdiction on a defendant is permissible without the leave of the Court provided that each claim against that defendant made by the writ is a claim which by virtue of any enactment the Court has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within 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 enter an appearance shall be limited in accordance with the practice adopted under rule 4(4).

*[Order 11 amended by BR 62 / 2018 rule 2 effective 9 July 2018]*

11/2

and [blank]

11/3

### **11/4 Application for, and grant of, leave to serve writ out of jurisdiction.**

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

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(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 enter an appearance.

### **11/5 Service of writ abroad: general**

5 (1) Subject to the following provisions of this rule, Order 10 rule 1(1), (2), and (3) 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.

(2) Nothing in this rule or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

(3) A writ which is to be served out of the jurisdiction—

- (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected; and
- (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 6 or rule 7.

(4) *[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 or judicial authorities of that country; or
- (c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.

(6) An official certificate by the Deputy Governor 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 a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.

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(8) In this rule and rule 6 “the Hague Convention” means the Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters signed at the Hague on November 15, 1965.

### **11/6 Service of writ abroad through foreign governments, judicial authorities and British Consuls**

6 (1) Save where a writ is to be served pursuant to paragraph (2A) this rule does not apply to service in any Commonwealth country, any colony, protectorate or protected state of the United Kingdom, or any trust territory administered by the Government of any Commonwealth country.

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

- (a) through the judicial authorities of that country; or
- (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).

(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 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

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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 lodged 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 Deputy Governor with a request that he arrange for the writ to be served by the method indicated in the request lodged under paragraph (4) or, where alternative methods are indicated, by such one of those methods as is most convenient.

### **11/7 Service of writ in certain actions under certain Acts**

7 (1) Where a person to whom leave has been granted under rule 1 to serve a writ on a High Contracting Party to the convention set out in Schedule 1 to the Carriage by Air Act 1961 or the Schedule to the Carriage by Air (Supplementary Provisions) Act 1962, being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, wishes to have the writ served on that Party, he must lodge with the Registrar—

- (a) a request for service to be arranged by the Deputy Governor; and
- (b) a copy of the writ; and
- (c) except where the official language of the High Contracting Party is, or the official languages of that Party include English, a translation of the writ in the official language or one of the official languages of the High Contracting Party.

(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 Deputy Governor with a request that the Deputy Governor arrange for the writ to be served on the High Contracting Party or the government in question, as the case may be.

### **11/8 Undertaking to pay expenses of service by Deputy Governor**

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 Deputy 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.

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### **11/9 Service of originating summons, petition, notice of motion, etc.**

9 (1) 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) and (3) *[blank]*

(4) Service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court 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 enactment be served out of the jurisdiction without leave.

(5) Rule 4(1) and (2) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1.

(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 enter an appearance.

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

*[Order 11 substituted by BR55/2005 effective 1 January 2006]*

## **ORDER 12**

### **ENTRY OF APPEARANCE TO WRIT OR ORIGINATING SUMMONS**

#### **12/1 Mode of entering appearance**

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 issued as a trustee or estate representative or in any other representative capacity) enter an appearance in the action and defend it by an attorney or in person.

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

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

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

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*[blank]*

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### **12/3 Memorandum of appearance**

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

(2) A memorandum of appearance must be in Form No. 14 in Appendix A, and both the memorandum of appearance and the copy thereof required for entering an appearance must be signed by the attorney by whom the defendant appears or, if the defendant appears in person, by the defendant.

(3) A memorandum of appearance must specify—

- (a) in the case of a defendant appearing in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent; and
- (b) in the case of a defendant appearing by an attorney, a business address of his attorney's within the jurisdiction;

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

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

### **12/4 Procedure on receipt of requisite documents**

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

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

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

### **12/5 Time limited for appearing**

5 References in these rules to the time limited for appearing are references—

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- (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 notice of a writ, served out of the jurisdiction, to the time limited under Order 10, rule 2(2), Order 11, rule 1(3) or rule 4(4), or, where that time has been extended as aforesaid, to that time as so extended.

### **12/6 Late appearance**

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

(2) Except as provided by paragraph (1), nothing in these rules or any writ or order thereunder shall be construed as precluding a defendant from entering an appearance in an action after the time limited for appearing, but if a defendant enters an appearance after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other thing later than if he had appeared within that time.

### **12/7 Conditional appearance**

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

(2) A conditional appearance, except by a person sued as a partner of a firm in the name of that firm and served as a partner, is to be treated for all purposes as an unconditional appearance unless the Court otherwise orders or the defendant applies to the Court, within the time limited for the purpose, for an order under rule 8 and the Court makes an order thereunder.

### **12/8 Application to set aside writ, etc.**

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

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

### **12/9 Appearance to originating summons**

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

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

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(4) Subject to the foregoing provisions of this rule, the foregoing rules of this Order shall apply in relation to an originating summons to which an appearance is required to be entered as they apply in relation to a writ except that for the reference in rule 5(b) to Order 11, rule 1(3), rule 4(4) there shall be substituted a reference to Order 11, rule 9(6).

### **ORDER 13**

#### **DEFAULT OF APPEARANCE TO WRIT**

##### **13/1 Claim for liquidated demand**

1 (1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest accruing after the date of the writ at an unspecified rate, but any such interest shall be computed from the date of the writ to the date of entering judgment at the statutory rate as fixed by the Interest and Credit Charges (Regulation) Act 1975 [*title 17 item 22*].

##### **13/2 Claim for unliquidated damages**

2 Where a writ is indorsed with the claim against a defendant for unliquidated damages only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

##### **13/3 Claim in detinue**

3 Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, at his option enter either—

- (a) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs; or
- (b) interlocutory judgment for the value of the goods to be assessed and costs,

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

##### **13/4 Claim for possession of land**

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 enter an appearance the plaintiff may, after the time limited for appearing, and on producing a certificate by his attorney, or (if he sues in person), an affidavit, stating that he is not claiming any

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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 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 to which the Rent Increases (Domestic Premises) Control Act 1978 [title 29 item 3] does not apply.

(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 enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

### **13/5 Mixed claims**

5 Where a writ issued against any defendant is indorsed with two or more of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter against 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.

### **13/6 Other claims**

6 (1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing and upon filing an affidavit proving due service of the writ on that defendant and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had entered an appearance.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter judgment with the leave of the Court against that defendant for costs.

(3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything

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in Order 65, rule 9, be served on the defendant against whom it is sought to enter judgment.

### **13/7 Proof of service of writ**

- 7 (1) Judgment shall not be entered against a defendant under this Order unless—
- (a) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ or notice of the writ on the defendant; or
  - (b) 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 enter an appearance, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

13/8

[blank]

### **13/9 Setting aside judgment**

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

## **ORDER 14**

### **SUMMARY JUDGMENT**

#### **14/1 Application by plaintiff for summary judgment**

1 (1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that the defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ other than one which includes—

- (a) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment,
- (b) a claim by the plaintiff based on an allegation of fraud,
- (c) an Admiralty action *in rem*.

(3) This Order shall not apply to an action to which Order 86 applies.

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### **14/2 Manner in which application under Rule 1 must be made**

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 deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of any damages claimed.

(2) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof.

(3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than ten clear days before the return day.

### **14/3 Judgment for plaintiff**

3 (1) Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or the part of a claim, to which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

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

### **14/4 Leave to defend**

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 the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

(4) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—

- (a) to produce any document;
- (b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

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### **14/5 Application for summary judgment on counterclaim**

5 (1) Where a defendant to an action begun by writ has served a counterclaim on the plaintiff, then, subject to paragraph (3), the defendant may, on the ground that the plaintiff has no defence to a claim made in the counterclaim, or to a particular part of such a claim, apply to the Court for judgment against the plaintiff on that claim or part.

(2) Rules 2, 3 and 4 shall apply in relation to an application under this rule as they apply in relation to an application under rule 1 but with the following modifications, that is to say—

- (a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;
- (b) the words in rule 3(2) “any counterclaim made or raised by the defendant in” shall be omitted; and
- (c) the reference in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

(3) This rule shall not apply to a counterclaim which includes any such claim as is referred to in rule 1(2).

### **14/6 Directions**

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 a part of a claim, or
- (b) gives judgment for 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.

### **14/7 Costs**

7 (1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend then, without prejudice to Order 62, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may require the costs to be paid by him forthwith.

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(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.

### **14/8 Right to proceed with residue of action or counterclaim**

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 counter claim.

### **14/9 Judgment for delivery up of chattel**

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

### **14/10 Relief against forfeiture**

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 the trial.

### **14/11 Setting aside judgment**

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

## **ORDER 14A**

### **DISPOSAL OF CASE ON POINT OF LAW**

#### **14A/1 Determination of questions of law or construction**

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.

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(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have either—

- (a) had an opportunity of being heard on the question; or
- (b) consented to an order or judgment on such determination.

(4) The jurisdiction of the Court under this Order may be exercised by the Registrar.

(5) Nothing in this Order shall limit the powers of this Court under Order 18, rule 19 or any other provision of these rules.

*[Rule 14A/1 inserted by BR 13 / 2026 rule 2 effective 1 March 2026]*

### **14A/2 Manner in which application under rule 1 may be made**

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

(2) An application under rule 1 may be made without prejudice to Order 14; Order 18, rule 19; and Order 33, rule 7 and the Court may decline to proceed under Order 14A where it determines that another procedure would be more appropriate.

*[Rule 14A/2 inserted by BR 13 / 2026 rule 2 effective 1 March 2026]*

## **ORDER 15**

### **CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES**

#### **15/1 Joinder of causes of action**

1 (1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action—

- (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action, or
- (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others, or
- (c) with the leave of the Court.

(2) An application for leave under this rule must be made *ex parte* by 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.

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### **15/2 Counterclaim against plaintiff**

2 (1) Subject to rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

(2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.

(3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.

(4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

### **15/3 Counterclaim against additional parties**

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

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

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

(4) Entry of appearance to a counterclaim by a person who is not already a party to the action shall be made at the Registry.

(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 10 (except rule 1(4)), Order 11 (except rule 3), Orders 12 and 13 and Order 75, rule 4, shall, subject to the last foregoing paragraph, apply in relation to the counterclaim and the proceedings arising from it as if—

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- (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.

(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—

- (a) stating the effect of Order 12, rule 1, as applied by paragraph (5),
- (b) stating that the Registry is the appropriate office for the entry of appearance by that person to the counterclaim, and
- (c) stating that he may obtain forms of the requisite documents from the Registry and explaining how he may do so.

### **15/4 Joinder of parties**

4 (1) Subject to rule 5(1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where—

- (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions, and
- (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any enactment 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.

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

### **15/5 Court may order separate trials, etc.**

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

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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.

### **15/6 Misjoinder and non-joinder of parties**

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) At any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application—

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party, namely—
  - (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
  - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter;

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

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

### **15/6A Proceedings against estates**

6A (1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

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(2) Without prejudice to the generality of paragraph (1), an action brought against “the estate 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 defendant who has died shall, if the cause of action survives and no grant of probate or administration has been made, be treated as having been brought against his estate in accordance with paragraph (1).

(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 since the commencement of the action, for an order that the estate 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 so appointed or, as the case may be, against the estate representative, as if he had been substituted for the estate;
- (b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in sub-paragraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4), rules 7(4) and 8(3) and (4) shall apply as if the order had been made under rule 7 on the application of the plaintiff.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and an estate representative of the deceased had been a party to the proceedings.

### **15/7 Change of parties by reason of death, etc.**

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

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

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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 matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun.

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

### **15/8 Provisions consequential on making of order under rule 6 or 7**

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 fourteen days after the making of the order.

(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the cause book.

(3) Where by an order under rule 6 or 7 a person is to be made a defendant the rules as to entry of appearance shall apply accordingly to entry of appearance by him subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for appearing shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.

(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—

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- (a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him, or
- (b) where the order is made under rule 7, the order has been served on him under rule 7 (4) or, if the order is not required to be served on him, the order has been noted in the cause book;

and where by virtue of the foregoing provision a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old, except that entry of appearance by the old party shall not dispense with entry of appearance by the new.

(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.

### **15/9 Failure to proceed after death of party**

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 estate representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the estate 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.

### **15/10 Actions for possession of land**

10 (1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.

(2) An application by any person for an order under this rule may be made *ex parte*, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him.

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

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### **15/11 Relator actions**

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.

### **15/12 Representative proceedings**

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

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

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

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

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

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

### **15/12A Derivative actions**

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 entered an appearance, 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.

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(4) Unless the Court otherwise orders, the application must be issued within twenty-one days after the relevant date, and must be served, together with the affidavit in support and any exhibits to the affidavit, not less than ten clear days before the return day on all defendants who have entered an appearance; and 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 an appearance was entered, provided that where more than one appearance is entered, that date shall be the date when the first appearance was entered.

(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 fourteen 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 direction as to joinder of parties, the filing of further evidence, discovery, cross examination of deponents and otherwise as it may consider expedient.

(9) If the plaintiff does not apply for leave to continue the action as required by paragraph (2) within the time laid down in paragraph (4), any defendant who has entered an appearance may apply for an order to dismiss the action or any claim made in it by way of derivative action.

(10) On the hearing of such an application for dismissal, the Court may—

- (a) subject to paragraph (11), dismiss the action;
- (b) if the plaintiff so requests, grant the plaintiff (on such terms as to costs or otherwise as the Court may think fit) an extension of time to apply for leave to continue the action; or
- (c) make such other order as may in the circumstances be appropriate.

(11) Where only part of the relief claimed in that action is sought on behalf of the company, the Court may dismiss the claim for that part of the relief under paragraphs (8) and (10), without prejudice to the plaintiff's right to continue the action as to the remainder of the relief and Order 18, rule 2(1) shall apply as modified by paragraph (7).

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(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; and on such application the court shall have the same powers as it would have had upon an application made 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).

*[Rule 12A inserted by BR 62 / 2018 rule 3 effective 9 July 2018]*

### **15/13 Representation of interested persons who cannot be ascertained**

- 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 an Act or any other enactment,

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.

The conditions of exercise of 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, the class or some member of the class, though ascertained, cannot be found;
  - (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.
- (3) Where in any proceedings to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made

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when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

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

- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise, or
- (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 or material facts.

### **15/14 Representation of beneficiaries by trustees, etc.**

14 (1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

### **15/15 Representation of deceased person interested in proceedings**

15 (1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no estate representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased to the same extent as it would have been bound had an estate representative of that person been a party to the proceedings.

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

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### **15/16 Declaratory judgment**

16 No action or other proceedings shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

### **15/17 Conduct of proceedings**

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

## **ORDER 16**

### **THIRD PARTY AND SIMILAR PROCEEDINGS**

#### **16/1 Third party notice**

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

then, subject to paragraph (2), the defendant may issue a notice in Form 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 grounds of the claim made by him or of the question or issue required to be determined.

(2) A defendant to an action may not issue a third party notice without the leave of the Court unless the action was begun by writ and he issues the notice before serving his defence on the plaintiff.

(3) Where a third party notice is served on the person against whom it is issued, he shall as from the time of service be a party to the action (in this Order referred to as a third party) with the same rights in respect of his defence against any claim made against him in the notice and otherwise as if he had been duly sued in the ordinary way by the defendant by whom the notice is issued.

#### **16/2 Application for leave to issue third party notice**

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.

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(2) An application for leave to issue a third party notice must be supported by an affidavit stating—

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

### **16/3 Issue and service of, and entry of appearance to, third party notice**

3 (1) The order granting leave to issue a third party notice may contain directions as to the period within which the notice is to be issued.

(2) There must be served with every third party notice a copy of the writ or originating summons by which the action was begun and of the pleadings (if any) served in the action.

(3) Appearance to a third party notice must be entered 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 (except rule 1(4)), Order 11 (except rule 3), Order 12 and Order 75, rule 4, shall apply in relation to a third party notice and to the proceedings begun thereby as if—

- (a) the third party notice were a writ and the proceedings begun thereby an action; and
- (b) the defendant issuing the third party notice were a plaintiff and the person against whom it is issued a defendant in that action.

### **16/4 Third party directions**

4 (1) If the third party enters an appearance, 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 7 days after entering an appearance, by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

(3) On an application for directions under this rule the Court may—

- (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant; or

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- (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 there in as may be just, and generally may make such order said 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.

### **16/5 Default of third party, etc.**

5 (1) If a third party does not enter an appearance or, having been ordered to serve a defence, fails to do so—

- (a) he 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 party notice was issued may, if judgment in default is given against him in the action, at any time after satisfaction of that judgment and, with the leave of the Court, before satisfaction thereof, enter judgment against the third party in respect of any contribution or indemnity claimed in the notice and, with the leave of the Court, in respect of any other relief or remedy claimed therein.

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

### **16/6 Setting aside third party proceedings**

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

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### **16/7 Judgment between defendant and third party**

7 (1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action or, if the action is decided otherwise than by trial, on an application by summons or motion, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.

(2) Where in an action judgment is given against a defendant and judgment is given for the defendant against a third party, execution shall not issue against the third party without the leave of the Court until the judgment against the defendant has been satisfied.

### **16/8 Claims and issues between a defendant and some other party**

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

- (a) claims against a person who is already a party to the action any contribution or indemnity; or
- (b) claims against such a person any relief or remedy relating to or connected with the original subject-matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- (c) requires that any question or issue relating to or connected with the original subject-matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action;

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

(2) Where a defendant makes such a claim as is mentioned in paragraph (1) and that claim could be made by him by counterclaim in the action, paragraph (1) shall not apply in relation to the claim.

(3) No appearance to such a notice shall be necessary if the person on whom it is served has entered an appearance in the action or is a plaintiff therein, and the same procedure shall be adopted for the determination between the defendant by whom, and the person on whom, such a notice is served of the claim, question or issue stated in the notice as would be appropriate under this Order if the person served with the notice were a third party and (where he has entered an appearance in the action or is a plaintiff) had entered an appearance to the notice.

(4) Rule 4(2) shall have effect in relation to proceedings on a notice issued under this rule as if for the words “seven days after entering an appearance” there were substituted the words “fourteen days after service of the notice on him.”

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### **16/9 Claims by third and subsequent parties**

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 fourteen days after the time limited for appearing to the notice issued against him.

### **16/10 Offer of contribution**

10 If, at any time after he has entered an appearance, a party to an action who, either as a third party or as one of two or more tortfeasors liable in respect of the same damage, stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his defence), a written offer to that other party to contribute to a specified extent to the debt or damages, then, notwithstanding that he reserves the right to bring the offer to the attention of the judge at the trial, the offer shall not be brought to the attention of the judge until after all questions of liability and amount of debt or damages have been decided.

### **16/11 Counterclaim by defendant**

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**

### **17/1 Entitlement to relief by way of interpleader**

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

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- (b) claim is made to any money, goods or chattels taken or intended to be taken by the Provost Marshal General 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 Provost Marshal General, may apply to the Court for relief by way of interpleader.

(2) Reference in this Order to the Provost Marshal General shall be construed as including references to any other officer charged with the execution of process by or under the authority of the Court.

### **17/2 Claim to goods, etc. taken in execution**

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 Provost Marshal General 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 Provost Marshall General must forthwith give notice thereof to the execution creditor and the execution creditor must, within four days after receiving the notice, give notice to the Provost Marshall General 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 Provost Marshal General for any fees and expenses incurred by the Provost Marshal General before receipt of that notice.

(3) Where—

- (a) the Provost Marshal General 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 Provost Marshal General may apply to the Court for relief under this Order.

(4) The Provost Marshal General 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.

### **17/3 Mode of application**

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.

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(2) Where the applicant is the Provost Marshal General 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) No appearance need be entered to an originating summons under this rule.

(4) Subject to paragraph (5), a summons under this rule must be supported by evidence that the applicant

- (a) claims no interest in the subject-matter in dispute other than for charges or costs,
- (b) does not collude with any of the claimants to that subject matter, and
- (c) is willing to pay or transfer that subject-matter into court or to dispose of it as the Court may direct.

(5) Where the applicant is the Provost Marshal General, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the Court so to do.

### **17/4 To whom Provost Marshal General may apply for relief**

4 An application to the Court for relief under this Order may, if the applicant is the Provost Marshal General, be made to the Registrar.

### **17/5 Powers of Court hearing summons**

5 (1) Where on the hearing of a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute (hereafter in this Order referred to as "the claimants") appear, the Court may order—

- (a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order, or
- (b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.

(2) Where—

- (a) the applicant on a summons under this Order is the Provost Marshal General, or
- (b) all the claimants consent or any of them so request, or
- (c) the question at issue between the claimants is a question of law and the facts are not in dispute, the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.

(3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or

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refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, forever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

### **17/6 Power to order sale of goods taken in execution**

6 Where an application for relief under this Order is made by the Provost Marshal General who has taken possession of any goods or chattels in execution under any process, and a claimant alleges that he is entitled, under a chattel mortgage 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.

### **17/7 Power to stay proceedings**

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.

### **17/8 Other powers**

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.

### **17/9 One order in several causes or matters**

9 Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several causes or matters pending before different judges, the Court may make such an order; and the order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

### **17/10 Discovery**

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.

### **17/11 Trial of interpleader issue**

11 (1) Order 35 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of an action.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

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### **ORDER 18 PLEADINGS**

#### **18/1 Service of statement of claim**

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

#### **18/2 Service of defence**

2 (1) Subject to paragraph (2), a defendant who enters an appearance in, and intends to defend, an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of fourteen days after the time limited for appearing or after the statement of claim is served on him, whichever is the later.

(2) If a summons under Order 14, rule 1, is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within fourteen days after the making of the order or within such other period as may be specified therein.

#### **18/3 Service of reply and defence to counterclaim**

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 fourteen days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of fourteen days after the service on him of the counterclaim to which it relates.

#### **18/4 Pleadings subsequent to reply**

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

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#### **18/6 Pleadings: formal requirements**

6 (1) Every pleading in an action must bear on its face

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- (a) the year in which the writ in the action was issued and the number of the action,
- (b) the title of the action,
- (c) the jurisdiction of the Court which is being invoked,
- (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.

(5) Every pleading of a party must be signed by an attorney or firm of attorneys, if settled by him or them, or by the party, if he sues or defends in person.

### **18/7 Facts, not evidence, to be pleaded**

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 it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

### **18/7A Conviction, etc. to be adduced in evidence: matter to be pleaded**

7A (1) If in any action which is to be tried with pleadings any party intends, in reliance on section 70A of the Evidence Act 1905 [*title 8 item 10*] (convictions as evidence in civil proceedings) to adduce evidence that a person was convicted of an offence by or

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before a court in Bermuda, he must include in his pleading a statement of his intention with particulars of—

- (a) the conviction and the date thereof;
- (b) the court which made the conviction; and
- (c) the issue in the proceedings to which the conviction is relevant.

(2) If in any action which is to be tried with pleadings any party intends, in reliance on section 70B of the Evidence Act 1905 [*title 8 item 10*] (findings of adultery and paternity as evidence in civil proceedings) to adduce evidence that a person was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation proceedings before a court in Bermuda, he must include in his pleading a statement of his intention with particulars of—

- (a) the finding or adjudication and the date thereof;
- (b) the court which made the finding or adjudication and the proceedings in which it was made; and
- (c) the issue in the proceedings to which the finding or adjudication is relevant.

(3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party—

- (a) denies the conviction or finding of adultery or adjudication of paternity to which the statement relates, 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.

### **18/8 Matters which must be specifically pleaded**

8 (1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality—

- (a) which he alleges makes any claim or defence of the opposite party not maintainable; or
- (b) which, if not specifically pleaded, must take the opposite party by surprise; or
- (c) which raises issues of fact not arising out of the preceding pleading.

(2) Without prejudice to paragraph (1), a defendant to an action for the recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

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(3) A claim for exemplary damages must be specifically pleaded together with the facts on which the party pleading relies.

### **18/9 Matter may be pleaded whenever arising**

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.

### **18/10 Departure**

10 (1) A party shall not in any pleading make an allegation of fact, or raise any new ground or claim, inconsistent with a previous pleading of his.

(2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

### **18/11 Points of law may be pleaded**

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

### **18/12 Particulars of pleading**

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 words—

- (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and
- (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

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

- (a) a medical report; and
- (b) a statement of the special damages claimed.

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

- (a) specify the period of time within which the documents are to be served; or
- (b) make such other order as it thinks fit, including an order dispensing with the requirement to serve the documents or staying the proceedings.

(1C) For the purposes of paragraphs (1A) and (1B)—

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“medical report” means a report substantiating all the personal injuries alleged in the statement of claim which is proposed to be adduced in evidence as part of the plaintiff’s case at trial;

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

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

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading, or a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party—

(a) where he alleges knowledge, particulars of the facts on which he relies, and

(b) where he alleges notice, particulars of the notice.

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

*[Order 18 rule 12 paragraphs 1A, 1B and 1C inserted by BR 4 / 2025 rule 2 effective 1 March 2025]*

### **18/13 Admissions and denials**

13 (1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.

(2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

(3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them is not a sufficient traverse of them.

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(4) Any allegation that a party has suffered damage and any allegation as to the amount of damages is deemed to be traversed unless specifically admitted.

### **18/14 Denial by joinder of issue**

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.

### **18/15 Statement of claim**

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

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

(3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

### **18/16 Defence of tender**

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

### **18/17 Defence of set-off**

17 Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

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### **18/18 Counterclaim and defence to counterclaim**

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

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

### **18/19 Striking out pleading and indorsements**

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.

### **18/20 Close of pleadings**

20 (1) The pleadings in an action are deemed to be closed—

- (a) at the expiration of fourteen 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 fourteen 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.

### **18/21 Trial without pleadings**

21 (1) Where in an action to which this rule applies any defendant has entered an appearance in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

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(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree such a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate, and Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and 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.

### **18/22 Saving for defence under Merchant Shipping Act**

22 Nothing in Order 75, rules 2 and 37 to 40, shall be taken as limiting the right of any shipowner or other person to reply by way of defence on any provision of the Merchant Shipping Act of the Parliament of the United Kingdom, as applied to Bermuda, which limits the amount of his liability in connection with a ship or other property.

## **ORDER 19**

### **DEFAULT OF PLEADINGS**

#### **19/1 Default in service of statement of claim**

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.

#### **19/2 Default of defence: claim for liquidated demand**

2 (1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

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(2) Order 13, rule 1(2), shall apply for the purposes of this rule as it applies for the purposes of that rule.

### **19/3 Default of defence: claim for unliquidated damages**

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

### **19/4 Default of defence: claim in detinue**

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

- (a) interlocutory judgment against that defendant for the delivery of the goods or their value to be assessed and costs, or
- (b) interlocutory judgment for the value of the goods to be assessed and costs,

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

### **19/5 Default of defence: claim for possession of land**

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 to which the Rent Increases (Domestic Premises) Control Act 1978 [*title 29 item 3*] does not apply.

(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.

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(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.

### **19/6 Default of defence: mixed claims**

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.

### **19/7 Default of defence: other claims**

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

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, then, if one of the defendants makes default as mentioned in that paragraph, the plaintiff may—

- (a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or
- (b) set down the action on motion for judgment against the defendant in default at the time when the action is set down for trial, or is set down on motion for judgment, against the other defendants.

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

### **19/8 Default of defence: counterclaims**

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, 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.

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### **19/9 Setting aside judgment**

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

## **ORDER 20 AMENDMENT**

### **20/1 Amendment of writ without leave**

1 (1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.

(2) Where a writ is amended under this rule after service thereof, then, unless the Court otherwise directs on an application made *ex parte*, the amended writ must be served on each defendant to the action.

(3) This rule shall not apply in relation to an amendment which consists of—

- (a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued, or
- (b) the addition or substitution of a new cause of action, or
- (c) without prejudice to rule 3(1) an amendment of the statement of claim (if any) indorsed on the writ,

unless the amendment is made before service of the writ on any party to the action.

### **20/2 Amendment of appearance**

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

### **20/3 Amendment of pleadings without leave**

3 (1) A party may without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.

(2) Where an amended statement of claim is served on a defendant—

- (a) the defendant, if he has already served a defence on the plaintiff, may amend his defence, and
- (b) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these rules for service of his defence or a period of fourteen 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—

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- (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 fourteen 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.

### **20/4 Application for disallowance of amendment made without leave**

4 (1) Within fourteen 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.

### **20/5 Amendment of writ or pleading with leave**

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

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as to the identity of the person intending to sue or, as the case may be, intended to be sued.

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

(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.

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### **20/7 Amendment of other originating process**

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

### **20/8 Amendment of certain other documents**

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.

### **20/9 Failure to amend after order**

9 Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of fourteen 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.

### **20/10 Mode of amendment of writ, etc.**

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

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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) authorising the amendment was made and the date thereof, or, if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

### **20/11 Amendment of judgments and orders**

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 Registrar.

## **ORDER 21**

### **WITHDRAWAL AND DISCONTINUANCE**

#### **21/1 Withdrawal of appearance**

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

#### **21/2 Discontinuance of action, etc. without leave**

2 (1) The plaintiff in an action begun by writ may without the leave of the Court, discontinue the action, or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than fourteen 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) A defendant may, without the leave of the Court—

- (a) withdraw his defence or any part of it at any time,
- (b) discontinue a counterclaim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than fourteen 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.

(3) Where there are two or more defendants to an action not all of whom serve a defence on the plaintiff, and the period fixed by or under these rules for service by any of those defendants of his defence expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

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

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

(4) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by producing to the Registrar a written consent to the action being withdrawn signed by all the parties.

### **21/3 Discontinuance of action, etc. with leave**

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.

### **21/4 Effect of discontinuance**

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

### **21/5 Stay of subsequent action until costs paid**

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

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

### **21/6 Withdrawal of summons**

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**

#### **22/1 Payment into court**

1 (1) In any action for a debt or damages any defendant may at any time after he has entered an appearance in the action pay into court a sum of money in satisfaction of

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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 acknowledgement of its receipt.

(3) A defendant may, without leave, give notice of an increase in a payment made under this rule but, subject to that and without prejudice to paragraph (5), a notice 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 maybe, those causes of action.

(5) Where a single sum of money is paid into court under this rule in respect of two or more causes of action, then, if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may, subject to paragraph (6), order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.

(6) Where a cause of action under the Fatal Injuries (Action for Damages) Act 1949 [*title 8 item 66*] and a cause of action under the Survival of Actions Act 1949 [*title 8 item 68*] are joined in the action, with or without any other cause of action, the causes of action under the said Acts shall, for the purposes of paragraph (5) be treated as one cause of action.

### **22/2 Payment in by defendant who has counterclaimed**

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.

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### **22/3 Acceptance of money paid into court**

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

- (a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be, or
- (b) where the money was paid in respect of some only of the causes of action in respect of which the 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 paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action, in respect of which he claimed, then, on the plaintiff accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(6) A plaintiff who has accepted any sum paid into court shall, subject to rules 4 and 10 and Order 80, rule 12, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

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### **22/4 Order for payment out of money accepted required in certain cases**

4 (1) Where a plaintiff accepts any sum paid into court and that sum was paid into court—

- (a) by some but not all of the defendants sued jointly or in the alternative by him, or
- (b) with a defence of tender before action, or
- (c) in an action to which order 80, rule 13, applies, or
- (d) under the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*] and the Survival of Actions Act 1949 [*title 8 item 68*] or of a cause of action arising thereunder where more than one person is entitled to the money,

the money in court shall not be paid out except under paragraph (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates, as the case may be.

(2) Where an order of the Court is required under paragraph (1) by reason only of paragraph (1)(a), then if, either before or after accepting the money paid into court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the action against all other defendants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the trial or hearing of an action has begun a plaintiff accepts any money paid into court and all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates are stayed by virtue of rule 3(4), then, notwithstanding anything in paragraph (2), the money shall not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the action.

### **22/5 Money remaining in court**

5 If any money paid into court in an action is not accepted in accordance with rule 3, the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the action; and where such an order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

### **22/6 Counterclaim**

6 A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into court in accordance with rule 1, and that rule and rules 3 (except paragraph (5)), 4 and 5 shall apply accordingly with the necessary modifications.

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### **22/7 Non-disclosure of payment into court**

7 Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of rule 3(4) after the trial or hearing has begun, the fact that money has been paid into court under the foregoing provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of debt or damages have been decided.

### **22/8 Money paid into court under order**

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

(2) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 14—

- (a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice, or
- (b) if he pleads a tender, may by his pleading appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered;

and money appropriated in accordance with this rule 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.

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### **22/10 Persons to whom payment to be made**

10 (1) Where the party entitled to money in court is a person to whom legal aid has been granted under the Legal Aid Act 1980 [title 8 item 37], payment shall be made only to that party's 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.

### **22/11 Payment out: small intestate estates**

11 Where a person entitled to a fund in court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration of his estate has been made and that the assets of his estate do not exceed \$2,500 in value, including the value of the fund or share, it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the

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deceased, would have the prior right to a grant of administration of the estate of the deceased.

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### **22/13 Investment of money in court**

13 Cash under the control of or subject to the order of the Court may be invested in any manner authorised by the Trustee Act 1975 [*title 26 item 51*].

### **22/14 Written offers “without prejudice save as to costs”**

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 22 rule 14 inserted by BR55/2005 effective 1 January 2006]

## **ORDER 23**

### **SECURITY FOR COSTS**

#### **23/1 Security for costs of action, etc.**

1 (1) Where, on the application of a defendant to an action or other proceedings in the Court, it appears to the Court—

- (a) that the plaintiff is ordinarily resident out of the jurisdiction, or
- (b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so, or
- (c) subject to paragraph (2), that the plaintiff’s address is not stated in the writ or other originating process or is incorrectly stated therein, or
- (d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

then if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order the plaintiff to give such security for the defendant’s costs of the action or other proceedings 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.

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(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.

### **23/2 Manner of giving security**

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

### **23/3 Saving for enactments**

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**

#### **24/1 Mutual discovery of documents**

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.

#### **24/2 Discovery by parties without order**

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 fourteen days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action.

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

(2) Unless the Court otherwise orders, a defendant to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle shall not make discovery of any documents to the plaintiff under paragraph (1).

(3) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any enactment to make discovery of any documents.

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(4) Paragraphs (2) and (3) shall apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in paragraph (2) to the plaintiff, of a reference to the party making the counterclaim.

(5) On the application of any party required by this rule to make discovery of documents, the Court may—

- (a) order that the parties to the action or any of them shall make discovery under paragraph (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or
- (b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage;

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

(6) An application for an order under paragraph (5) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(7) Any party to whom discovery of documents is required to be made under this rule may, at any time before the summons for directions in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under paragraph (1), and the party on whom such a notice is served must, within fourteen 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.

### **24/3 Order for discovery**

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

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom discovery was required to be made, may make an order against the first-mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only or to such only of the matters in question in the cause or matter, as may be specified in the order.

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### **24/4 Order for determination of issue, etc. before discovery**

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.

### **24/5 Form of list and affidavit**

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 aforesaid verifying a list of documents must be in Form No. 27 in Appendix A.

### **24/6 Defendant entitled to copy of co-defendant's list**

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.

### **24/7 Order for discovery of particular documents**

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

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so specified or described is, or has at any time been in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or 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.

### **24/8 Discovery to be ordered only if necessary**

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

### **24/9 Inspection of documents referred to in list**

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

### **24/10 Inspection of documents referred to in pleadings and affidavits**

10 (1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof.

(2) The party on whom a notice is served under paragraph (1) must, within 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.

### **24/11 Order for production for inspection**

11 (1) If a party who is required by rule 9 to serve such a notice as is therein mentioned or who is served with a notice under rule 10(1)—

- (a) fails to serve a notice under rule 9 or, as the case may be, rule 10(2), or
- (b) objects to produce any document for inspection, or

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(c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then, or, as the case may be, there, then, subject to rule 13(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 13(1) the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

### **24/12 Order for production to Court**

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

### **24/13 Production to be ordered only if necessary, etc.**

13 (1) No order for the production of any documents for inspection or to the Court shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court privilege from such production is claimed or objection is made to such production on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

### **24/14 Production of business books**

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.

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### **24/15 Document disclosure of which would be injurious to public interest: saving**

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.

### **24/16 Failure to comply with requirement for discovery, etc.**

16 (1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 11(1), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, order that the defence be struck out and judgment 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 or 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.

### **24/17 Revocation and variation of orders**

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

## **ORDER 25**

### **SUMMONS FOR DIRECTIONS**

#### **25/1 Summons for directions**

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

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- (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 fourteen days.

(2) This rule applies to all actions begun by writ except—

- (a) actions in which the plaintiff or defendant has applied for judgment under Order 14, or in which the plaintiff applied for judgment under Order 86 and directions have been given under the relevant Orders;
- (b) actions in which the plaintiff or defendant has applied under Order 18, rule 21, for trial without pleadings or further pleadings and directions have been given under that rule;
- (c) actions in which 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 which an order for the taking of an account has been made under Order 43, rule 1;
- (h) actions for the infringement of a patent; and
- (i) actions ordered to be tried as Admiralty short causes.

(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 fourteen 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 fourteen 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.

### **25/2 Duty to consider all matters**

2 (1) When the summons for directions first comes to be heard, the Court shall consider whether—

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- (a) it is possible to deal then with all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions, or
- (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.

(2) If when the summons for directions first comes to be heard the Court considers that it is possible to deal with all the said matters, it shall deal with them forthwith and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also then dealt with.

(3) If, when the summons for directions first comes to be heard, the Court considers that it is expedient to adjourn the consideration of all or any of the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons, the Court shall deal forthwith with such of those matters as it considers can conveniently be dealt with forthwith and adjourn the consideration of the remaining matters and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are dealt with either then or at a resumed hearing of the summons for directions.

(7) If the hearing of the summons for directions is adjourned without a day being fixed for the resumed hearing thereof, any party may restore it to the list on two days' notice to the other parties.

### **25/3 Particular matters for consideration**

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 the following provisions—

- (a) any provision of Part IIA (hearsay evidence) or Part IIB of the Evidence Act 1905 [*title 8 item 10*] or of Part III or IV of Order 38;
- (b) Order 20, rule 5, Order 38, rules 2 to 7, and Order 75, rule 25(4).

(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 (c) of that rule and direct the parties accordingly.

*[Order 25 rule 3 para (2) inserted by BR55/2005 effective 1 January 2006]*

### **25/4 Admissions and agreements to be made**

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

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### **25/5 Limitation of right of appeal**

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

### **25/6 Duty to give all information at hearing**

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

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

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

(3) If the Court on any hearing of the summons for directions requires a party to the action or his attorney to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (4), the Court may—

- (a) cause the facts to be recorded in the order with a view to such special order, if any, as to costs as may be just being made at the trial, or
- (b) if it appears to the Court to be just so to do, order the whole or any part of the pleadings of the party concerned to be struck out, or, if the party is plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.

(4) Notwithstanding anything in the foregoing provisions of this rule, no information or documents which are 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.

### **25/7 Duty to make all interlocutory applications on summons for directions**

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.

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(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 other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in any such notice as aforesaid.

(3) Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action must be made under the summons by two clear days' notice to the other party stating the grounds of the application.

### **ORDER 26 INTERROGATORIES**

#### **26/1 Discovery by interrogatories**

- 1 (1) A party to any cause or matter may apply to the Court for an order—
- (a) giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter, and
  - (b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.
- (2) A copy of the proposed interrogatories must be served with the summons, or the notice under Order 25, rule 7, by which the application for such leave is made.
- (3) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs; and in deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.
- (4) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

#### **26/2 Interrogatory where party is a body of persons**

2 Where a party to a cause or matter is a body of persons, whether corporate or unincorporate, being a body which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the Court may, on the application of any other party, make an order allowing him to serve interrogatories on such officer or member of the body as may be specified in the order.

#### **26/3 Statement as to party, etc. required to answer**

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

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shall state which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

### **26/4 Objection to answer on ground of privilege**

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

### **26/5 Insufficient answer**

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

### **26/6 Failure to comply with order**

6 (1) If a party against whom an order is made under rule 1 or 5 fails to comply with it, the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If a party against whom an order is made under rule 1 or 5 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 to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) An attorney on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

### **26/7 Use of answers to interrogatories at trial**

7 A party may put in evidence at the trial of a cause or matter or of any issue therein, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be used without the other, the Court may direct that that other answer or part shall be put in evidence.

### **26/8 Revocation and variation of orders**

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

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### **ORDER 27**

#### **ADMISSIONS**

##### **27/1 Admission of case of other party**

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.

##### **27/2 Notice to admit facts**

2 (1) A party to a cause or matter may not later than twenty-one days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, the facts specified in the notice.

(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as may be just.

##### **27/3 Judgment on admission of facts**

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

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

##### **27/4 Admission and production of documents specified in list of documents**

4 (1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of any provision of Order 24 shall, unless the Court otherwise orders, be deemed to admit—

(a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been, and

(b) that any document described therein as a copy is a true copy.

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

(2) If before the expiration of twenty-one days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is the later, the party on whom the list is served serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial,

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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.

### **27/5 Notices to admit or produce documents**

5 (1) Except where rule 4(1) applies, a party to a cause or matter may within twenty-one 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 twenty-one 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**

#### **28/1 Application**

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 enactment; and, subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as it applies in relation to other summonses.

#### **28/2 Fixing time for attendance of parties before Court**

2 (1) Where, in the case of an originating summons to which appearance is required to be entered, any defendant served with the summons has entered, or has within the time limited for appearing failed to enter, an appearance, the plaintiff may obtain an appointment for the attendance of the parties before the Court for the hearing

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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 to which appearance is not required, or for the hearing of an *ex parte* originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be.

(3) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has entered an appearance.

### **28/3 Notice of first hearing, etc.**

3 (1) Not less than four clear days before the day fixed under rule 2 for the attendance of the parties before the Court for the hearing of an originating summons to which appearance is required to be entered, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has entered an appearance and, if the first mentioned party is a defendant, on the plaintiff.

(2) Not less than four clear days before the day fixed under rule 2 for the hearing of an originating summons to which appearance is not required, the plaintiff must serve the summons on every defendant.

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

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

### **28/4 Directions, etc. by the Court**

4 (1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) Unless on the first hearing of an originating summons the Court disposes of the summons altogether or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing

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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.

### **28/5 Adjournment of summons**

5 (1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally the party on whose application the day for its hearing was fixed under rule 2 may restore it to the list on two days' notice to all the other parties (except a defendant who has failed to enter an appearance, or if the summons is one to which an appearance is not required, has not been served with the summons), and any of those parties may restore it with the leave of the Court.

### **28/6 Application affecting party in default of appearance**

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

### **28/7 Counterclaim by defendant**

7 (1) A defendant to an action begun by originating summons who has entered an appearance to the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

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

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### **28/8 Continuation of proceedings as if cause or matter begun by writ**

8 (1) Where, in the case of a cause or matter begun by originating summons, it appears to the court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) Where the Court decides to make such an order, Order 25, rules 2 to 7 shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if there had been a summons for directions in the proceedings and that order were one of the orders to be made thereon.

(3) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(4) Any reference in these rules to an action begun by writ, shall, unless the context otherwise requires, be construed as including a reference to a cause or matter, proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

### **28/9 Order for hearing or trial**

9 (1) Except where the Court disposes of a cause or matter begun by originating summons in chambers or makes an order in relation to it under rule 8 or some other provision of these rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make an order for the hearing or trial in accordance with this rule.

(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 the said rule 4 and shall have effect accordingly with the necessary modifications and with the further modification that for references therein to the summons for directions there shall be substituted references to the first or any resumed hearing of the originating summons by the Court.

### **28/10 Failure to prosecute proceedings with despatch**

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

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

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

### **28/11 Abatement, etc. of action**

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.**

#### *I. Interlocutory Injunctions, Interim Preservation of Property, Etc.*

### **29/1 Application for injunction**

1 (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be 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.

### **29/2 Detention, preservation, etc. of subject matter of cause or action**

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.

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(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 enters an appearance.

### **29/3 Power to order samples to be taken, etc.**

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.

### **29/4 Sale of perishable property, etc.**

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,

(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.

### **29/5 Order for early trial**

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

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### **29/6 Recovery of personal property subject to lien, etc**

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.

### **29/7 Directions**

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), is 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.

### **29/8 Allowance of income of property pendente lite**

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

## **ORDER 30 RECEIVERS**

### **30/1 Application for receiver and injunction**

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

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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.

### **30/2 Giving of security by receiver**

2 (1) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.

(2) Where by virtue of paragraph (1), or of any judgment or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed \$10,000, by an undertaking.

(4) The guarantee or undertaking must be filed in the Registry, and it shall be kept as of record until duly vacated.

### **30/3 Remuneration of receiver**

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

### **30/4 Receiver's accounts**

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

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

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

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

### **30/5 Payment of balance, etc. by receiver**

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

### **30/6 Default by receiver**

6 (1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to

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submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into court, charge him with interest at the statutory rate on that sum while in his possession as receiver.

### **ORDER 31**

#### **SALES, ETC., OF LAND BY ORDER OF COURT: CONVEYANCING COUNSEL**

##### *I. SALES, ETC., OF LAND BY ORDER OF COURT*

#### **31/1 Power to order sale of land**

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.

#### **31/2 Manner of carrying out sale**

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 under paragraph (4) direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The party entitled to prosecute the order must—

(a) leave a copy of the order at the Registry with a certificate that it is a true copy of the order, and

(b) subject to paragraph (3), take out a summons to proceed with the order.

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

(4) On the hearing of the summons the Court may give such directions as it thinks fit for the purpose of effecting the sale, including, without prejudice to the generality of the foregoing words, directions—

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- (a) appointing the party or person who is to have the conduct of the sale;
- (b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;
- (c) fixing a reserve or minimum price;
- (d) requiring payment of the purchase money into court or to trustees or other persons;
- (e) for settling the particulars and conditions of sale;
- (f) for obtaining evidence of the value of the property;
- (g) fixing the security (if any) to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed 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.

### **31/3 Certifying result of sale**

3 (1) If either the Court has directed payment of the purchase money into court or the Court so directs, the result of a sale by order of the Court must be certified—

- (a) in the case of a sale by public auction, by the auctioneer who conducted the sale, and
- (b) in any other case, by the attorney of the party or person having the conduct of the sale;

and the Court may require the certificate to be verified by the affidavit of the auctioneer or attorney, as the case may be.

(2) The attorney of the party or person having the conduct of the sale must leave a copy of the certificate and affidavit (if any) at the judge's chambers and, not later than two days after doing so, file the certificate and any affidavit in the Registry.

### **31/4 Mortgage, exchange or partition under order of the Court**

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.

## *II. CONVEYANCING COUNSEL*

### **31/5 Reference of matters to conveyancing counsel**

5 The Court may appoint and refer to conveyancing counsel—

- (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,

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(b) any matter relating to the settlement of the 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.

### **31/6 Objection to conveyancing counsel's opinion**

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.

31/7

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### **31/8 Obtaining counsel's opinion on reference**

8 (1) When any matter is referred to conveyancing counsel, a minute of the order of reference shall be prepared and signed by the Registrar.

(2) A minute signed as mentioned in paragraph (1) is sufficient authority for counsel to proceed with the reference.

## **ORDER 32**

### **APPLICATIONS AND PROCEEDINGS IN CHAMBERS**

#### **32/1 Mode of making application**

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

#### **32/2 Issue of summons**

2 (1) Issue of a summons by which an application in chambers is to be made takes place on its being sealed by the Registrar.

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

#### **32/3 Service of summons**

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

#### **32/4 Adjournment of hearing**

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.

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(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.

### **32/5 Proceeding in absence of party failing to attend**

5 (1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeds in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

### **32/6 Order made ex parte may be set aside**

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

### **32/7 Subpoena for attendance of witness**

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 maybe issued out of the Registry, if the registrar so authorises.

(2) The Registrar may direct that the application for any such writ be made to the judge before whom the proceedings are to be heard.

### **32/8 Registrar may administer oaths, etc.**

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

### **32/9 Application for leave to institute certain proceedings**

9 (1) The jurisdiction of the Court to grant leave under section 75 of the Mental Health Act 1968 [*title 11 item 36*] to bring proceedings against a person may be exercised in chambers by a judge.

(3) No appearance need be entered to an originating summons by which an application for leave under the said section 75 is made.

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

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32/10 [blank]

### **32/11 Jurisdiction of Registrar**

11 (1) The Registrar shall have power to transact all such business and exercise all such authority and jurisdiction as under the Act or these rules may be transacted and exercised by a judge 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) any other matter or proceedings 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.

### **32/12 Reference of matter to judge**

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 with such directions as he thinks fit.

### **32/13 Power to direct hearing in Court**

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.

32/14

and [blank]

32/15

### **32/16 Obtaining assistance of experts**

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.

### **32/17 Notice of filing etc. of affidavit**

17 Without prejudice to the provisions of Order 29 rule 1, any party—

- (a) filing an affidavit intended to be used by him in any proceedings in chambers, or
- (b) intending to use in any such proceedings any affidavit filed by him in previous proceedings,

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

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### **32/18 Adjournment into or from court**

18 The hearing of any summons or other application in chambers may be adjourned from chambers into court and subsequently from court into chambers.

### **32/19 Disposal of matter in chambers**

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

### **32/20 Powers for use of Court, etc.**

20 The original of any document which is to be used in evidence in proceedings in chambers must, if it is available, be brought in, and copies of any such document or of any part thereof shall not be made unless the Court directs that copies of that document or part be supplied for the use of the Court or be given to the other parties to the proceedings.

### **32/21 Notes of proceedings in chambers**

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

## **ORDER 33**

### **MODE OF TRIAL**

33/1 [blank]

### **33/2 Mode of trial**

2 (1) Subject to the provisions of these rules, a cause or matter, or any question or issue arising therein, may be tried before—

- (a) a judge alone, or
- (b) a judge with a jury, or
- (c) a judge with the assistance of assessors, or
- (d) the Registrar, or
- (f) a special referee with or without the assistance of assessors.

(2) If on the application of any party made within the prescribed time the Court or a judge is satisfied—

- (a) that a charge of fraud against that party is in issue; or
- (b) that a claim in respect of libel, slander, malicious prosecution, false imprisonment, or seduction is in issue,

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then the cause, matter or issue shall be ordered to be tried with a jury unless the Court or judge is of opinion that the trial thereof requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury.

(3) In this rule the expression “within the prescribed time” means not later than ten days after the close of the pleadings, or (where there are no pleadings) at the time of or within ten days after the order directing the mode of trial.

### **33/3 Time, etc. of trial of questions and issues**

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.

### **33/4 Determining the mode of trial**

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

(2) In any such action different questions or issues may be ordered to be tried by different modes of trial and one or more questions or issues may be ordered to be tried before the others.

(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 an officer of the Court who shall serve a copy of the order on every party; and
- (b) where a party applies within fourteen 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.

*[Order 33 rule 4(2A) inserted by BR55/2005 effective 1 January 2006]*

### **33/4A Split trial: offer on liability**

4A (1) This rule applies where an order is made under rule 4(2A) 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.

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

*[Order 33 rule 4A inserted by BR55/2005 effective 1 January 2006]*

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*[blank]*

### **33/6 Trial with assistance of assessors**

6 A trial of a cause or matter with the assistance of assessors shall take place in such manner and on such terms as the Court may direct.

### **33/7 Dismissal of action, etc. after decision of preliminary issue**

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

### **33/8 Special juries**

8 In any cause or matter in which a trial by the Court with a jury has been ordered—

- (a) the plaintiff or the defendant may have the issues tried by a special jury on application made at the time at which the mode of trial is fixed, or, if the Court or judge thinks fit, at any later stage upon such terms as to costs and otherwise as may be just; or
- (b) the Court or a judge may without any application order that the issues be tried by a special jury.

*[Order 33 amended by BR55/2005 effective 1 January 2006]*

## **ORDER 34**

### **SETTING DOWN FOR TRIAL ACTION BEGUN BY WRIT**

#### **34/1 Application and interpretation**

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

#### **34/2 Time for setting down action**

2 (1) Every order made in an action which provides for trial before a judge shall, whether the trial is to be with or without a jury, fix a period within which the plaintiff is to 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

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application, the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

(3) Every order made in an action which provides for trial shall contain an estimate of the length of the trial.

### **34/3 Lodging documents then setting down**

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 deliver to the Registrar, one bundle for the use of the judge consisting of a copy of each of the following documents, that is to say—

- (a) the writ,
- (b) the pleadings (including any affidavits ordered to stand as pleadings), any request or order for particulars and the particulars given,
- (c) all orders made on the summons for directions.

(2) The said bundle must be bound up in the proper chronological order.

### **34/4 Directions relating to lists**

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.

### **34/5 Further provisions as to lists**

5 (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 the Registrar, 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.

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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.

34/6

and [blank]

34/7

### **34/8 Notification of setting down**

8 (1) A party to an action who sets it down for trial must, within twenty-four hours after doing so, notify the other parties to the action that he had 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.

### **34/9 Abatement, etc. of action**

9 (1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the 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, and the Registrar 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.

### **34/10 The Court bundle**

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

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

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

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(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 circumstance, be appropriate.

(4) Where an action is to be tried with the assistance of assessors, additional copies of the bundle to be lodged under paragraph (2) shall be provided for the use of the assessors.

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

*[Order 34 rule 10 inserted by BR55/2005 effective 1 January 2006]*

### **ORDER 35**

#### **PROCEEDINGS AT TRIAL**

##### **35/1 Failure to appear by both parties or one of them**

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.

##### **35/2 Judgment etc. given in absence of party may be set aside**

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.

##### **35/3 Adjournment of trial**

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.

35/4 to

35/6 *[blank]*

##### **35/7 Order of speeches**

7 (1) The judge before whom an action is tried (whether with or without a jury) may give directions as to the party to begin and the order of speeches at the trial, and, subject

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to any directions, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to paragraph (6) the plaintiff shall begin by opening his case.

(3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.

(4) If the defendant elects to adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.

(5) Where there are two or more defendants who appear separately or are separately represented, then—

- (a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;
- (b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;
- (c) if some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order aforesaid after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

### **35/8 Inspection by judge or jury**

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.

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### **35/9 Death of party before giving of judgment**

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

### **35/10 Certificate of Registrar**

10 It shall be the duty of the Registrar in his capacity as taxing master upon the conclusion of the trial to give a certificate as to the following matters—

- (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.

### **35/11 List of exhibits**

11 (1) The clerk of the Court shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number, 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 clerk of the Court shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office copy of that list.

(3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the action.

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

### **35/12 Custody of exhibit after trial**

12 It shall be the duty of every party 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 labelled as before, so that in the event of an appeal, he may be able to produce the exhibit so marked and labelled at the hearing of the appeal in case he is required to do so.

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### **35/13 Impounded documents**

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, SPECIAL REFEREES**

#### **36/1 Power to order trial before special referee**

1 Without prejudice to any provision of law, if, in any cause or matter other than a criminal proceeding by the Crown, the Court considers, upon the application by any party that having regard to the nature of the case it is desirable (whether on grounds of expedition, economy or convenience or otherwise) in the interests of one or more of the parties or with the consent of the parties, the Court may, subject to any right to a trial with a jury, order that the cause or matter, or any question or issue of fact arising therein, shall be tried before a special referee, with or without assessors.

#### **36/2 Reference to special referee of question of fact for inquiry, etc.**

2 In any cause or matter other than a criminal proceeding by the Crown the Court may, subject to any right to a trial with a jury, refer to a special 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 special referee's report.

#### **36/3 Report on reference under rule 2**

3 (1) The report made by a special referee in pursuance of a reference under rule 2 shall be made to the Court and notice thereof served on the parties to the reference.

(2) The special referee may in his report submit any question arising therein for decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

(3) On the receipt of the special 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 special referee; or

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- (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 special referee has been made, an application to vary the report or remit the 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 2 the Court orders that further consideration of the cause or matter in question shall not stand adjourned until the receipt of the special referee's report, the order may contain directions with respect to the proceedings on the receipt of the report, and the foregoing provisions of the rule shall have effect subject to any such directions.

### **36/4 Powers of special referee**

4 (1) Subject to any directions contained in the Order referring any business to a special referee—

- (a) the special 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 (including the power of committal and 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 the special referee shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before a judge.

(2) Without prejudice to the generality of paragraph (1), but subject to any such directions as are mentioned therein, a special referee before whom any cause or matter is tried shall have the like powers as the Court with respect to claims relating to or connected with the original subject-matter of the cause or matter by any party thereto against any other person, and Order 15, rule 5(2) and Order 16 shall with any necessary modifications apply in relation to any such claim accordingly.

(3) A special referee may hold any trial or any other proceedings before him at any time which appears to him to be convenient and may adjourn the proceedings from place to place as he thinks fit.

36/5 to

36/8 [blank]

### **36/9 Trial before, and inquiry by Registrar**

9 (1) An order under rule 1 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 instead of an official referee and that rule shall have effect accordingly with the omission of the reference to assessors.

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(2) Without prejudice to Orders 43 and 44, and subject to the provisions of those Orders, a reference under rule 2 may be made by the judge to the Registrar instead of an official referee and that rule and rule 3 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 an official referee and the conduct of proceedings before an official referee, except that the Registrar shall not have power to make orders of committal or the power conferred on an official referee by rule 4(3).

### **ORDER 37**

#### **ASSESSMENT OF DAMAGES BY THE REGISTRAR**

##### **37/1 General rule: witnesses to be examined orally**

1 (1) Where judgment is given by the Court for damages to be assessed and by the judgment no provision is made 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 seven 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 proceedings at a trial.

##### **37/2 Certificate of amount of damages**

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, when judgment is entered, be filed in the Registry.

##### **37/3 Default judgment against some but not all defendants**

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

##### **37/4 Power to order assessments at trial**

4 The Court may, in the case of any such judgment as is mentioned in rule 1, order that the action shall proceed to trial before a judge (with or without a jury) as respects the damages; and where the Court orders that the action shall proceed to trial, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they desire and with any other

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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.

### **37/5 Assessment of value**

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.

### **37/6 Assessment of damages to time of assessment**

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

## **ORDER 38**

### **EVIDENCE**

#### *I: GENERAL RULES*

### **38/1 General rule: witnesses to be examined orally**

1 Subject to the provisions of these Rules and of the Evidence Act 1905 [*title 8 item 10*] and any other enactment relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of witnesses orally and in open court.

### **38/2 Evidence by affidavit**

2 (1) The Court may at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for 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.

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### **38/2A Exchange of Witness Statements (O.38, r 2A)**

2A (1) The powers of the Court under this rule shall be exercised for the purpose of disposing fairly and expeditiously of the cause or matter before it, and saving costs, having regard to all the circumstances of the case, including (but not limited to) –

- (a) the extent to which the facts are in dispute or have been admitted;
- (b) the extent to which the issues of fact are defined by the pleadings;
- (c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.

(2) At the summons for directions in an action commenced by writ the Court shall direct every party to serve on the other parties, within 14 weeks (or such other period as the Court may specify) of the hearing of the summons and on such terms as the Court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial.

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

Order 3, rule 5 (3) shall not apply to any period specified by the court under this paragraph.

(3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.

(4) Statements served under this rule shall—

- (a) be dated and, except for good reason (which should be specified by letter accompanying the statement), be signed by the intended witness and shall include a statement by him that the contents are true to the best of his knowledge and belief;
- (b) sufficiently identify any documents referred to therein; and
- (c) where they are to be served by more than one party, be exchanged simultaneously.

(5) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (4) (a), the Court may direct the party wishing to adduce that witness's evidence to provide the other party with the name of the witness and (unless the Court otherwise orders) a statement of the nature of the evidence intended to be adduced.

(6) Subject to paragraph (9), where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.

(7) Subject to paragraph (9), where the party serving the statement does call such a witness at the trial—

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- (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 party may put the statement or any part of it in cross-examination of that witness.

(8) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.

(9) Where any statement served is one to which Parts IIA and IIB of the Evidence Act 1905 apply, paragraphs (6) and (7) shall take effect subject to the provisions of those Parts of that Act and Parts III and IV of this Order.

The service of a witness statement under this rule shall not, unless expressly so stated by the party serving the same, be treated as a notice under the said Act of 1905; and where a statement or any part thereof would be admissible in evidence by virtue only of the said Act of 1905 the appropriate notice under Part III or Part IV of this Order shall be served with the statement notwithstanding any provision of those Parts as to the time for serving such a notice. Where such a notice is served a counter-notice shall be deemed to have been served under Order 38, rule 26 (1).

(10) Where a party fails to comply with a direction for the exchange of witness statements he shall not be entitled to adduce evidence to which the direction related without the leave of the Court.

(11) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served—

- (a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or
- (b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7) (a) or otherwise).

(12) Subject to paragraph (13), the judge shall, if any person so requests during the course of the trial, direct the associate 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.

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

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

(14) Where the associate is directed under paragraph (12) to certify a witness statement as open to inspection he shall—

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

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

### **38/3 Evidence of particular facts**

3 (1) Without prejudice to rule 2, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

(2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial—

- (a) by statement on oath of information or belief, or
- (b) by the production of documents or entries in books, or
- (c) by copies of documents or entries in books, or

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- (d) in the case of a fact which is or was a matter of common knowledge, by the production of a specified newspaper which contains a statement of that fact.

### **38/4 Limitation of expert evidence**

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.

### **38/5 Limitation of plans, etc. in evidence**

5 Unless, at or before the trial, the Court for special reasons otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least ten 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.

### **38/6 Revocation or variation of orders under rules 2 to 5**

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.

### **38/7 Evidence of finding on foreign law**

7 (1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law by virtue of section 27M(2) of the Evidence Act 1905 [*title 8 item 10*] shall—

- (a) in the case of an action to which Order 25, rule 1 applies within fourteen days after the pleadings in the action are deemed to be closed, and
- (b) in the case of any other cause or matter, within twenty-one days after the date on which an appointment for the first hearing of the cause or matter is obtained,

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

(2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.

(3) In any cause or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

### **38/8 Application to trial of issues, references, etc.**

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

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### **38/9 Depositions: when receivable in evidence at trial**

9 (1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless—

- (a) the deposition was taken in pursuance of an order under Order 39, rule 1, and
- (b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.

(2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.

(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

### **38/10 Court documents admissible or receivable in evidence**

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

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

### **38/11 Evidence of consent of new trustee to act**

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.

### **38/12 Evidence at trial may be used in subsequent proceedings**

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

### **38/13 Order to produce document at proceeding other than trial**

13 (1) At any stage in a cause or matter the Court may order any person to attend any proceeding in the cause or matter and produce any document, to be specified or described in that order, the production of which appears to the Court to be necessary for the purpose of that proceeding.

(2) No person shall be compelled by an order under paragraph (1) to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

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### *II. WRITS OF SUBPOENA*

#### **38/14 Form and issue of writ of subpoena**

14 (1) A writ of subpoena must be in Form No. 28 or 29 in Appendix A, whichever is appropriate.

(2) Issue of a writ of subpoena takes place upon its being sealed by the Registrar.

(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 or firm and business address of that party's attorney.

#### **38/15 More than one name may be included in one writ of subpoena**

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

#### **38/16 Amendment of writ of subpoena**

16 Where there is a mistake in any person's name or address in a writ of subpoena, then, if the writ has not been served the party by whom the writ was issued may have the writ resealed in correct form by filing a second praecipe under rule 14(5) indorsed with the words "Amended and re-sealed."

#### **38/17 Service of writ of subpoena**

17 A writ of subpoena must be served personally and the service shall not be valid unless effected within twelve weeks after the date of issue of the writ.

#### **38/18 Duration of writ of subpoena**

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

38/19

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### *III. HEARSAY EVIDENCE*

#### **38/20 Interpretation and application**

20 (1) In this Part of this Order "the Act" means the Evidence Act 1905 [*title 8 item 10*] and any expressions used in this Part of this Order and in Part IIA of the Act have the same meanings in this Part of this Order as they have in the said Part IIA.

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

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### **38/21 Notice of intention to give certain statements in evidence**

21 (1) Subject to the provisions of this rule, a party to a cause or matter who desires to give in evidence at the trial or hearing of the cause or matter any statement which is admissible in evidence by virtue of section 27B, 27D or 27E of the Act must—

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

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

(2) Paragraph (1) shall not apply in relation to any statement which is admissible as evidence of any fact stated therein by virtue not only of the said section 27B, 27D or 27E but by virtue also of any other Act.

(3) Paragraph (1) shall not apply in relation to any statement which any party to a probate action desires to give in evidence at the trial of that action and which is alleged to have been made by the deceased person whose estate is the subject of the action.

(4) Where by virtue of any provision of these rules or of any order or direction of the Court the evidence in any proceedings is to be given by affidavit then, without prejudice to paragraph (2), paragraph (1) shall not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings, but nothing in this paragraph shall affect the operation of Order 41, rule 5, or the powers of the Court under Order 38, rule 3.

(5) Order 65, rule 9, shall not apply to a notice under this rule but the Court may direct that the notice need not be served on any party who at the time when service is to be effected is in default as to entry of appearance or who has no address for service.

### **38/22 Statement admissible by virtue of section 27B of the Evidence Act 1905**

22 (1) If the statement is admissible by virtue of section 27B of the Act, and was made otherwise than in a document, the notice must contain particulars of—

- (a) the time, place and circumstances at or in which the statement was made;
- (b) the person by whom, and the person to whom, the statement was made; and
- (c) the substance of the statement or, if material, the words used.

(2) If the statement is admissible by virtue of the said section 27B and was made in a document, a copy or transcript of the document, or of the relevant part thereof, must be annexed to the notice, and the notice must contain such (if any) of the particulars

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mentioned in paragraph (1) (a) and (b) as are not apparent on the face of the document or part.

(3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

### **38/23 Statement admissible by virtue of section 27D of the Act**

23 (1) If the statement is admissible by virtue of section 27D of the Act, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain—

- (a) particulars of—
  - (i) the person by whom the record containing the statement was compiled;
  - (ii) the person who originally supplied the information from which the record was compiled; and
  - (iii) any other person through whom that information was supplied to the compiler of that record;

and, in the case of any such person as is referred to in (i) or (iii) above, a description of the duty under which that person was acting when compiling that record or supplying information from which that record was compiled, as the case may be;

- (b) if not apparent on the face of the document annexed to the notice, a description of the nature of the record which, or part of which, contains the statement; and
- (c) particulars of the time, place and circumstances at or in which that record or part was compiled.

(2) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

### **38/24 Statement admissible by virtue of section 27E of the Act: contents of notice**

24 (1) If the statement is contained in a document produced by a computer and is admissible by virtue of section 27E of the Act, the notice must have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and must contain particulars of—

- (a) a person who occupied a responsible position in relation to the management of the relevant activities for the purpose of which the computer was used regularly during the material period to store or process information;

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- (b) a person who at the material time occupied such a position in relation to the supply of information to the computer, being information which is reproduced in the statement or information from which the information contained in the statement is derived;
- (c) a person who occupied such a position in relation to the operation of the computer during the material period;

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

(2) The notice must also state whether the computer was operating properly throughout the material period and, if not, whether any respect in which it was not operating properly or was out of operation during any part of that period was such as to effect the production of the document in which the statement is contained or the accuracy of its contents.

(3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 25, the notice must contain a statement to that effect specifying the reason relied on.

### **38/25 Reasons for not calling a person as a witness**

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

### **38/26 Counter-notice requiring person to be called as a witness**

26 (1) Subject to paragraphs (2) and (3), any party to a cause or matter on whom a notice under rule 21 is served may within twenty-one days after service of the notice on him serve on the party who gave the notice a counter-notice requiring that party to call as a witness at the trial or hearing of the cause or matter any person (naming him) particulars of whom are contained in the notice.

(2) Where any notice under rule 21 contains a statement that any person particulars of whom are contained in the notice cannot or should not be called as a witness for the reason specified therein, a party shall not be entitled to serve a counter-notice under this rule requiring that person to be called as a witness at the trial or hearing of the cause or matter unless he contends that that person can or, as the case may be, should be called, and in that case he must include in his counter-notice a statement to that effect.

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(3) Where it statement to which a notice under rule 21 relates is one to which rule 28 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this rule in relation to that statement. but the foregoing provision is without prejudice to the right of any party to apply to the Court under rule 28 for directions with respect to the admissibility of that statement.

(4) If any party to a cause or matter by whom a notice under rule 21 is served fails to comply with a counter-notice duly served on him under this rule, then, unless any of the reasons specified in rule 25 applies in relation to the person named in the counter-notice, and without prejudice to the powers of the Court under rule 29, the statement to which the notice under rule 21 relates shall not be admissible at the trial or hearing of the cause or matter as evidence of any fact stated therein by virtue of section 27B, 27D or 27E of the Act, as the case may be.

### **38/27 Determination of question whether person can or should be called as a witness**

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

(2) Unless the Court otherwise directs, the summons by which an application under paragraph (1) is made must be served by the party making the application on every other party to the cause or matter.

(3) Where any such question as is referred to in paragraph (1) has been determined under or by virtue of that paragraph, no application to have it determined afresh at the trial or hearing of the cause or matter may be made unless the evidence which it is sought to adduce in support of the application could not with reasonable diligence have been adduced at the hearing which resulted in the determination.

### **38/28 Directions with respect to statement made in previous proceedings**

28 Where a party to a cause or matter has given notice in accordance with rule 21 that he desires to give in evidence at the trial or hearing of the cause or matter—

- (a) a statement falling within section 27B(1) of the Act which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal), or
- (b) a statement falling within section 27D(1) of the said Act which is contained in a record of direct oral evidence given in some other legal proceedings (whether civil or criminal),

any party to the cause or matter may apply to the Court for directions under this rule, and the Court hearing such an application may give directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to

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do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved.

### **38/29 Power of Court to allow statement to be given in evidence**

29 (1) Without prejudice to section 27B(2)(a) and 27D(2)(a) of the Act and rule 28, the Court may, if it thinks it just to do so, allow a statement falling within section 27B(1), 27D(1) or 27E(1) of the Act to be given in evidence at the trial or hearing of a cause or matter notwithstanding—

- (a) that the statement is one in relation to which rule 21 (1) applies and that the party desiring to give the statement in evidence has failed to comply with that rule, or
- (b) that that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on him in accordance with rule 26.

(2) Without prejudice to the generality of paragraph (1), the Court may exercise its power under that paragraph to allow a statement to be given in evidence at the trial or hearing of a cause or matter if a refusal to exercise that power might oblige the party desiring to give the statement in evidence to call as a witness at the trial or hearing an opposite party or a person who is or was at the material time the servant or agent of an opposite party.

### **38/30 Restriction on adducing evidence as to credibility of maker, etc. of certain statements**

30 Where—

- (a) a notice given under rule 21 in a cause or matter relates to a statement which is admissible by virtue of section 27B or 27D of the Act, and
- (b) the person who made the statement, or, as the case may be, the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the trial or hearing of the cause or matter, and
- (c) none of the reasons mentioned in rule 25 applies so as to prevent the party who gave the notice from calling that person as a witness,

no other party to the cause or matter shall be entitled, except with the leave of the Court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of section 27G of the Act unless he gave a counter-notice under rule 26 in respect of that person or applied under rule 28 for a direction that that person be called as a witness at the trial or hearing of the cause or matter.

### **38/31 Notice required to give evidence of certain inconsistent statements**

31 (1) Where a person, particulars of whom were contained in a notice given under rule 21 in a cause or matter, is not to be called as a witness at the trial or hearing of the cause or matter, any party to the cause or matter who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in

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section 27G(1)(b) of the Act must, not more than twenty-one days after service of that notice on him, serve on the party who gave that notice, notice of his intention to do so.

(2) Rule 22(1) and (2) shall apply to a notice under this rule as if the notice were a notice under rule 21 and the statement to which the notice relates were a statement admissible by virtue of section 27B of the Act.

(3) The Court may if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of a cause or matter any evidence which is admissible for the purpose mentioned in the said section 27G(1)(b) notwithstanding that that party has failed to comply with the provisions of paragraph (1).

### **38/32 Costs**

32 If—

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

then, without prejudice to Order 62 and, in particular, to rule 7(1) thereof, the Court may direct that any costs to that party in respect of the preparation and service of the counter-notice shall not be allowed to him and that any costs occasioned by the counter-notice to any other party shall be paid by him to that other party.

### **38/33 Certain powers exercisable in chambers**

33 The jurisdiction of the Court under sections 27B(2)(a), 27B(3), 27D(2)(a) and 27F(1) of the Act may be exercised in chambers.

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## *IV. EXPERT EVIDENCE*

### **38/35 Interpretation**

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.

### **38/36 Restrictions on adducing expert evidence**

36 (1) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence has applied to the Court to determine whether a direction should be given under rule 3, 38, or 41 (whichever is appropriate) and has complied with any direction given on the application.

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(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.

### **38/37 Medical evidence in actions for personal injuries**

37 (1) Where in an action for personal injuries an application is made under rule 36(1) in respect of oral expert evidence relating to medical matters, then, unless the Court considers that there is sufficient reason 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) The Court may if it thinks fit, treat any of the following circumstances as a sufficient reason for not giving a direction under paragraph (1):—

- (a) that the pleadings contain an allegation of a negligent act or omission in the course of medical treatment; or
- (b) that the expert evidence may contain an expression of opinion—
  - (i) as to the manner in which the personal injuries were sustained; or
  - (ii) as to the genuineness of the symptoms of which complaint is made.

### **38/38 Other expert evidence**

38 (1) Where an application is made under rule 36(1) in respect of oral expert evidence to which rule 37 does not apply, the Court may, if satisfied that it is desirable to do so, direct that the substance of any expert evidence which is to be adduced by any party 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) In deciding whether to give a direction under paragraph (1) the Court shall have regard to all the circumstances and may, to such extent as it thinks fit, treat any of the following circumstances as affording a sufficient reason for not giving such a direction:—

- (a) that the expert evidence is or will be based to any material extent upon a version of the facts in dispute between the parties; or
- (b) that the expert evidence is or will be based to any material extent upon facts which are neither—
  - (i) ascertainable by the expert by the exercise of his own powers of observation, nor
  - (ii) within his general professional knowledge and experience.

### **38/39 Disclosure of part of expert evidence**

39 Where the Court considers that any circumstances rendering it undesirable to give a direction under rule 37 or 38 relate to part only of the evidence sought to be adduced, the Court may, if it thinks fit, direct disclosure of the remainder.

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### **38/40 Expert evidence of engineers in accident cases**

40 In an action arising out of an accident on land due to a collision or apprehended collision a party who intends to apply to the Court under rule 36 in respect of the expert evidence of an engineer sought to be called on account of his skill and knowledge as respects motor vehicles shall before the hearing of the summons for directions make available to all parties for their inspection a report by the engineer containing the substance of his evidence.

### **38/41 Expert evidence contained in statement**

41 Where an application is made under rule 36 in respect of expert evidence contained in a statement and the applicant alleges that the maker of the statement cannot or should not be called as a witness, the Court may direct that the provisions of rules 20 to 23 and 25 to 33 shall apply with such modifications as the Court thinks fit.

### **38/42 Putting in evidence expert report disclosed by another party**

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.

### **38/43 Time for putting expert report in evidence**

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 rule 40 or in accordance with a direction given under rule 37 or 38, 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.

### **38/44 Revocation and variation of directions**

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 38 rule 2A inserted by BR55/2005 effective 1 January 2006]*

## **ORDER 39**

### **EVIDENCE BY DEPOSITION**

#### **39/1 Power to order depositions to be taken**

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.

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### **39/2 Where person to be examined is out of the jurisdiction**

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 any person in that country for the assistance of proceedings in the Court, or
- (b) with the consent of the Deputy Governor.

### **39/3 Order for issue of letter of request**

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 that country or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where the examination is to be taken.

(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that persons full name, of his address and of his qualifications for making the translation.

(6) The party obtaining the order must, when he lodges in the Registry the documents mentioned in paragraphs (2) to (5), also file in that office an undertaking signed by him or his attorney to be responsible personally for all expenses incurred by the Deputy Governor in respect of the letter of 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.

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### **39/4 Enforcing attendance of witness at examination**

4 Where an order has been made under rule 1—

- (a) for the examination of any person before an officer 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 the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by writ of subpoena in like manner as the attendance of a witness and the production by a witness of a document at a trial may be offered.

### **39/5 Refusal of witness to attend, be sworn, etc.**

5 (1) If any person, having been duly summoned by writ of subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document therein, a certificate of his refusal or failure, signed by the examiner, must be filed in the Registry, and upon the filing of the certificate the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn or, to answer any question or produce any document, as the case may be.

(2) An application for an order under this rule may be made *ex parte*.

(3) If the Court makes an order under this rule it may order the person against whom the order is made to pay any costs occasioned by his refusal or failure.

(4) A person who willfully disobeys any order made against him under paragraph (1) is guilty of contempt of court.

### **39/6 Appointment of time and place for examination**

6 (1) The examiner must give the party on whose application the order for examination was made a notice appointing the place and time at which, subject to any application by the parties, the examination shall be taken, and such time shall, having regard to the convenience of the persons to be examined and all the circumstances of the case, be as soon as practicable after the making of the order.

(2) The party to whom a notice under paragraph (1) is given must on receiving it forthwith give notice of the appointment to all the other parties.

### **39/7 Examiner to have certain documents**

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.

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### **39/8 Conduct of examination**

- 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.

### **39/9 Examination of additional witnesses**

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 the order for examination, and must annex such consent to the original deposition of that person.

### **39/10 Objection to questions**

- 10 (1) If any person being examined before the examiner objects to answer any questions put to him, or if objection is taken to any such question, that question, the ground for the objection and the answer to any such question to which objection is taken must be set out in the deposition of that person or in a statement annexed thereto.
- (2) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by the Court and not by the examiner, but the examiner must state to the parties his opinion thereon, and the statement of his opinion must be set out in the deposition or in a statement annexed thereto.
- (3) If the Court decides against the person taking the objection it may order him to pay the costs occasioned by his objection.

### **39/11 Taking of depositions**

- 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.

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If a person refuses to sign it 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.

### **39/12 Time taken by examination to be indorsed on depositions**

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.

### **39/13 Special report by examiner**

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.

### **39/14 Order for payment of examiner's fees**

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 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.

### **39/15 Perpetuation of testimony**

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.

### **39/16 Examiners of the Court**

16 A sufficient number of attorneys, of not less than three years standing, shall be appointed by the Chief Justice to act as examiners 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.

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### **ORDER 40 COURT EXPERT**

#### **40/1 Appointment of expert to report on certain questions**

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, with or without the consent of the parties, 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.

#### **40/2 Report of court expert**

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.

#### **40/3 Experiments and tests**

3 If the court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report he shall inform the parties or their attorneys and 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.

#### **40/4 Cross-examination of court expert**

4 Any party may, within fourteen 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

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- (b) before an examiner at such time and place as may be specified in the order.

### **40/5 Remuneration of court expert**

5 (1) The remuneration of the court expert shall be fixed by the Court and shall include a fee for his report and a proper sum for each day during which he is required to be present either in court or before an examiner.

(2) Without prejudice to any order providing for payment of the court expert's remuneration as part of the costs of the cause or matter, the parties shall be jointly and severally liable to pay the amount fixed by the Court for his remuneration but, where the appointment of a court expert is opposed, the Court may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the Court thinks fit.

### **40/6 Calling of expert witnesses**

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**

#### **41/1 Form of affidavit**

1 (1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter must be entitled in that cause or matter.

(2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words "and other matters", and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words "and others", and similarly with respect to defendants.

(4) Every affidavit must be expressed in the first person and must state the place of residence or business of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact.

(5) Every affidavit must follow continuously from page to page.

(6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

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(7) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.

(8) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.

### **41/2 Affidavit by two or more deponents**

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.

### **41/3 Affidavit by illiterate or blind person**

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.

### **41/4 Use of defective affidavit**

4 An affidavit may with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

### **41/5 Contents of affidavit**

5 (1) Subject to Order 14, rules 2(2) and 4(2), to Order 86, rule 2(1), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

### **41/6 Scandalous, etc. matter in affidavit**

6 The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

### **41/7 Alterations in affidavits**

7 (1) An affidavit which has in the jurat or body thereof an interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

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(2) Where an affidavit is sworn at the Registry, the Seal of the Court may be substituted for the signature or initials required by this rule.

### **41/8 Affidavit not to be sworn before attorney of party, etc.**

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.

### **41/9 Filing of affidavits**

9 (1) Every affidavit used in a cause or matter proceeding in the Court must be filed in the Registry.

(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 filed or used without the leave of the Court.

### **41/10 Use of original affidavit or office copy**

10 (1) Subject to paragraph (2), an original affidavit may be used in any proceedings without leave of the Court notwithstanding that it has not been filed in accordance with rule 9.

(2) An original affidavit may not be used in any proceedings unless it has previously been stamped with the fee payable on filing.

(3) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he must immediately after it is used leave it with the Registrar in Court or in chambers, as the case may be, who shall send it to be filed.

(4) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

### **41/11 Documents to be used in conjunction with affidavit to be exhibited to it**

11 (1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit.

(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.

The certificate must be entitled, in the same manner as the affidavit and rule 1(1), (2) and (3) shall apply accordingly.

### **41/12 Affidavit taken in countries outside Bermuda**

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 outside Bermuda in testimony of an affidavit being taken before it or him shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person.

**ORDER 42**  
**JUDGMENTS AND ORDERS**

**42/1 Form of judgment, etc.**

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 the 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) An order must be marked with the name of the judge, special referee or Registrar by whom it was made and must be sealed.

**42/2 Judgment, etc. requiring act to be done: time for doing it**

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.

**42/3 Date from which judgment or order takes effect**

3 (1) A judgment or order of the Court, the Registrar or of a special 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, the Registrar or a special referee orders it to be dated is of some earlier or later day, in which case it shall be dated as of that other day.

**42/4 Orders required to be drawn up**

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 authorised by these rules, or by any judgment, order or direction, to do any act, or

(ii) grants leave for the doing of any of the acts mentioned in paragraph (3), and

(b) which neither imposes any special terms nor includes any special directions other than a direction as to costs,

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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 the Registrar or the Provost Marshal General.

### **42/5 Drawing up and entry of judgments and orders**

5 (1) Where a judgment given in a cause or matter is presented for entry in accordance with this rule at the Registry, it shall be entered in the book kept for that purpose by the Registrar.

(2) The party seeking to have such a judgment entered must draw up the judgment and present it to the Registrar for entry.

- (3) A party presenting a judgment for entry must—
  - (a) if he is 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 made and required to be drawn up must be drawn up by the party taking out the summons, notice or other document 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.

## **ORDER 43**

### **ACCOUNTS AND INQUIRIES**

#### **43/1 Summary order for account**

1 (1) Where a writ is indorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has entered an appearance or after the time limited for appearing, apply for an order under this rule.

(2) An application under this rule must be made by summons and, if the Court so directs, must be supported by affidavit or other evidence.

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(3) On the hearing of the application, the Court may unless satisfied by the defendant by affidavit or otherwise that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

### **43/2 Court may direct taking of accounts, etc**

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.

## **ORDER 44**

### **PROCEEDINGS UNDER JUDGMENTS AND ORDERS: IN CHANCERY JURISDICTION**

#### **44/1 Application to proceedings under an order**

1 This Order shall, with the necessary modifications, apply in relation to proceedings under an order as it applies in relation to proceedings under a judgment and, accordingly, references therein to a judgment shall be construed as including references to an order.

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#### **44/3 Service of notice of judgment on person not a party**

3 (1) Where in an action for—

- (a) the administration of the estate of a deceased person, or
- (b) the execution of a trust, or
- (c) the sale of any property

the Court gives a judgment which affects the rights or interests of persons not parties to the action or directs any account to be taken or inquiry made, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any person interested in the estate or under the trust or in the property, as the case may be; and any person duly served with notice of a judgment in accordance with this rule shall, subject to paragraph (5), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(2) The Court may direct a notice of judgment to be served personally or in such manner as it may specify on the person required to be served, or if it appears to the Court that it is impracticable for any reason to serve such notice on any person it may dispense with service of the notice on that person.

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Before notice of a judgment is served the notice must be indorsed with a memorandum in Form No. 52 in Appendix A.

(4) Where the Court dispenses with service of notice of a judgment on any person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

(5) A person served with notice of a judgment may, within one month after service of the notice on him, and without entering an appearance, apply to the Court to discharge, vary or add to the judgment.

(6) A person served with notice of a judgment may after entering an appearance to the notice, attend the proceedings under the judgment.

### **44/4 Directions by Court**

4 (1) The Court hearing the summons to proceed shall give directions with respect to the proceedings to be taken under the judgment and the conduct thereof, including, in particular, directions with respect to—

- (a) the manner in which any account or inquiry is to be prosecuted,
- (b) the evidence to be adduced in support thereof,
- (c) the parties required to attend all or any part of the proceedings, and
- (d) the time within which each proceeding is to be taken,

and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under this rule.

### **44/5 Court may require parties to be represented by same attorney**

5 Where on the hearing of the summons to proceed or at any stage of the proceedings under the judgment it appears to the Court that the interests of the parties can be classified, it may require the parties constituting each or any class to be represented by the same attorney to represent them, the Court may nominate an attorney to represent the class in the proceedings.

### **44/6 Court may require parties to be represented by different attorneys**

6 Where on the hearing of the summons to proceed or at any stage of the proceedings under the judgment it appears to the Court that two or more of the parties who are represented by the same attorney ought to be separately represented, it may require them to be so represented and may adjourn the proceedings until they are.

### **44/7 Leave to attend proceedings, etc.**

7 Any party to the proceedings under the judgment who has not been directed to attend may apply to the Court for leave to attend any part of the proceedings at the cost

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of the estate or other property to which the proceedings relate and to have the conduct of that part either in addition to or in substitution for any other party.

### **44/8 Judgment requiring to be settled by Court: directions**

8 Where the judgment directs any deed or other instrument to be settled by the judge in chambers, or to be settled by him if the parties to the deed fail to agree it, the Court hearing the summons to proceed under the judgment shall direct—

- (a) that within such period as it may specify the party entitled to prepare a draft of the deed must serve a copy of the draft on every other party who will be a party to the deed, and
- (b) that within eight days, or such other period, if any, as it may specify, after service on any such other party of a copy of the draft that party must serve on the party by whom the draft was prepared a written statement of his objections (if any) to the draft.

### **44/9 Application of rules 10 to 17**

9 Rules 10 to 17 apply—

- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next of kin or other unascertained claimants to be made, and
- (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made.

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs any account of debts or other liabilities to be taken or any inquiry to be made.

### **44/10 Advertisements for creditors and other claimants**

10 (1) On the hearing of the summons to proceed the Court may direct the issue of advertisements for creditors or other claimants, and in deciding whether to do so shall have regard to any advertisement previously issued by the estate representatives or trustees concerned.

(2) Every such advertisement shall be prepared by the party prosecuting the judgment, and—

- (a) in the case of an advertisement for creditors, shall be signed by that party's attorney or, if he has no attorney, by the Registrar, and
- (b) in the case of an advertisement for other claimants, shall be submitted to the Registrar and if approved by the Registrar shall be signed by him.

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(3) The Court shall fix the time within which, and the person to whom, any claimant is to send his name and address and particulars of his claim, and that time and the name and address of that person shall be stated in the advertisement.

### **44/11 Failure to claim within specified time**

11 A claimant who fails to send full particulars of his claim to the person named in any advertisement directed by the Court within the time therein specified shall not be entitled to prove his claim except with the leave of the Court, and in granting leave the Court may impose such terms as to costs and otherwise as it thinks just.

### **44/12 Examination, etc. of claims**

12 (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—

- (a) examine the claims of persons claiming to be creditors of the estate and determine, so far as he is able, to which of such claims the estate is liable, and
- (b) at least seven clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—
  - (i) claims sent in pursuance of any advertisement,
  - (ii) claims which have been received by any of the estate representatives otherwise than in pursuance of an advertisement, and
  - (iii) debts of the deceased at the time of his death in respect of which no claim has been received but which are or may still be due and which have come to the knowledge of any of the estate representatives.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—

- (a) examine the claims and determine, so far as he is able, which of them are valid claims, and
- (b) at least seven clear days before the time appointed for adjudicating on claims, make an affidavit verifying lists of—
  - (i) claims sent in pursuance of any advertisement, and
  - (ii) claims received by any of the estate representatives or trustees concerned, otherwise than in pursuance of an advertisement, or which have come to his knowledge.

(3) The affidavit required by paragraph (1) or (2) must, as the circumstances of the case require, specify, in relation to the claims of creditors, the claims and debts which in the belief of the deponent are liabilities of the estate of the deceased and ought to be allowed, in whole or in part, and, in relation to the claims of persons other than creditors, the claims which in the belief of the deponent are valid claims, with, in either case, the reasons for such belief.

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(4) If the estate 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.

### **44/13 Adjudication on claims**

13 (1) The Court adjudicating on the claims—

- (a) may allow any such claim after or without proof thereof;
- (b) may direct any such claim to be investigated in such manner as it thinks fit;
- (c) may require any claimant to attend and prove his claim or to furnish further particulars or evidence of it.

(2) Where the Court exercises the power conferred by paragraph 1(c) in relation to any claimant, such party as the Court may direct must serve on that claimant a notice requiring him—

- (a) to file an affidavit in support of his claim within such time, not being less than seven days after service of the notice as may be specified in the notice and to attend before the Court for adjudication on the claim at such time as may be so specified, or
- (b) to produce to the Court at such time as may be so specified such documents in support of his claim as may be so specified or described.

(3) Where a claimant fails to comply with a notice served on him under paragraph (2) his claim may be disallowed.

(4) A claimant who files an affidavit in compliance with a notice served on him under paragraph (2) must serve notice of the filing on the party by whom the first-mentioned notice was served and, unless the Court otherwise directs, that party must produce an office copy of the affidavit at the adjudication of the claim.

(5) No person claiming to be a creditor need make an affidavit or attend in support of his claim, except for the purpose of producing any documents which he is required to produce, unless served with a notice under paragraph 2(a).

(6) If the Court so directs, a person claiming to be a secured creditor must produce his security at the Registry.

(7) In this rule references to a claim include references to part of a claim.

### **44/14 Adjournment of adjudication**

14 Where on the day appointed for adjudication of claims any claim is not then disposed of, the adjudication shall be adjourned to a day appointed by the Court, and the Court may fix the time within which any evidence in support of or in opposition to the claim is to be filed.

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### **44/15 Service of notice of judgment on certain claimants**

15 (1) Where a claimant other than a creditor has established his claim, then, unless he is a party to the cause or matter or has previously been served with notice of the judgment or the Court otherwise directs, the party having the conduct of the cause or matter must serve notice of the judgment on him.

(2) A person duly served with notice of a judgment under this rule shall, subject to rule 3(5), as applied by paragraph (4), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(3) Where the Court directs under paragraph (1) that notice of a judgment shall not be served on a person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

(4) Rule 3(5) and (6) shall apply in relation to a person served with notice of a judgment under this rule as they apply in relation to a person served with notice of a judgment under that rule.

### **44/16 Notice, etc. of claims allowed**

16 (1) Such party as the Court may direct must serve on every creditor whose claim or any part thereof has been allowed or disallowed and who did not attend when the claim was disposed of a notice informing him of that fact.

(2) Such party if any as the Court may direct must make out a list of the creditors' claims, and a list of any other claims, allowed and leave it at the Registry.

### **44/17 Service of notice**

17 For the purpose of Order 65, rule 5, in its application to the service of any notice under this Order on a claimant, the proper address of a claimant shall be the address stated in his claim, or, if an attorney is acting for him in connection with the claim, the business address of that attorney.

### **44/18 Interest on debts**

18 (1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—

(a) on any such debt as carries interest, at the rate it carries, and

(b) on any other debt, at the statutory rate from the date of the judgment.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt at the statutory rate from the date of the judgment out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

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### **44/19 Interest on legacies**

19 When an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the statutory rate beginning at the expiration of one year after the testator's death.

### **44/20 Determination by judge of question arising before Registrar**

20 (1) Any party may, before the proceedings before the Registrar under any judgment are concluded, apply to a judge for the determination of any question arising in the course of the proceedings.

Unless the Court otherwise directs, a fresh summons shall not be issued for the purpose of an application under this paragraph.

(2) It shall not be necessary to draw up the order or directions made or given by the judge on the determination of such question, except in the event of an appeal to the Court of Appeal, but the Registrar shall refer to such order or directions in his certificate under rule 21.

### **44/21 Registrar's certificate**

21 (1) The result of proceedings before the Registrar under a judgment shall be stated in the form of a certificate by the Registrar.

(2) Such certificate shall refer to so much of the judgment, to such documents or parts thereof and to such of the evidence as will make it clear upon what the result stated in the certificate is founded but shall not, unless the circumstances of the case render it necessary, set out the judgment or any documents, evidence or reasons.

(3) Where the judgment requires the taking of any account, the certificate must refer to the account verified by filed affidavit and must specify by reference to the numbered items in the account which, if any, of such items have been disallowed or varied and the additions, if any, which have been made by way of surcharge or otherwise.

(4) Where by reason of the alterations made in the account verified by filed affidavit the Court has directed a fresh account incorporating the alterations to be made, the reference in paragraph (3) to the account so verified shall be construed as a reference to the fresh account.

### **44/22 Settling and filing of Registrar's certificate**

22 (1) A draft of the Registrar's certificate shall be drawn up in chambers unless the Registrar directs it to be drawn up by a party to the proceedings and the draft shall be settled by the parties before the Registrar on such day as the Registrar may appoint.

(2) The certificate signed by the Registrar and any account referred to therein shall be filed in the Registry

### **44/23 Discharge or variation of Registrar's certificate**

23 (1) Any party to proceedings under a judgment may, not later than—

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- (a) eight clear days after the filing of the Registrar's certificate therein;
- (b) if the certificate is to be acted upon by the Accountant General without further order or is a certificate passing a receiver's account, two clear days after the filing thereof,

apply by summons for an order of the judge discharging or varying the certificate.

(2) Subject to paragraph (3), any such certificate shall, on the expiration of the period specified in relation to it in paragraph (1), become binding on the parties to the proceedings unless discharged or varied by order under paragraph (1).

(3) The judge may in special circumstances, by order discharge or vary the certificate of the Registrar notwithstanding that the certificate has become binding on the parties.

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

### **44/24 Further consideration of cause or matter in chambers**

24 (1) Where the Registrar's certificate has been filed in any cause or matter in the Chancery jurisdiction, then, if—

- (a) the cause or matter in which it was filed is a debenture holders' action or the judgment to be made in the cause or matter in which it was filed is for the distribution of an insolvent estate or for the distribution of the estate of a person who died intestate, or
- (b) the order on which the certificate was made in chambers and no direction has been given that the cause or matter be adjourned for further consideration in court, or
- (c) an order has been made directing that the cause or matter be adjourned for further consideration in chambers,

a summons for the further consideration of the cause or matter may be issued—

- (i) after the expiration of eight clear days, and before the expiration of fourteen days, from the filing of the Registrar's certificate, by the plaintiff or party having the conduct of the proceedings, or
- (ii) after the expiration of the said fourteen days, by any party.

(2) There shall be at least six days between the service of a summons under this rule and the day named therein for the further consideration of the cause or matter.

### **44/25 Further consideration of cause or matter in court**

25 (1) Where the Registrar's certificate has been filed in any cause or matter, in the Chancery jurisdiction then, if—

- (a) the judgment on which the certificate was made was given in court and the cause or matter is not such as is mentioned in rule 24(1)(a) and no

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direction has been given that it be adjourned for further consideration in chambers, or

- (b) an order has been made directing that the cause or matter be adjourned for further consideration in court,

the cause or matter may be set down by the Registrar in the cause book for further consideration—

- (i) after the expiration of eight clear days, and before the expiration of fourteen days, from the filing of the Registrar's certificate, on the written request of the plaintiff or party having the conduct of the proceedings, or
- (ii) after expiration of the said fourteen days, on the written request of any party,

upon the production, in either case, of the judgment adjourning the cause or matter for further consideration, or a certified copy thereof, and a certified copy of the Registrar's certificate or a memorandum of the date of filing of the certificate, indorsed on request by the Registrar on the judgment or certified copy thereof.

When a cause or matter is so set down, a copy of the writ or other originating process by which the cause or matter was begun, a copy of the pleadings (if any) and two copies of minutes of the judgment sought must be left with the Registrar.

(2) A cause or matter so set down shall not be put into the list for further consideration until after the expiration of ten days from the day on which it was so set down, and notice of the setting down as the day before which the cause or matter is not to be put in the list for further consideration must be given to the other parties to the cause or matter at least six days before that day.

### **ORDER 45**

#### **ENFORCEMENT OF JUDGMENTS AND ORDERS:**

##### **GENERAL**

#### **45/1 Enforcement of judgment, etc. for payment of money**

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 *feri facias*;
- (b) garnishee proceedings;
- (d) the appointment of a receiver;
- (e) in a case in which rule 5 applies, an order for committal;
- (f) in such a case, writ of sequestration.

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(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 Debtors Act 1973 [*title 8 item 47*] to commit to prison a person who makes a default in paying money adjudged or ordered to be paid by him, or to the enactments relating to bankruptcy or the winding up of companies.

(4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

(5) In any writ or order issued or made to enforce a judgment or order for the payment of money, the amount to be recovered may be stated in Bermudian currency or in such other currency as the Court may order.

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### **45/3 Enforcement of judgment for possession of land**

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 except where the judgment or order was given or made in a mortgage action to which Order 88 applies.

(3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the 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.

### **45/4 Enforcement of judgment for delivery of goods**

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

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made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say—

- (a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this rule referred to as a “writ of specific delivery”);
- (b) in a case in which rule 5 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) Subject to the provisions of these rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say—

- (a) writ of delivery to recover the goods or their assessed value;
- (b) with the leave of the Court, a writ of specific delivery;
- (c) in a case in which rule 5 applies, a writ of sequestration.

(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.

### **45/5 Enforcement of judgment to do or abstain from doing any act**

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 Act 1973 [*title 8 item 47*], an order of committal against that person or, where that person is a body corporate, against any such officer.

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(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to the order made under rule 6.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

### **45/6 Judgment, etc. requiring act to be done: order fixing time for doing it**

6 (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, rule 5, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, notwithstanding Order 42, rule 2(1), or by reason of Order 42, rule 2(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this rule must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the person required to do the act in question.

### **45/7 Service of a copy of judgment, etc. prerequisite to enforcement under rule 5**

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 a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5(1)(ii) or (iii) unless—

- (a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought, and

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- (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.
- (4) There must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served—
- (a) in the case of service under paragraph (2), that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the Order, he is liable to process of execution to compel him to obey it, and
  - (b) in the case of service under paragraph (3), that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he is liable to process of execution to compel the body to obey it.
- (5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3, rule 5, extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 5(3) or 6 of this Order, a copy of the previous order requiring the act to be done.
- (6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either—
- (a) by being present when the order was made, or
  - (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.
- (7) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

### **45/8 Court may order act to be done at expense of disobedient party**

8 If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to any other power it may have including its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

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### **45/9 Execution by or against person not being a party**

9 (1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

### **45/10 Conditional judgment: waiver**

10 A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

### **45/11 Matters occurring after judgment: stay of execution, etc.**

11 Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

### **45/12 Forms of writs**

12 (1) A writ of *feri facias* 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 in Appendix A, whichever is appropriate.

(4) A writ of sequestration must be in Form No. 67 in Appendix A.

### **45/13 Enforcement of judgments and orders for recovery of money, etc.**

13 (1) Rule 1(1) of this Order, with the omission of subparagraphs (e) and (f) thereof, and Orders 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.

(2) Rule 3 of this Order with the omission of paragraph (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 paragraphs (1)(b) and (c) and (2)(c) thereof, and Order 47 rule 3(2), shall apply in relation to a judgment or order that a person do have a return of any goods and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a

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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.

### **ORDER 46**

#### **WRITS OF EXECUTION: GENERAL**

##### **46/1 Definition**

1 In this Order unless the context otherwise requires, “writ of execution” includes a writ of *feri facias*, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

##### **46/2 When leave to issue any writ of execution is necessary**

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 fulfilment of any condition which it is alleged has been fulfilled;
- (e) where any goods or land sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Paragraph(1) is without prejudice to any enactment or rule by virtue of which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.

(3) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within 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.

##### **46/3 Leave required for issue of writ in aid of other writ**

3 A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

##### **46/4 Application for leave to issue writ**

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.

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- (2) Such an application must be supported by an affidavit—
- (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;
  - (b) stating, where the case falls within rule 2(1)(a), the reasons for the delay in enforcing the judgment or order;
  - (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.

### **46/5 Application for leave to issue writ of sequestration**

5 (1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration must be made to a judge by motion.

(2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.

(3) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of the notice of motion under this rule if it thinks it just to do so.

(4) The judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 6, but except in such a case, the application shall be heard in open court.

### **46/6 Issue of writ of execution**

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.

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(4) No such writ shall be sealed unless at the time of the tender thereof for sealing—

- (a) the person tendering it produces—
  - (i) the judgment or order on which the writ is to issue, or an office copy thereof,
  - (ii) where the writ may not issue without the leave of the Court, the order granting such leave or evidence of the granting of it; and
- (b) the Registrar is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

(5) Every writ of execution shall bear the date of the day on which it is issued.

### **46/7 Sale of property in execution of judgment**

7 (1) The following property is liable to attachment and sale in execution of a judgment, namely, land, houses, goods, money, bank notes, cheques, bills of exchange, promissory notes, government securities, bonds, or other securities for money, debts, shares in the capital or joint stock of any company and all other property whatsoever, whether movable or immovable belonging to the judgment debtor, and whether the same is held in his own name or by another person in trust for him or on his behalf.

(2) Every sale in execution of a judgment shall be made under the direction of the Registrar and shall be conducted according to such orders, if any, as the Court may make on the application of any party concerned and shall be made by public auction:

Provided that the Court may in any case authorise the sale to be made in such other manner as it may deem advisable.

(3) Where any goods in the possession of an execution debtor at the time of seizure by the Provost Marshal General or other officer charged with the enforcement of a writ, warrant or other process of execution are sold by such Provost Marshal General or other officer without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to the goods so sold and no person shall be entitled to recover against the Provost Marshal General or other officer, or anyone lawfully acting under the authority of either of them, except as provided by section 66 of the Bankruptcy Act 1876 [*title 8 item 49*], for any sale of such goods or for paying over the proceeds thereof prior to the receipt of a claim to the said goods, unless it is proved that the person from whom recovery is sought had notice or might by making reasonable inquiry have ascertained that the goods were not the property of the execution debtor:

Provided that nothing in this rule contained shall affect the right of any claimant who may prove that at the time of sale he had a title to any goods so seized and sold to any remedy to which he may be entitled against any person other than such Provost Marshal General or other officer or purchaser as aforesaid.

(4) At any time within ten days from the date of sale of any immovable property in execution of a judgment, application may be made to the Court to set aside the sale on

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the ground of any material irregularity in the conduct of the sale, but no such sale shall be set aside on the ground of such irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

- (5) (a) If no such application is made the sale shall be deemed absolute.
- (b) If such application is made and the objection is disallowed, the Court shall make an order confirming the sale.
- (c) If such application is made and the objection is allowed, the Court shall make an order setting aside the sale for irregularity.

(6) Whenever a sale of immovable property is set aside for irregularity the purchaser shall be entitled to receive back any money deposited or paid by him on account of such sale, with or without interest, to be paid by such parties and in such manner as it may appear to the Court proper to direct.

- (7) (a) After a sale of immovable property has become absolute in manner aforesaid the Court shall grant a certificate to the person who has been declared the purchaser at such sale to the effect that he has purchased the right, title and interest of the judgment debtor in the property sold.
- (b) Such certificate shall be liable to the same stamp duty as an assignment of the same property and, when duly stamped as aforesaid, shall be taken and deemed to be a valid transfer of such right, title and interest.
- (8) (a) Where the property sold consists of immovable property in the occupancy of the judgment debtor, or of some person on his behalf, or of some person claiming under a title created by the judgment debtor subsequently to the attachment of the property, the Court shall, on the application of the purchaser, order delivery of the property to be made by putting the party to whom the property has been sold, or any person whom he may appoint to receive delivery on his behalf, in possession thereof and, if necessary, by removing any person who may refuse to vacate the same.
- (b) Where the property sold consists of immovable property in the occupancy of any other person entitled to occupy the same the Court may, subject to the Rent Increases (Domestic Premises) Control Act 1978 [*title 29 item 3*], on the application of the purchaser, order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property or at the court house.
- (9) (a) If the purchaser of any immovable property sold in execution of a judgment is, notwithstanding the order of the Court, resisted or obstructed in obtaining possession of the property, the provisions of this Order relating to resistance or obstruction to the execution of the judgment for immovable property shall be applicable in the case of such resistance or obstruction.

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- (b) If it appears that the resistance or obstruction to the delivery of possession was occasioned by any person other than the judgment debtor claiming a right to the possession of the property sold as proprietor, mortgagee, lessee, or under any other title, or if in the delivery of possession to the purchaser any such person claiming as aforesaid is dispossessed, the Court, on the complaint of the purchaser or of such person claiming as aforesaid, if made within one month from the date of such resistance or obstruction or of such dispossession, as the case may be, shall inquire into the matter of the complaint and make such order as may be proper in the circumstances of the case.
  - (c) The person against whom any such order is made shall be at liberty to bring an action to establish his right at any time within three months from the date of the order.
- (10) (a) Where the property sold consists of movable property in the possession of the judgment debtor, or to the immediate possession of which the judgment debtor is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.
- (b) Where the property sold consists of movable property to which the judgment debtor is entitled subject to a lien or right of any person to the immediate possession thereof, the delivery to the purchaser shall as far as practicable be made by the Provost Marshal General giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.
- (11) Where the property sold consists of debts, not being negotiable instruments, or of shares in any company, the Court shall, on the application of the purchaser, make an order prohibiting the judgment debtor from receiving the debts and his debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the shares are standing from making any transfer of the shares to any person except the purchaser, or receiving payment of any dividends thereon, and the manager, secretary or other proper officer of the company from permitting any such transfer or making any such payment to any person except the purchaser.
- (12) Where the property sold consists of a negotiable instrument of which actual seizure has been made the same shall be delivered to the purchaser.
- (13) (a) If the execution of a transfer by any person in whose name any share in a company is standing, or the indorsement by any person of any negotiable instrument, or the execution by any person of any deed or other instrument relating to immovable property or any interest therein, is lawfully required to give effect to any sale in execution of a judgment, the Registrar, with the sanction of the Court, may—
- (i) execute such transfer; or
  - (ii) endorse such negotiable instrument; or
  - (iii) execute such deed or other instrument.

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- (b) The execution of such transfer, the endorsement of such negotiable instrument and the execution of such deed or other instrument by the Registrar shall have the same effect as the execution and the endorsement by the person whose execution or endorsement is so required as aforesaid.
- (c) Until the execution of such transfer or endorsement of such negotiable instrument the Court may, by order, appoint some person to receive any dividend or interest due in respect of any such share or negotiable instrument.

### **46/8 Duration and renewal of writ of execution**

8 (1) For the purpose of execution, a writ of execution is valid in the first instance for twelve 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 twelve months at any time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire.

(3) Before a writ the validity of which has been extended under this rule is executed 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 Provost Marshal General to whom the writ is directed informing him of the making of the order and the date thereof.

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the Provost Marshal General.

(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 this rule.

### **46/9 Return to writ of execution**

9 (1) Any party at whose instance a writ of execution was issued may serve a notice on the Provost Marshal General to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.

(2) If the Provost Marshal General 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 Provost Marshal General to comply with the notice.

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**ORDER 47**

**WRITS OF FIERI FACIAS**

**POWER TO STAY WRIT OF FIERI FACIAS**

**47/1 Power to stay execution by writs of *feri facias***

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 in-expedient 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 *feri facias* either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this rule, if not made at the time the judgment is given or order made, must be made by summons and may be so made notwithstanding that the party liable to execution did not enter an appearance in the action.

(3) An application made by summons must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicants' inability to pay, disclosing his income, the nature and value of any property, whether real or personal, of his and the amount of any other liabilities of his.

(4) The summons and a copy of the supporting affidavit must, not less than four clear days before the return day, be served on the party entitled to enforce the judgment or order.

(5) An order staying execution under this rule may be varied or revoked by a subsequent order.

47/2

[blank]

**47/3 Separate writs to enforce payment of costs, etc.**

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 *feri facias* 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.

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(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 *feri facias* to enforce payment of any damages or costs awarded to him by that judgment or order.

### **ORDER 48**

#### **EXAMINATION OF JUDGMENT DEBTOR, ETC.**

##### **48/1 Order for examination of judgment debtor**

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 and be orally examined on the question—

- (a) whether any and, if so, what debts are owing to the judgment debtor, and
- (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment 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.

##### **48/2 Examination of party liable to satisfy other judgment**

2 Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

##### **48/3 Registrar to make record of debtor’s statement**

3 The Registrar shall take down, or cause to be taken down, in writing the statement made by the judgment debtor or other person at the examination, read it to him and ask him to sign it, and if he refuses the Registrar shall sign the statement.

### **ORDER 49**

#### **GARNISHEE PROCEEDINGS**

##### **49/1 Attachment of debt due to judgment debtor**

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

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referred to as “the judgment debtor”) of money not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as “the garnishee”) is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An order under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

### **49/2 Application for order**

2 An application for an order under rule 1 must be made *ex parte* supported by an affidavit—

- (a) identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application, and
- (b) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent’s information or the grounds for his belief.

### **49/3 Service and effect of order to show cause**

3 (1) An order under rule 1 to show cause must, at least seven days before the time appointed thereby for the further consideration of the matter, be served—

- (a) on the garnishee personally, and
- (b) unless the Court otherwise directs, on the judgment debtor.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

### **49/4 No appearance or dispute of liability by garnishee**

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, subject to rule 7, make an order absolute under rule 1 against the garnishee.

(2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

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### **49/5 Dispute of liability by garnishee**

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 orders trial before the Registrar, the need for any consent by the parties.

### **49/6 Claims of third persons**

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 hearing any person who attends before the Court in compliance with an order under paragraph (1), the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

49/7

*[blank]*

### **49/8 Discharge of garnishee**

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.

### **49/9 Money in court**

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.

(3) Unless the Court otherwise directs, the summons must be served on the judgment debtor at least seven days before the day named therein for the hearing of it.

(4) Subject to Order 75, rule 24, the Court hearing an application under this rule may make such order with respect to the money in court as it thinks just.

### **49/10 Costs**

10 The costs of any application for an order under rule 1 or 9, and of any proceedings arising therefrom or incidental thereto, shall, unless the Court otherwise

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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**

##### **51/1 Appointment of receiver by way of equitable execution**

1 (1) Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

51/2

[blank]

##### **51/3 Application of rules as to appointment of receiver, etc.**

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**

##### **52/1 Committal for contempt of court**

1 (1) The power of the Court to punish for contempt of court may be exercised by an order of committal.

52/2 to

52/3 [blank]

##### **52/4 Application to Court**

4 (1) An application to the Court 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.

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(3) Without prejudice to its power under Order 65, rule 4, the Court may dispense with the service of the notice of motion under this rule if it thinks it just so to do.

### **52/5 Saving for power to commit without application for purpose**

5 Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of court.

### **52/6 Provisions as to hearing**

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 within the meaning of the Mental Health Act 1968 [*title 11 item 36*];
- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private;

but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state—

- (a) the name of that person,
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made, and
- (c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the 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.

## **RULES OF THE SUPREME COURT 1985**

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### **52/7 Power to suspend execution of committal order**

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.

### **52/8 Discharge of person committed**

8 (1) The Court may on the application of any person committed to prison for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver anything to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

### **52/9 Saving for other powers**

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 Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

## **ORDER 53**

### **APPLICATIONS FOR JUDICIAL REVIEW**

#### **53/1 Cases appropriate for application for judicial review**

1 (1) An application for an order of mandamus, prohibition or certiorari, 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 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,

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- (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.

### **53/2 Joinder of claims for relief**

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.

### **53/3 Grant of leave to apply for judicial review**

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 attorney (if any) and
  - (iv) the applicant's address for service; 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.

(4) Where the application for leave is refused by the Judge, or is granted on terms, the applicant may renew it by applying to a Judge sitting in open Court:

Provided that no application for leave may be renewed in any non-criminal cause or matter in which the Judge has refused leave under paragraph (3) after a hearing.

(5) In order to renew his application for leave the applicant must, within ten days of being served with notice of the Judge's refusal, lodge in the Registry notice of his intention in Form No. 86B.

(6) Without prejudice to its powers under Order 20, rule 8 the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.

(7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

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(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 proceeding 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.

### **53/4 Delay in applying for relief**

4 (1) An application for leave to apply for judicial review shall be made promptly and in any event within six 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.

### **53/5 Mode of applying for judicial review**

5 (1) In any criminal cause or matter, where leave has been granted to make an application for judicial review, the application shall be made by originating motion to a Judge sitting in open Court.

(2) In any other such cause or matter, 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 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 Judge is to be made, on the Judge.

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(4) Unless the Court granting leave has otherwise directed, there must be at least ten days between the service of the motion or summons and the hearing.

(5) A motion must be entered for hearing within fourteen 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 hearing and, if any person who ought to be served under this rule has not been served the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion 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.

### **53/6 Statements and affidavits**

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 and 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 fifty-six days after service upon him of the documents required to be served by paragraph (1).

(5) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.

### **53/7 Claim for damages**

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

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(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.

### **53/8 Application for discovery, interrogatories, cross-examination, etc.**

8 (1) Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to a judge or the Registrar.

In this paragraph "interlocutory application" includes an application for an order under Order 24 or 26 or Order 38, rule 2 (3) or for an order dismissing the proceedings by consent of the parties.

(2) In relation to an order made by the Registrar pursuant to paragraph (1), Order 58, rule 1, shall, where the application for judicial review is to be heard by a Judge in Court, have effect as if a reference to a Judge in Court were substituted for the reference to a Judge in Chambers.

(3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

### **53/9 Hearing of application for judicial review**

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 it referred to in paragraph (2) the order shall, subject to paragraph (4) direct that the proceedings shall be quashed forthwith on their removal into the Court.

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application,

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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.

### **53/10 Saving for person acting in obedience to mandamus**

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.

53/11

and *[blank]*

53/12

### **53/13 Appeal from Judge's order**

13 No appeal shall lie from an order made under paragraph (3) of rule 3 on an application for leave which may be renewed under paragraph (4) of that rule.

### **53/14 Meaning of "Court"**

14 In relation to the hearing by a Judge for an application for leave under rule 3 or of an application for judicial review, any reference in this Order to "the Court" shall, unless the context otherwise requires, be construed as a reference to the Judge.

*[Order 53 inserted by BR55/2005 effective 1 January 2006]*

## **ORDER 54**

### **APPLICATIONS FOR WRIT OF HABEAS CORPUS**

#### **54/1 Application for writ of habeas corpus ad subjiciendum**

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.

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### **54/2 Power of Court to whom ex parte application made**

2 (1) The Court or judge to whom an application under rule 1 is made ex parte may make an order forthwith for the writ to issue, or may—

- (a) where the application is made to a judge otherwise than in court, direct that an originating summons for the writ be issued, or that an application therefore be made to a judge in court;
- (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given;
- (c) [blank].

(2) The summons or notice of the motion must be served on the person against whom the issue of the writ is sought and on such other persons as the Court or judge may direct, and, unless the Court or judge otherwise directs, there must be at least eight clear days between the service of the summons or notice and the date named therein for the hearing of the application.

### **54/3 Copies of affidavits to be supplied**

3 Every party to an application under rule 1 must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing of the application.

### **54/4 Power to order release of person restrained**

4 (1) Without prejudice to rule 2(1), the Court or judge hearing an application for a writ of habeas corpus ad subjiciendum may in its or his discretion order that the person restrained be released, and such order shall be a sufficient warrant to the Commissioner of Prisons, any police officer or other person for the release of the person under restraint.

(2) Where such an application in a criminal cause or matter is heard by a judge and the judge does not order the release of the person restrained, he shall direct that the application be made by originating motion to a judge in Court.

### **54/5 Directions as to return to writ**

5 Where a writ of habeas corpus ad subjiciendum is ordered to issue, the Court or judge by whom the order is made shall give directions as to the Court or judge before whom, and the date on which, the writ is returnable.

### **54/6 Service of writ and notice**

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 Commissioner of Prisons 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.

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(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 or judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

### **54/7 Return to the writ**

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 therefore, by leave of the Court or judge before whom the writ is returnable.

### **54/8 Procedure at hearing of writ**

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 then one counsel for the person restrained in reply.

### **54/9 Bringing up prisoner to give evidence, etc.**

9 (1) [blank]

(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.

### **54/10 Form of writ**

10 A writ of habeas corpus must be in Form No. 89, 91 or 92 in Appendix A, whichever is appropriate.

*[Order 54 inserted by BR55/2005 effective 1 January 2006]*

## **ORDER 55**

### **APPEALS TO SUPREME COURT FROM COURT, TRIBUNAL OR PERSON: GENERAL**

#### **55/1 Application**

1 (1) Subject to paragraphs (2) and (3), 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—

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- (a) an appeal by case stated;
- (b) an appeal under the Civil Appeals Act 1971 [*title 8 item 85*];
- (c) an appeal under the Criminal Appeal Act 1952 [*title 8 item 87*].

(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 courts of law.

55/2

[*blank*]

### **55/3 Bringing of appeal**

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 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 on the judgment, determination or other decision against which the appeal is brought unless the Court, or a Judge or the court, tribunal or person by which or by whom the decision was given so orders.

### **55/4 Service of notice of motion and entry of appeal**

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 responsible officer 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 other person, the chairman of the tribunal, Minister, government board 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 twenty-eight 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.

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(4) In the case of an appeal against an order, determination, award or other decision of a tribunal, Minister, government board or other person, the period specified in paragraph (2) shall be calculated from the date on which notice of the decision was given to the appellant by the person who made the decision or by a person authorized in that behalf to do so.

### **55/5 Date of hearing of appeal**

5 Unless the Court or a judge otherwise directs, an appeal to which this Order applies shall not be heard sooner than twenty-one days after service of notice of the motion by which the appeal is brought.

### **55/6 Amendment of grounds of appeal etc.**

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 Registry.

(3) Except with the leave of the Court or a judge, no grounds other than those stated in the notice of the motion by which the appeal is brought or any supplementary notice under paragraph (1) may be relied upon by the appellant at the hearing; but the Court or a judge may amend the grounds so stated or make any other order, on such terms as it or he 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 or a judge under Order 20.

### **55/7 Powers of Court hearing appeal**

7 (1) In addition to the power conferred by rule 6(3), the Court when hearing an appeal to which this Order applies shall have the powers conferred by the following provisions of this rule.

(2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in court, by affidavit, by deposition taken before an examiner or in some other manner.

(3) The Court shall have power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose.

(4) It shall be the duty of the appellant to apply to the magistrate 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 note, or, if such note is incomplete, in addition to such note, the Court may hear and determine the appeal on any other

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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.

### **55/8 Right of Minister, etc. to appear and be heard**

8 Where an appeal to which this Order applies is against an order, determination or other decision of a Minister, or government board, the Minister or board, as the case may be, shall be entitled to appear and be heard in the proceedings on the appeal.

## **ORDER 58**

### **APPEALS FROM THE REGISTRAR**

#### **58/1 Appeals from certain decisions of the Registrar, etc. to judge in chambers**

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 party 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.

58/2 to

58/7 [blank]

#### **58/8 Appeal from judgment, etc. of judge in interpleader proceedings**

8 (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

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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**

**[blank]**

### **ORDER 60**

**[blank]**

### **ORDER 61**

**[blank]**

### **ORDER 62**

#### **COSTS**

*Part 1:*

*Preliminary*

#### **62/1 Interpretation**

1 (1) Except where it is otherwise expressly provided, or the context otherwise requires, the following provisions of this rule shall apply for the interpretation of this Order.

(2) In this Order “Certificate” includes allocatur—

“contentious business” means business done by an attorney in or for the purpose of proceedings begun before the Court or before an arbitrator appointed under the Arbitration Act 1986, not being non-contentious common form probate business;

“non-contentious business” means any business done by an attorney which is not contentious business;

“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 10(2);

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“patient” means a person who, by reason of mental disorder within the meaning of Part IV of the Mental Health Act 1968, is incapable of managing and administering his property and affairs;

“the standard basis” and “the indemnity basis” have the meaning assigned to them by rule 12(1) and (2) respectively;

“taxed costs” means costs 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 estate 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 estate 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 costs shall be construed as including references to fees, charges, disbursements, expenses and remuneration and, in relation to proceedings (including taxation proceedings), also include references to costs of or incidental to those proceedings.

### **62/2 Application**

2 (1) In addition to the civil proceedings to which this Order applies by virtue of Order 1, rule 2(1) and (2), this Order applies to any criminal proceedings in the Court in respect of which costs are awarded.

(2) This Order shall have effect, with such modifications as may be necessary, where by virtue of any Act the costs of any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Act, not being proceedings in the Court, are taxable in the Court.

(3) *[blank]*

(4) The costs of and incidental to proceedings in the Supreme Court (including any criminal proceedings to which this Order applies) shall be in the discretion of the Court, and that discretion shall be exercised subject to and in accordance with this Order.

### *Part II:*

#### *Entitlement to Costs*

### **62/3 General principles**

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.

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(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 costs of one party to proceedings be paid by another party to those proceedings, or
- (b) an order is made for the payment of costs 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 proceedings under the Matrimonial Causes Act 1974.

(6) Subject to rule 8, a term mentioned in the first column of the table below, when used in an order for costs, shall have the effect indicated in the second column of that table.

<i>Term</i>	<i>Effect</i>
“Costs”	(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 (b) where this order is made at the conclusion of a cause or matter, the party in whose favour it is made shall be entitled to have his costs taxed forthwith;
“Costs reserved”	(Except in proceedings under the Matrimonial Causes Act 1974) the party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which this order is made unless the Court orders otherwise;
“Costs in any event”	This order has the same effect as an order for “costs” made in interlocutory proceedings;

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“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;
“Costs in the cause” or “costs in application”	The party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which such an order is made;
“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 to 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.

### **62/4 Cases where no order for costs is to be made**

4 (1) [blank]

(2) No order shall be made for costs to be paid by or to any person (other than the Parliamentary Registrar) who is respondent to an appeal to the Court from a decision of the Parliamentary Registrar under section 23 of the Parliamentary Elections Act 1978, unless that person appears in support of the decision of the Parliamentary Registrar.

(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.

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### **62/5 Cases where order for costs deemed to have been made**

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, for the purposes of section 9 of the Interest and Credit Charges (Regulation) Act 1975, 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 proceedings 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 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.

### **62/6 Cases where costs do not follow the event**

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, estate 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 estate representative, has in substance acted for his own benefit rather than for the benefit of the fund.

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(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 the 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 costs of action (if allowed) to costs incurred in establishing his claim; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

(5) The costs of any amendment made without leave in the writ or any pleadings shall be borne by the party making the amendment.

(6) The costs of any application to extend the time fixed by these rules or by any direction or order thereunder shall be borne by the party making the application.

(7) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within fourteen 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.

### **62/7 Special circumstances in which costs shall not or may not be taxed**

7 (1) The provisions of this rule shall apply in the circumstances mentioned in this rule.

(2) Costs which by or under any direction of the Court are to be paid to a receiver appointed by the Court under section 19(c) of the Act, 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.

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(4) In awarding costs to any person the Court may order that, instead of his taxed costs, that person shall be entitled to a proportion (specified in the order) of those costs from or up to a stage of the proceedings so specified.

(5) Where the court orders a party to pay costs to another party (other than fixed costs) it may make a summary assessment of the costs, unless any rule, practice direction or other enactment provides otherwise.

(6) Where the court makes a summary assessment under paragraph (4), the costs so assessed shall be payable forthwith, unless the court orders otherwise.

(7) Where a claimant is entitled to costs under rule 6(3) the amount of the costs 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.

(8) Subject to paragraph (7), 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.

(9) No order may be made under paragraph (6) in a case where the person against whom the order is made is an assisted person within the meaning of the statutory provisions relating to legal aid.

### **62/8 Stage of proceedings at which costs to be taxed**

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, except in a case to which paragraph (3) applies, order accordingly.

(3) No order may be made under paragraph (2) in a case where the person against whom the order for costs is made is an assisted person within the meaning of the statutory provisions relating to legal aid.

(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) may direct that the costs be taxed by the Registrar.

(7) and (8) *[blank]*

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(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.

### **62/9 Matters to be taken into account in exercising discretion**

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, provided that the Court shall not take such an offer into account if, at the time it is made, the party making it could have protected his position as to costs by means of a payment into court under Order 22.

### **62/10 Misconduct or neglect in the conduct of any proceedings**

10 (1) Where it appears to the Court in any proceedings that any thing 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).

### **62/11 Personal liability of attorney for costs**

11 (1) Subject to the following provisions of this rule, where it appears to the Court that costs have been incurred unreasonably or improperly in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, the Court may—

- (a) order—
    - (i) the attorney whom it considers to be responsible (whether personally or through a servant or agent) to repay to his client costs which the client has been ordered to pay to any other party to the proceedings;  
or
    - (ii) the attorney personally to indemnify such other parties against costs payable by them; and
    - (iii) the costs as between the attorney and his client to be disallowed;
- or

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- (b) direct the Registrar to inquire into the matter and report to the Court, and upon receiving such a report the Court may make such order under sub-paragraph (a) as it thinks fit.
- (2) When conducting an inquiry pursuant to a direction under paragraph (1)(b) the Registrar shall have all the powers and duties of the Court under paragraphs (4), (5), (6) and (8) of this rule.
- (3) Instead of proceeding under paragraph (1) of this rule the Court may refer the matter to the Registrar, in which case the Registrar shall deal with the matter under paragraphs (2) and (3) of rule 28.
- (4) Subject to paragraph (5), before an order may be made under paragraph (1)(a) of this rule the Court shall give the attorney a reasonable opportunity to appear and show cause why an order should not be made.
- (5) Without prejudice to Order 32, rule 5 (3), the Court shall not be obliged to give the attorney a reasonable opportunity to appear and show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the attorney—
- (a) fails to attend in person or by a proper representative;
  - (b) fails to deliver any document for the use of the Court, which ought to have been delivered or to be prepared with any proper evidence or account, or
  - (c) otherwise fails to proceed.
- (6) The Court may direct the Solicitor General to attend and take part in any proceedings or inquiry under this rule and the Court shall make such order as to the payment of the Solicitor General's costs as it thinks fit.
- (7) If in any proceedings a party who is represented by an attorney fails to pay the fees or any part of the fees prescribed by the orders as to Court fees the Court may order the attorney personally to pay that amount in the manner so prescribed.
- (8) The Court may direct that notice of any proceedings or order against an attorney under this rule be given to his client in such a manner as may be specified in the direction.

### *Part III:*

#### *Taxation and Assessment of Costs*

##### **62/12 Basis of taxation**

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.

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(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.

62/13

*[blank]*

### **62/14 Costs payable to a trustee or estate representative out of any fund**

14 (1) This rule applies to every taxation of a trustee’s or estate representative’s costs where—

- (a) he is or has been a party to any proceedings in that capacity, and
- (b) he is entitled to be paid his costs out of any fund 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 estate representative as such.

62/15

*[blank]*

### **62/16 Costs payable to an attorney where money claimed by or on behalf of a minor or a patient**

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 on the indemnity basis but shall be presumed—

- (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client, and
- (b) to have been reasonable in amount if their amount was expressly or impliedly approved by the client, and
- (c) to have been unreasonably incurred if in the circumstances of the case they are of an unusual nature unless the attorney satisfies the Registrar

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that prior to their being incurred he informed his client that they might not be allowed on a taxation of costs inter partes.

(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 this rule shall prejudice an attorney's lien for costs.

(6) The foregoing provisions of this rule shall apply in relation to—

- (a) a counterclaim by or on behalf of a person who is a minor or a patient, and
- (b) a claim made by or on behalf of a person who is a minor or a patient in an action by any other person for relief under section 504 of the Merchant Shipping Act 1894,

as if for references to a plaintiff there were substituted references to a defendant.

### **62/17 Provisions for ascertaining costs on a taxation**

17 (1) Subject to the following provisions of this rule, the provisions contained in Part II 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 Part III to this Order applies in accordance with the provisions of that Part unless the Court otherwise orders.

(4) This rule and the provisions contained in Part II to this Order shall not apply to the extent that regulations made under the Legal Aid Act 1980 determine the amount of costs payable to legal representatives in relation to proceedings to which this Order applies.

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### **62/18 Litigants in person**

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 \$50.00 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 Part III to, this Order shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising attorney.

(7) This rule shall apply, with the necessary modifications, to the summary assessment of costs by the court under paragraph 4A of rule 7.

### *Part IV:*

#### *Powers of Registrar*

### **62/19 Who may tax costs**

19 The Registrar shall have power to tax—

- (a) the cost 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 Act or payable pursuant to an arbitration agreement, and
- (c) any other costs the taxation of which is ordered by the Court.

### **62/20 Supplementary powers of Registrar**

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;

## **RULES OF THE SUPREME COURT 1985**

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- (c) examine any witness in those proceedings; and
- (d) order the production of any document which may be relevant in connection with those proceedings.

### **62/21 Extensions of time**

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 any thing 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 any thing in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) The Registrar may extend any such period as is referred to in paragraph (1) of this rule although the application for extension is not made until after the expiration of that period.

### **62/22 Certificates**

22 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 which is not in dispute;
- (c) may amend or cancel an interim certificate issued by him;
- (d) may correct any clerical mistake in any certificate issued by him or any error arising therein from any accidental slip or omission,
- (e) may set aside a certificate issued by him in order to enable him to extend the period provided by rule 33(2), and

### **62/23 Power of Registrar where party liable to be paid and to pay costs**

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.

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### **62/24 Taxation of bill of costs comprised in an account**

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.

### **62/25 Registrar to fix certain fees payable to conveyancing counsel**

25 (1) When the Court refers any matter to the conveyancing counsel of the Court 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 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.

### **62/26 Powers of Registrar on taxation of costs out of a fund**

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 on 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 to 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 the Registrar for taxation;
- (b) *[blank]*
- (c) the time appointed by the Registrar at which the taxation will be continued, and
- (d) such other information, if any, as the Registrar may direct.

### **62/27 Powers of Registrar in relation to costs of taxation proceedings**

27 (1) Subject to the provisions of any Act and this 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 any 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.

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(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 fourteen 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) No offer to pay a specific sum in satisfaction of costs may be made in a case where the person entitled to recover his costs is an assisted person within the meaning of the statutory provisions relating to legal aid.

(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.

### **62/28 Powers of Registrar in relation to misconduct, neglect, etc.**

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) Where, whether or not on a reference by the Court under rule 11(3), it appears to the Registrar that costs have been wasted in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, he may, subject to paragraph (3) of this rule, exercise the powers conferred on the Court by rule 11.

(3) In relation to the exercise by the Registrar of the powers of the Court under rule 11, paragraphs (4) to (6) and (8) of rule 11 shall apply as if for reference to the Court there were substituted references to the Registrar.

(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 section 9 of the Interest and Credit Charges (Regulations) Act 1975 because of the failure or delay), allow the party so entitled less than the amount he would

## **RULES OF THE SUPREME COURT 1985**

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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 this rule; and Order 58, rule 1 shall apply to such an appeal.

(6) In exercising his powers under this rule the Registrar shall have all the powers available to the Court in the exercise of its discretion under rules 10 and 11.

### *Part V:*

#### *Procedure on Taxation*

#### **62/29 Commencement of proceedings**

29 (1) 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 Court; or
- (b) rule 5(3), (4) or (5); or
- (c) an award made on an arbitration under any Act 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 Act,

he must begin proceedings for the taxation of those costs within six months of conclusion of the cause or matter in which the proceedings arise unless the Court when making an order for costs orders that costs ought to be taxed at an earlier stage under rule 8(2). In cases to which sub paragraph (b) applies he must begin proceedings for the taxation of those costs within six months after service of the notice given under order 21 rule 2 or order 22 rule 3. Where there is an appeal of any judgment, direction, order, award or of any other determination that concludes the cause or matter in which the proceedings arise, a party entitled to recover taxed Supreme Court costs must begin proceedings for the taxation of those costs within six months after the final determination of the appeal.

(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) A party entitled to require any costs to be taxed must begin proceedings for the taxation of those costs by lodging at the Registry—

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- (a) a statement containing the following particulars—
  - (i) the name of every party, and the capacity in which he is a party to the proceedings, his position on the record of the proceedings which gave rise to the taxation proceedings and, if any costs to which taxation proceedings relate are to be paid out of a fund, the nature of his interest in the fund; and
  - (ii) the address of any party to the proceedings who acknowledged service in person or who at the conclusion of the proceedings which gave rise to the taxation proceedings was acting in person and the name and address of the attorneys of any party who did not so enter an appearance or was not so acting in person.
- (b) unless the Registrar otherwise orders, a bill of costs—
  - (i) in which the professional charges and the disbursement are set out in separate columns and each column 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 contains a certificate, signed by that attorney or, if the costs are due to a firm, by a partner of that firm, that the costs claimed therein do not exceed the costs which the receiving party is required to pay him or his firm.

(6) Where a party is entitled to require taxation by the Registrar of the costs directed to be paid by an award made on arbitration under any Act or pursuant to an arbitration agreement and no order of the Court for the enforcement of the award has been made, the party so entitled must begin proceedings for the taxation of those costs by producing the award at the Registry.

(7) 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 Act, the party so entitled must begin proceedings for the taxation of those costs by producing at the Registry the order, award or other determination, as the case may be.

(8) Where a party has begun proceedings for taxation 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 supporting the bill of costs are to be sent to the Registrar.

(9) A party whose costs are to be taxed in any taxation proceedings must, within four days after beginning the proceedings or, as the case may be, receiving notice under paragraph (8), send a copy of his bill of costs to every other party entitled to be heard in the proceedings unless that party has not entered an appearance or taken any part in the proceedings which gave rise to the taxation proceedings.

(10) In this rule and in this Part of this Order—

“party entitled to be heard on the taxation” means—

## **RULES OF THE SUPREME COURT 1985**

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- (a) a person who has entered an appearance 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 has a financial interest in the outcome of the taxation, or
- (d) a person in respect of whom a direction has been given under rule 26.

### **62/30 Subsequent procedure**

30 (1) Subject to rule 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 fourteen days' notice of the day, time and place appointed for the taxation.

(2) 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 this 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.

62/31

[blank]

### **62/32 Short and urgent taxations**

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

## **RULES OF THE SUPREME COURT 1985**

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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 shall enter the proceedings for taxation in a list kept for the purposes of this rule 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 the taxation with a notice of the day and time appointed for taxation.

62/33

and 34 [blank]

### **62/34A Scales of costs**

34A Subject to the foregoing rules, the scale of costs contained in the Schedule to this Order, together with the notes and general provisions contained in that Schedule shall apply to scales of costs, fees payable and taxation of all costs incurred in relation to matters heard in the Supreme Court.

*[Rule 34A inserted by BR 10 / 2024 rule 2 effective 1 March 2024]*

### *Part VI:*

#### *Review of Taxation*

### **62/35 Review of Registrar's decision by a judge**

35 (1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by him in respect of any item, may apply to the judge for an order to review the taxation as to that item or part of an item.

(2) An application under this rule for review of the Registrar's decision may be made at any time within fourteen days after the Registrar's decision:

Provided that no application under this rule for review of a decision in respect of any item may be made until after the signing of the Registrar's certificate dealing finally with that item.

(3) An application under this rule shall be made by summons and shall specify the nature and grounds of the objection and the items or parts of items the allowance or disallowance of which or the amount allowed in respect of which is objected to and shall, except where the Judge thinks fit to adjourn into court, be heard in chambers.

**RULES OF THE SUPREME COURT 1985**

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(4) On the hearing of an application under this rule, the judge may receive further evidence and may exercise all such powers and discretion as are vested in the Registrar on an original taxation, including the power to award costs of and incidental to the proceedings before him.

(5) On an application under this rule the judge may make such order as the circumstances require, and in particular may order the Registrar's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the Registrar for taxation.

(6) An application under this rule for review of the Registrar's decision in respect of any item shall not prejudice the power of the Registrar under rule 22 to issue an interim certificate in respect of items his decision as to which is not objected to.

*[Order 62 substituted by BR55/2005 effective 1 January 2006]*

**SCHEDULE TO ORDER 62 (RULE 34A)**

**PART I**

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**PART I**

**FEES PAYABLE INTO THE REGISTRY  
OF THE SUPREME COURT (RULE 34A)**

\* "commercial action" has the meaning provided in Order 72.

		FEE FOR NON-COMMERCIAL ACTIONS	FEE FOR COMMERCIAL ACTIONS*
1	On filing and issuing a writ of summons:	\$100.00	\$500.00
2	On filing an originating summons or motion:	\$100.00	\$500.00
3	On filing a petition:	\$100.00	\$500.00
4	On filing and issuing a concurrent writ of summons:	\$50.00	\$300.00
5	On renewing writ of summons:	\$50.00	\$300.00
6	On filing or issuing amended writ of summons or an amended originating summons:	\$25.00	\$100.00

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7	On application for leave to serve process out of the jurisdiction:	\$100.00	\$300.00
8	Lodgment fee under Order 11, rule 7 in relation to the Carriage by Air Act 1961:	\$50.00	\$200.00
9	On entering an appearance or conditional appearance:	\$50.00	\$200.00
10	On entering judgment in default of appearance or defence:	\$50.00	\$200.00
11	On entering judgment in a claim in detinue in default of appearance:	\$50.00	\$200.00
12	On entering judgment in a claim for possession of land other than a mortgagee's action in default of appearance:	\$100.00	\$250.00
13	On filing written authorization in a relator action:	\$25.00	\$100.00
14	On filing third party notice:	\$50.00	\$200.00
15	On filing withdrawal of appearance:	\$25.00	\$200.00
16	On filing discontinuance or withdrawal:	\$50.00	\$200.00
17	On paying money into court—		
	(a) where the sum is less than \$5,000:	\$100.00	\$400.00
	(b) where the sum is \$5,000 or more but less than \$10,000:	\$175.00	\$750.00
	(c) where the sum is \$10,000 or more:	\$250.00	\$1,000.00
18	On a request for a certificate of—		
	(a) the amount and description of any land:	\$50.00	\$200.00

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	(b)	lodgment in court of any fund:	\$50.00	\$200.00
	(c)	non-lodgment in court of any land:	\$50.00	\$200.00
	(d)	any transaction for which no other fee is prescribed:	\$50.00	\$200.00
19		On a request for information in writing relating to—		
	(a)	an account which has been granted for upwards of six years; or		
	(b)	a fund which has not been dealt with for upwards of six years,		
		where the account or fund is identified in the request by reference to the relevant cause or matter.	\$50.00	\$200.00
20		On a request for information in writing where no account or fund is specified in the request:	\$50.00	\$200.00
21		On filing summons for directions by consent:	\$75.00	\$300.00
22		On filing summons for directions without consent:	\$100.00	\$400.00
23		On filing of a summons before a Judge:	\$100.00	\$400.00
24		On hearing of any summons for Chambers before a Judge (payable at the time the matter is requested to be listed):	\$150.00	\$1,000.00 per half-day
25		On filing of a summons by the Registrar:	\$70.00	\$300.00
26		On hearing of any summons before the Registrar:	\$70.00	\$300.00
27		Trial of any cause or matter (other than a divorce matter) before—		
	(a)	a judge alone:	\$400.00	\$1,000.00 per half-day

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	(b)	a judge with a jury:	\$800.00	—
	(c)	a judge with the assistance of assessors or such fee as the Judge may order:	\$600.00	\$1,500.00 per half-day
	(d)	the Registrar:	\$250.00	—
	(e)	a special referee with or without assessors:	\$350.00	\$900.00 per half-day
28		On issuing certificate of a Judge:	\$35.00	\$100.00
29		Assessment of damages by a Judge or the Registrar:	\$175.00	\$500.00 per half-day
30		On ascertaining pursuant to an order—		
	(a)	the estate or outstanding estates of any person; or		
	(b)	any property subject to a trust, mortgage or charge; or		
	(c)	any partnership assets:	\$125.00	\$500.00
31		On settling—		
	(a)	an arrangement approved by the Court for the variation of any trusts:	\$125.00	\$500.00
	(b)	a scheme for the management of a charity:	\$125.00	\$1,000.00
32		On taking a receiver's account:	\$125.00	\$500.00
33		On sealing a writ of subpoena:	\$25.00	\$200.00
34		On filing an affidavit or any other document in respect of which no specific filing fee is provided for in this Schedule:	\$25.00	\$50.00
35		On filing an exhibit:	\$15.00 for each exhibit	\$30.00 for each exhibit
36		On filing an order:	\$25.00	\$50.00

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37	On examination of a claim:	\$100.00	\$500.00
38	On issuing the Registrar's certificate:	\$25.00	\$200.00
39	On filing a writ of execution:	\$25.00	\$100.00
40	On filing a writ of sequestration:	\$25.00	\$100.00
41	On the Registrar or any authorized officer signing a document:	\$25.00	\$100.00
42	On examination of a debtor:	\$100.00	\$300.00
43	On hearing originating motion or summons in Chambers or in Court:	\$300.00	\$1,000.00 per half-day
44	On receiving documents, arranging service and issuing certificate under Order 69:	\$250.00	\$500.00
45	On receiving application under Order 70 for taking of evidence:	\$100.00	\$200.00
46	On dealing with deposition under Order 70, rule 5:	\$100.00 plus Registry expenses	\$200.00 plus Registry expenses
47	On hearing of a special case in respect of arbitration proceedings:	\$500.00	\$1,000.00

*Divorce*

		FEE FOR NON-COMMERCIAL ACTIONS	FEE FOR COMMERCIAL ACTIONS*
48	On application for hearing of a special procedure divorce (including order for directions and the hearing):	\$250.00	—
49	On application for hearing of an uncontested divorce (including order for directions and the hearing):	\$300.00	—
50	On listing ancillary relief application (including order for directions and the hearing):	\$300.00	—

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51	On application for hearing of a contested divorce (including order for directions and hearing):	\$500.00	—
52	On filing a divorce petition:	\$150.00	—
53	On filing an affidavit or any other document:	\$25.00	—

*Taxation of Costs*

		FEE FOR NON-COMMERCIAL ACTIONS	FEE FOR COMMERCIAL ACTIONS*
54	On filing a bill of costs:	\$50.00	\$200.00
55	On taxing a bill of costs where taxation is non-contentious:	\$100.00	\$400.00
56	On taxing a bill of costs where taxation is contentious:	\$200.00	\$800.00 per half-day
57	On review of a bill of costs by a Judge:	\$200.00	\$800.00 per half-day

*Fees in Admiralty Proceeding not elsewhere provided for in this Schedule*

*In the Registry*

		FEE FOR NON-COMMERCIAL ACTIONS	FEE FOR COMMERCIAL ACTIONS*
58	On issuing a warrant of arrest:	\$200.00	\$500.00
59	On issuing of instrument of release under Order 75, rule 13:  <i>Note of item: This item includes drawing the instrument and other documents required in connection with the issue of the instrument, obtaining any consent so required and any attendances required to procure the issue of the instrument and the filing of any such document.</i>	\$200.00	\$500.00
60	On filing and entering a caveat:	\$100.00	—
61	On filing bail bond:	\$100.00	\$400.00

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62	On filing preliminary action in collision actions:	\$100.00	\$400.00
63	On filing praecipe in respect of appraisalment and sale of property:	\$100.00	\$400.00
64	On taxing marshal's account under Order 75, rule 23(4):	\$200.00	\$500.00
65	On hearing of reference by the Registrar under Order 75, rule 42:	\$600.00	\$1,200.00

*In the Marshal's Office*

		FEE FOR NON-COMMERCIAL ACTIONS	FEE FOR COMMERCIAL ACTIONS*
66	On lodging with the marshal any instrument under Order 75, rule 5(1), 13(1) or 21(2):	\$200.00	\$500.00
67	On the appointment and swearing of appraiser: <i>[Note: This fee may be taken by transfer from money in Court]</i>	\$200.00	\$500.00
68	On the delivery of a ship or goods to a purchaser:	\$400.00	\$1,000.00
69	On the sale of a ship or goods: <i>[Those fees are paid by transfer from the proceeds in court to the account of fees on proceedings.]</i>	1.5% of the price thereof	2.5% of the price thereof
70	For attending the discharge of a cargo or the removal of a ship or goods for each day of attendance:	\$1,000.00	\$2,000.00

*Fees payable in the Court in the exercise of the Court's Appellate jurisdiction*

		FEE FOR NON-COMMERCIAL ACTIONS	FEE FOR COMMERCIAL ACTIONS*
71	On filing a notice of appeal (including hearing fee):	\$100.00	—
72	On filing notice of abandonment:	\$50.00	—

*Fees payable in non-contentious probate matters*

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		FEE FOR NON-COMMERCIAL ACTIONS	FEE FOR COMMERCIAL ACTIONS*
73	On sealing or resealing a grant of probate or letters of administration, with or without the will annexed (including recording of will or letters of administration) if the gross value of the estate—		
	(a) does not exceed \$25,000:	\$35.00	—
	(b) exceeds \$25,000 but does not exceed \$50,000:	\$75.00	—
	(c) exceeds \$50,000 but does not exceed \$200,000:	\$150.00	—
	(d) exceeds \$200,000:	\$350.00	—
74	Stamp Duty is payable on the net value of the estate on a sliding scale according to the date of death of the deceased.		
	Deaths occurring on the 1st April 1976 to the 31st March 1988:		
	(a) First \$10,000 - Exempt		
	(b) 2% on the next \$100,000		
	(c) 3% on anything over		
	Deaths occurring on the 1st April 1988 to the 24th March 1991:		
	(a) First \$10,000 - Exempt		
	(b) 2% on the next \$90,000		
	(c) 5% on anything over		
	Deaths occurring on the 25th March 1991 to the 31st March 1992:		
	(a) First \$20,000 - Exempt		
	(b) 5% on the next \$100,000		
	(c) 10% on anything over		
	Deaths occurring on the 1st April 1992 to the 16th February 1993:		

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	(a) First \$20,000 - Exempt		
	(b) 5% on the next \$80,000		
	(c) 10% on anything over		
	Deaths occurring on the 17th February 1993 to the 14th February 1995:		
	(a) First \$30,000 - Exempt		
	(b) 5% on the next \$70,000		
	(c) 10% on anything over		
	Deaths occurring on the 15th February 1995 to the 31st March 2010:		
	(a) First \$50,000 - Exempt		
	(b) 5% on the next \$150,000		
	(c) 10% on the next \$800,000		
	(d) 15% on anything over		
	Deaths occurring on or after 1st April 2010 to 31st March 2023:		
	(a) First \$100,000 - Exempt		
	(b) 5% on the next \$100,000		
	(c) 10% on the next \$800,000		
	(d) 15% on the next \$1,000,000		
	(e) 20% on anything over		
	Deaths occurring on or after 1st April 2023:		
	(a) First \$100,000 - Exempt		
	(b) 5.25% on the next \$100,000		
	(c) 10.50% on the next \$800,000		
	(d) 15.75% on the next \$1,000,000		
	(e) 21% on anything over		
75	For making any notation on or amendment to the grant and record after issue, or impounding or revoking a grant, or releasing an impounded grant:	\$100.00	—

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76	For the entry, renewal or withdrawal of a caveat:	\$50.00	—
77	On settling and sealing a citation:	\$50.00	—
78	On taking an account of an administrator or receiver pending suit or other person liable to account:	\$250.00	—

*Miscellaneous Fees*

		FEE FOR NON-COMMERCIAL ACTIONS	FEE FOR COMMERCIAL ACTIONS*
79	On any search:	\$10.00	—
80	On an inspection of a file:	\$20.00	\$40.00
81	For providing a copy of a document:	\$1.00 per page	\$2.00 per page
82	Preparing a recording from an official record:	\$50.00 per hearing	\$200.00 per hearing
83	For a certificate of appearance or pleading, affidavit or proceeding having been entered, filed, taken or of the negative thereof and for a similar certificate if required for use outside Bermuda, unless otherwise provided for in this Schedule:	\$50.00	\$150.00
84	On making or examining a copy of any document making or sealing the same as an office copy:	The fees specified for the purposes of the Supreme Court (Records) Act 1955.	

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85	Current price of preparing an official transcript plus administration fees:	A transcriber's contract price or the Registrar's estimate of the cost to the Court for carrying out the transcription in relation to the length of the official transcript requested.	A transcriber's contract price or the Registrar's estimate of the cost to the Court for carrying out the transcription in relation to the length of the official transcript requested.
86	Under the Judgments (Reciprocal Enforcement) Act 1958—		
	(a) on a certificate of a judgment for registration abroad:	\$25.00	\$200.00
	(b) on registration of a judgment obtained abroad:	\$50.00	\$400.00
87	On sealing or issuing a commission to take oaths or affidavits in the Court:	\$50.00	\$150.00
88	Upon an application for the production of records or documents to be given in evidence—		
	(a) where the records or documents are sent by post—		
	(i) for the first document:	\$10.00	\$100.00
	(ii) for each additional document:	\$5.00	\$50.00
	(b) where an officer is required to produce the record or document in court:	\$100.00	\$300.00
	and, in addition, for every half-day or part thereof that he is necessarily absent from his office and his reasonable expenses of attendance:	\$50.00	\$400.00
89	On taking an affidavit or an affirmation, for each person making the same:	\$100.00	\$300.00
	and, in addition thereto, for each exhibit therein referred to and required to be marked:	\$5.00	\$100.00
90	For allowing any person to copy or make extracts from any of the records of the Court:	\$10.00	\$40.00
91	In respect of the preparation and furnishing to any person a copy of any of the records of the Court examined, certified and sealed by an authorized officer—		

**RULES OF THE SUPREME COURT 1985**

	(a) for the first page:	\$25.00	\$50.00
	(b) for any page thereafter:	\$2.00	\$4.00
92	Where the record of the Court in question is a document written in whole or in part in a foreign language, or comprises a map or a plan or a mechanical or scientific diagram or drawing, or a set of mathematical computations, or a photograph or other pictorial representation, or comprises other material not printed or typewritten, then the actual cost incurred in preparing the copy shall be charged, together with a surcharge of \$25.00 and in respect of the examination, certificate and sealing:	\$100.00	\$200.00
93	Registration under Order 119 of an order of the Bermuda Monetary Authority	\$200.00 plus Registry expenses	\$400.00 plus Registry expenses

PART II - COSTS

Division I

Amount of Costs

1 (1) The amount of costs to be allowed shall (subject to rule 18 and to any of 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, specialised 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

## **RULES OF THE SUPREME COURT 1985**

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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. Each such item (other than an item relating only to time spent in travelling and waiting) may include an allowance for general care and conduct having regard to such of the circumstances referred to in paragraph (2) above as may be relevant to that item. Where a claim is made for such an allowance in addition to an hourly rate or base fee, the amount of the increase must be shown separately.

### Fees to counsel

2 (1) No fee to overseas counsel who has been specially admitted as an attorney shall be allowed unless—

- (a) before taxation its amount has been agreed by the attorney instructing overseas counsel; and
- (b) before taxation a fee note signed by overseas counsel or his clerk is produced.

(2) Except in taxations under rule 14, no costs shall be allowed in respect of more than one counsel appearing before the court unless the Judge or Registrar hearing the matter has certified the attendance as being proper in the circumstances of the case.

### Items to be authorised, certified etc.

3 (1) In an action arising out of an accident on land due to a collision or apprehended collision, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed unless—

- (a) before the trial the Court authorised the preparation of the plan, or
- (b) notwithstanding the absence of an authorisation under subparagraph (a), the taxing officer is satisfied that it is reasonable to prepare the plan for use at the trial.

(2) The costs of calling an expert witness with regard to any questions as 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.

### Division 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

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- 2 Conferences and Overseas Counsel—
- (a) Attending counsel in conference.
  - (b) Travelling and waiting.
- 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
- (a) The doing of any work which was reasonably done arising out of or incidental to the proceedings, 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 Enquiries: making searches at offices or public records and elsewhere for relevant documents: searched 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) Interest: where relevant, the calculation of interest;
    - (xii) Notices: preparation and service of miscellaneous notices, including notices to witnesses to attend court.

**RULES OF THE SUPREME COURT 1985**

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(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 and attending the taxation;
- (ii) Travelling and waiting.

(b) Review

- (i) preparing and delivering objections to decision of taxing officer on taxation or answers to objections, and considering opponent’s answers or objections, as the case may be; attending hearing of review.
- (ii) Travelling and waiting.

PART III - Fixed Costs

Costs on the recovery of a liquidated sum without trial

1 The scale of costs following paragraph 2 of this Part of this Schedule shall apply in relation to the following cases if the writ was indorsed in accordance with Order 6, rule 2(1)(b), with a claim for a debt or liquidated demand only, that is to say—

- (a) cases in which the defendant pays the amount claimed within the time and in the manner required by the indorsement of the writ;
- (b) cases in which the plaintiff obtains judgment for failure to enter an appearance under Order 13, rule 1, or judgment in default of defence under Order 19, rule 2.

2 There shall be added to the basic costs set out in the said scale the appropriate court fees.

Division I

Fourteen-Day Costs in Writ Actions

The amount of costs indorsed on a Writ of Summons under Order 6, Rule 2(1)(b).

1	Where the amount claimed is less than \$25,000	\$200.00
2	Where the amount claimed is not less than \$25,000 but does not exceed \$50,000	\$500.00
3	Where the amount claimed is not less than \$50,000 but does not exceed \$100,000	\$700.00
4	Where the amount claimed is not less than \$100,000 but does not exceed \$250,000	\$900.00
5	Where the amount claimed exceeds \$250,000	\$1,000.00

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The above apply to all writs for service within the jurisdiction, indorsed with liquidated demand only, whether indorsed with a statement of claim or not.

**Additional Allowances**

(1)	Where there is more than one defendant, in respect of each additional defendant Served	\$50.00
(2)	For the Contingency of Substitute Service:	\$200.00
(3)	For service in any other place out of the jurisdiction	400.00

Division II

Judgment in default of Appearance or of Defence for a Debt or Liquidated Demand only or for Possession of Land

The following sums apply whether the statement of claim is indorsed on the Writ or not

1	Where the amount recovered is less than \$25,000	\$275.00
2	Where the amount recovered is not less than \$25,000 but is less than \$50,000	\$650.00
3	Where the amount recovered is not less than \$50,000 but is less than \$100,000	\$850.00
4	Where the amount recovered is not less than \$100,000	\$1,150.00
5	Where the amount recovered exceeds \$250,000	\$1,300.00
6	Delivery up of Specific Goods Judgment for delivery of specific goods where the stated value of the goods—	
	(a) is not less than \$25,000 but is less than \$50,000	\$650.00
	(b) is not less than \$50,000 but is less than \$100,000	\$850.00
	(c) is not less than \$100,000 but is less than \$250,000	\$1,150.00
	(d) is in excess of \$250,000	\$1,300.00
7	Possession of land other than premises specified in order 13, r. 4(2) or Order 19, r. 5(2). Costs on judgment without trial - Judgment for possession with or without a money claim	\$600.00

Additional Allowances where Applicable unless Taxation is Ordered

(1)	Where the substituted service ordered and effected:	\$200.00
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(2) In the case of judgment in default of defence or judgment (where appearance is entered after the time limited therefore and the Plaintiff makes an affidavit of service for the purpose of a judgment on failure to enter an appearance) (the allowance to include the search fee)	\$40.00
(3) Where service ordered and effected out of jurisdiction	\$400.00.

*[Schedule to Order 62 amended by BR 86 / 2000 effective 29 December 2000; Parts II and III substituted by BR 55 / 2005 effective 1 January 2006; Schedule to Order 62 amended by 2022 : 4 s. 35 effective 13 March 2023; Schedule to Order 62 part I revoked and replaced by BR 10 / 2024 rule 4 effective 1 March 2024]*

**GENERAL AND ADMINISTRATIVE PROVISIONS**

**ORDER 63**

**REGISTRY OF THE SUPREME COURT**

63/1  
and *[blank]*  
63/2

**63/3 Date of filing to be marked, etc.**

3 (1) Any document filed in the Registry in any proceedings shall be stamped 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.

63/4  
*[blank]*

**63/5 Deposit of documents**

5 Where the Court orders any documents to be lodged in court then the documents must be deposited in the Registry.

63/6 to  
63/8 *[blank]*

**63/9 Restriction on removal of documents**

9 No document filed in or in the custody of the Registry of the Court shall be taken out of the Registry without the leave of the Court.

**ORDER 64**

**OFFICE HOURS**

64/1 to  
64/6 *[blank]*

## **RULES OF THE SUPREME COURT 1985**

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### **64/7 Supreme Court offices: days on which open and office hours**

7 (1) The office of the Court shall be open on every day of the year except—

- (a) Saturdays and Sundays;
- (b) public holidays.

(2) The hours during which the office of the Court shall be open to the public shall be such as the Chief Justice may from time to time direct.

## **ORDER 65**

### **SERVICE OF DOCUMENTS**

#### **65/1 When personal service required**

1 (1) Any document which by virtue of these rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these rules or by order of the Court is required to be so served.

(2) Paragraph (1) shall not affect the power of the Court under any provision of these rules to dispense with the requirement for personal service.

#### **65/2 Personal service: how effected**

2 Personal service of a document is effected by leaving a copy of the document with the person to be served and, if so requested by him at the time when it is left, showing him—

- (a) in the case where the document is a writ or other originating process, the original, and
- (b) in any other case, the original or an office copy.

#### **65/3 Personal service on body corporate**

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 in accordance with rule 2 on the president or vice-president of the body, or the secretary or other similar officer thereof.

#### **65/4 Substituted service**

4 (1) If, in the case of any document which by virtue of any provision of these rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order for substituted service of that document.

(2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.

## **RULES OF THE SUPREME COURT 1985**

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(3) Substituted service of it 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.

### **65/5 Ordinary service: how effected**

5 (1) Service of any document, not being a document which by virtue of any provision of these rules is required to be served personally, may be effected—

- (a) by leaving the document at the proper address of the person to be served, or
- (b) by post, or
- (c) 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 of service of that person, but if at the time when service is effected that person has no address for service his address for the purpose 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.

(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.

### **65/6 Service on Minister, etc. in proceedings which are not by or against the Crown**

6 Where for the purpose of or in connection with any proceedings in the Court, not being civil proceedings by or against the Crown within the meaning of the Crown Proceedings Act 1966 [*title 8 item 105*], any document is required by any enactment or these rules to be served on the Minister or on a government department or on the Attorney General, section 15 of the Crown Proceedings Act 1966 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.

## **RULES OF THE SUPREME COURT 1985**

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### **65/7 Effect of service after certain hours**

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 in the afternoon on a Friday and midnight on the following Sunday or after four 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.

### **65/8 Affidavit of service**

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.

### **65/9 No service required in certain cases**

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 entry of appearance or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these rules otherwise provides.

### **65/10 Service of process on Sunday**

10 (1) No process shall be served or executed within the jurisdiction on a Sunday except, in case of urgency, with the leave of the Court.

(2) For the purpose of this rule "process" includes a writ, judgment, notice, order, petition, originating or other summons or warrant.

## **ORDER 66**

### **PAPER, PRINTING, NOTICES AND COPIES**

#### **66/1 Quality and size of paper**

1 (1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Court must be on paper of durable quality, having a margin, to be left blank on the left of the face of the paper and on the right side of the reverse.

#### **66/2 Regulations as to printing, etc.**

2 (1) Except where these rules otherwise provide, every document prepared by a party for use in the Court must be produced by one of the following means, that is to say, printing, writing (which must be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by another or others of them.

(2) For the purpose of these rules a document shall be deemed to be printed if it is produced by type lithography or duplicating.

## **RULES OF THE SUPREME COURT 1985**

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(3) Any type used in producing a document for use as aforesaid must be such as to give a clear and legible impression and must be no smaller than 11 point type for printing or elite type for type lithography, duplicating or typewriting.

(4) Any document produced by a photographic or similar process giving a positive and permanent representation free from blemishes shall, to the extent that it contains a facsimile of any printed, written or typewritten matter, be treated for the purposes of these rules as if it were printed, written or typewritten, as the case may be.

(5) Any notice required by these rules may not be given orally except with the leave of the Court.

### **66/3 Copies of documents for other party**

3 (1) Where a document prepared by a party for use in the Court is printed the party by whom it was prepared must, on receiving a written request from any party entitled to a copy of that document and on payment of the proper charges, supply him with such number of copies thereof, not exceeding ten, as may be specified in the request.

(2) Where a document prepared by a party for use in the Court is written or typewritten, the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it.

The copy must be ready for delivery within forty-eight hours after a written request for it, together with an undertaking to pay the proper charges, is received and must be supplied thereafter on payment of those charges.

### **66/4 Requirements as to copies**

4 (2) Before a copy of a document is supplied to a party under these rules, it must be indorsed with the name and address of the party or attorney by whom it was supplied.

(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 an office copy, as the case may be.

## **ORDER 67**

### **CHANGE OF ATTORNEY**

#### **67/1 Notice of change of attorney**

1 (1) A party to any cause or matter who sues or defends by an attorney may change his attorney without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are 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 in the Court.

(2) Notice of a change of attorney must be filed, and a copy thereof lodged in the Registry.

## **RULES OF THE SUPREME COURT 1985**

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(3) The party giving the notice must serve on every other party to the cause, or matter (not being a party in default as to entry of appearance) and on the former attorney a copy of the notice indorsed with it memorandum stating that the notice has been duly filed in the Registry.

(4) The party giving the notice may perform the duties prescribed by this rule in person or by his new attorney.

67/2

[blank]

### **67/3 Notice of appointment of attorney**

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.

### **67/4 Notice of intention to act in person**

4 Where a party after having sued or defended by an attorney intends and is entitled to act in person, the change may be made without an order for that purpose and rule 1 shall, with the necessary modifications, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of attorney except that the notice of intention to act in person must contain an address for service of the party giving it.

### **67/5 Removal of attorney from record at instance of another party**

5 (1) Where—

- (a) an attorney who has acted for a party in a cause or matter has died or becomes bankrupt or cannot be found or has been struck off the roll of attorneys or has been suspended from practising or has for any other reason ceased to practise, 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 firstmentioned party in the cause or matter, and the Court may make an order accordingly

(2) An application for an order under this rule must be made by summons and the summons must, unless the Court otherwise directs, be served on the party to whose attorney the application relates.

The application must be supported by an affidavit stating the grounds of the application.

(3) Where an order is made under this rule the party on whose application it was made must—

## **RULES OF THE SUPREME COURT 1985**

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- (a) serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, 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.

### **67/6 Withdrawal of attorney who has ceased to act for party**

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 entry of appearance) 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 in the Court.

(2) An application for an order under this rule must be made by summons and the summons must, unless the Court otherwise directs, be served on the party for whom the attorney acted.

The application must be supported by an affidavit stating the grounds of the application.

(3) An order made under this rule shall not affect the rights of the attorney and the party for whom he acted as between themselves.

### **67/7 Address for service of party whose attorney is removed, etc.**

7 Where—

- (a) an order is made under rule 5, or
- (b) an order is made under rule 6, and the applicant for that order has complied with rule 6(1),

then, unless and until the party to whose attorney or to whom, as the case may be, the order or certificate relates either appoints another attorney and complies with rule 3 or, being entitled to act in person, gives notice of his intention so to do and complies with rule 4, his last known address or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

**RULES OF THE SUPREME COURT 1985**

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**ORDER 68**

[blank]

**PROVISIONS AS TO FOREIGN PROCEEDINGS**

**ORDER 69**

**SERVICE OF FOREIGN PROCESS**

**69/1 Definition**

1 In this Order “process” includes a citation.

**69/2 Service of foreign legal process**

2 (1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country where a letter of request from such a tribunal requesting service on a person in Bermuda of any such process sent with the letter is received by the Deputy Governor and is sent by him to the Court with an intimation that it is desirable that effect should be given to the request.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a translation thereof in English, by two copies of the process to be served and by two copies of a translation of the process in English.

(3) Subject to paragraph (4) and to any enactment which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served.

Service shall be effected by the process server appointed under rule 5 or his authorised agent.

(4) Where an application in that behalf is made by the Attorney General the Court may make an order for substituted service of the process, and, where such an order is made, service of the process shall be effected by taking such steps as the Court may direct to bring the process to the notice of the person to be served.

(5) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall leave with the Registrar a copy of the process, an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, a copy of that affidavit and a statement of the costs incurred in effecting, or attempting to effect, service.

(6) The Registrar shall give a certificate—

- (a) identifying the documents annexed thereto, that is to say, the letter of request for service, a copy of the process received with the letter and a copy of the affidavit referred to in paragraph (5);

## **RULES OF THE SUPREME COURT 1985**

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- (b) certifying that the method of service of the process and the proof of service are such as are required by the rules of the Court regulating the service of process of that Court in Bermuda or, if such be the case, that service of the process could not be effected for the reason specified in the certificate, and
- (c) certifying that the cost of effecting, or attempting to effect, service, as certified by the Registrar, is the amount so specified.

(7) The certificate given under paragraph (6) shall be sealed with the seal of the Supreme Court and shall be sent to the Deputy Governor.

### **69/3 Service of foreign legal process under Civil Procedure Convention**

3 (1) This rule applies in relation to the service of any process required in connection with civil or commercial proceedings pending before a court or other tribunal of a foreign country, being a country with which there subsists a Civil Procedure Convention providing for service in Bermuda of process of the tribunals of that country, where a letter of request from a consular or other authority of that country requesting service on a person in Bermuda of any such process sent with the letter is received by the Registrar.

(2) In order that service of the process may be effected in accordance with this rule the letter of request must be accompanied by a copy of a translation of the process to be served in English.

(3) Subject to any enactment which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the relevant Civil Procedure Convention, service of the process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served.

Service shall be effected by the process server appointed under rule 5 or his authorised agent.

(4) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall leave with the Registrar an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, and a statement of the costs incurred in effecting, or attempting to effect, service.

- (5) The Registrar shall give a certificate certifying—
- (a) that the process or a copy thereof, as the case may be, was served on the person, at the time, and in the manner, specified in the certificate or, if such be the case, that service of the process could not be effected for the reason so specified, and
  - (b) that the cost of effecting, or attempting to effect, service, as certified by the Registrar, is the amount so specified.

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(6) The certificate given under paragraph (5) shall be sealed with the seal of the Supreme Court and shall be sent to the consular or other authority by whom the request for service was made.

### **69/4 Costs of service, etc. to be certified by Registrar**

4 A statement of the costs incurred in effecting, or attempting to effect, service under rule 2 or rule 3 shall be submitted to the Registrar who shall certify the amount properly payable in respect of those costs.

## **ORDER 70**

### **OBTAINING EVIDENCE FOR FOREIGN COURTS ETC.**

#### **70/1 Interpretation and exercise of jurisdiction**

1 (1) In this Order “the Act” means the Evidence Act 1905 [*title 8 item 10*] and the expressions used in this Order which are used in the Act shall have the same meaning as in the Act.

(2) The power of the Supreme Court to make an order under section 27Q of the Act may be exercised by the Registrar.

#### **70/2 Application for order**

2 (1) Subject to rule 3, an application for an order under the Act must be made *ex parte* and must be supported by affidavit.

(2) There must 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.

#### **70/3 Application by Attorney General in certain cases**

3 Where a request—

- (a) is received by the Deputy 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 Bermuda of any party to the matter pending before the court or tribunal, or
- (b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Bermuda for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such a party,

the Registrar shall send the document to the Attorney-General and the Attorney-General may make an application for an order and take such other steps as may be necessary to give effect to the request.

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### **70/4 Person to take and manner of taking examination**

4 (1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before such other qualified person as the Court seems fit.

(2) Subject to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in 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 one of the examiners of the Court, Order 39, rules 17, 18 and 19, shall apply in relation to the examination.

### **70/5 Dealing with deposition**

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 Court identifying the documents annexed thereto, that is to say, the letter of request, the order of the Court for examination and the deposition taken in pursuance of the order; and
- (b) send the certificate with the documents annexed thereto to the Deputy 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 that court or tribunal.

## **ORDER 71**

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## **ORDER 72**

### **COMMERCIAL ACTIONS**

#### **72/1 Application and Interpretation**

1 (1) This Order applies to commercial actions in the Supreme Court, and the other provisions of these Rules apply to those actions subject to the provisions of this Order.

(2) In this Order “commercial action” means any claim or counterclaim arising out of the transaction of trade and commerce and—

- (a) includes any claim or counterclaim relating to—
  - (i) a business document or contract;
  - (ii) the export or import of goods;

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- (iii) the carriage of goods by land, sea, air or pipeline;
- (iv) the exploitation of oil and gas reserves or other natural resources;
- (v) insurance and re-insurance;
- (vi) banking and financial services;
- (vii) the operation of markets and exchanges;
- (viii) the purchase and sale of commodities;
- (ix) the construction of ships;
- (x) business agency; and
- (xi) arbitration.

(b) includes any application under the Companies Act 1981.

(3) There is hereby constituted, as part of the Supreme Court, a Commercial Court to take such causes and matters as may in accordance with this Order be entered in the commercial list.

(4) The judges of the Commercial Court shall be known as Commercial Judges and shall be such of the judges of the Supreme Court as the Chief Justice may from time to time designate to be Commercial Judges.

### **72/2 The Commercial List**

2 (1) There shall be a list, which shall be called “the commercial list”, in which commercial actions in the Supreme Court may be entered in accordance with the provisions of this Order, for trial in the Commercial Court, and the Chief Justice or one of the Commercial Judges nominated by the Chief Justice shall be in charge of that list.

(2) All proceedings in the commercial list will be heard or determined by a Commercial Judge, except that—

- (a) another judge of the Supreme Court may hear urgent applications if no Commercial Judge is available; and
- (b) unless a Commercial Judge otherwise orders, any application relating to the enforcement of a Commercial Court judgment or order for the payment of money may be dealt with by any judge of the Supreme Court.

72/3

[blank]

### **72/4 Entry of action in commercial list when action begun**

4 (1) Before a writ or originating summons by which a commercial action in the Supreme Court is to be begun is issued it may be marked in the heading “In the Supreme Court of Bermuda (Commercial Court)” and on the issue of a writ or summons so marked the action begun thereby shall be entered in the commercial list.

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(2) If the plaintiff intends to issue a writ or originating summons by which a commercial action in the Supreme Court is to be begun and to mark it in accordance with paragraph (1) and the writ or the originating summons, as the case may be, is to be served out of the jurisdiction, an application for leave to issue the writ or summons and to serve the writ or the summons out of the jurisdiction may be made to a Commercial Judge.

(3) The affidavit in support of an application made to a Commercial Judge by virtue of paragraph (2) must, in addition to the matters required by Order 11, rule 4 (1) to be stated, state that the plaintiff intends to mark the writ or originating summons in accordance with paragraph (1) of this rule.

(4) If the judge hearing an application made to him by virtue of paragraph (2) is of opinion that the action in question should not be entered in the commercial list, he may adjourn the application to be heard by any judge.

### **72/5 Transfer of action to commercial list after action begun**

5 (1) At any stage of the proceedings in a commercial action in the Supreme Court any party to the action may apply by summons to a Commercial Judge to transfer the action to the commercial list.

(2) If, at any stage of the proceedings in a commercial action in the Supreme Court, it appears to the Court that the action may be one suitable for trial in the Commercial Court and any party wishes the action to be transferred to the commercial list, then the Court may adjourn any hearing so that it can proceed before a Commercial Judge and be treated by him as a summons to transfer the action to that list.

### **72/6 Removal of action from commercial list**

6 (1) A Commercial Judge may, of his own motion or on the application of any party, order an action in the commercial list to be removed from that list.

(2) Where an action is in the commercial list by virtue of rule 4, an application by a defendant or third party for an order under this rule must be made within 7 days after giving notice of intention to defend the action.

### **72/7 Pleadings in commercial list actions**

7 (1) The pleadings in an action in the commercial list must be in the form of points of claim, or of defence, counterclaim, defence to counterclaim or reply, as the case may be and must be as brief as possible.

(2) Without prejudice to Order 18, rule 12 (1) no particulars shall be applied for or ordered in an action in the commercial list except such particulars as are necessary to enable the party applying to be informed of the case he has to meet or as are for some other reason necessary to secure the just, expeditious and economical disposal of any question at issue in the action.

(3) The foregoing provisions are without prejudice to the power of a Commercial Judge to order that an action in the commercial list shall be tried without pleadings or further pleadings, as the case may be.

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### **72/8 Directions in commercial list actions**

8 (1) Notwithstanding anything in Order 25, rule 1 (1) any party to an action in the commercial list may take out a summons for directions in the action before the pleadings in the action are deemed to be closed.

(2) Where an application is made to transfer an action to the commercial list, 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 were a summons for directions.

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### **72/10 Production of certain documents in marine insurance actions**

10 (1) Where in an action in the commercial list relating to a marine insurance policy an application for an order under Order 24, rule 3, is made by the insurer, then, without prejudice to its powers under that rule, the Court, if satisfied that the circumstances of the case are such that it is necessary or expedient to do so, may make an order, either in Form 94 in Appendix A or in such form as it thinks fit, for the production of such documents as are therein specified or described.

(2) An order under this rule may be made on such terms, if any, as to staying proceedings in the action or otherwise, as the Court thinks fit.

[Order 72 inserted by BR55/2005 effective 1 January 2006]

## **SPECIAL PROVISIONS AS TO PARTICULAR PROCEEDINGS**

### **ORDER 73**

#### **ARBITRATION PROCEEDINGS**

### **73/1 [blank]**

1

### **73/2 Matters for a judge in court**

2

- (1) Every application to the Court—
- (a) to remit an award under section 33 of the Arbitration Act 1986, or
  - (b) to remove an arbitrator or umpire under section 34(1) of that Act, or
  - (c) to set aside an award under section 34(2) of that Act, or
  - (e) to determine, under section 30 of that Act, any question of law arising in the course of a reference, or
  - (f) to appoint an arbitrator under article 11(3) or secure the appointment of arbitrators under article 11(4) of the Second Schedule to the Bermuda International Conciliation and Arbitration Act 1993, or

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- (g) to decide, under article 13(3) of the Second Schedule to that Act, on a challenge to an arbitrator, or
- (h) to decide, under article 14(1) of the Second Schedule to that Act, on the termination of an arbitrator's mandate, or
- (i) to decide, under article 16(3) of the Second Schedule to that Act, on whether the arbitral tribunal has jurisdiction,

must be made by originating motion to a judge in court.

(2) *[blank]*

(3) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by originating motion to a 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.

### **73/3 Matters for judge in chambers**

3 (1) Subject to the foregoing provisions of this Order and the provisions of this rule, the jurisdiction of the Court or a judge thereof under the Arbitration Act 1986 and the Bermuda International Conciliation and Arbitration Act 1993, may be exercised by a judge in chambers.

(2) Any application—

- (a) for leave to appeal to the Court of Appeal under section 29(3) of the Arbitration Act 1986, or
- (b) under section 29(5) of that Act (including any application for leave), or
- (c) under section 32 of that Act,

shall be made to a judge in chambers.

(3) Any application to which this rule applies shall, where an action is pending, be made by summons in the action, and in any other case by an originating summons which shall be in Form No. 10 in Appendix A.

(4) Where an application is made under section 29(3) of the Arbitration Act 1986 the summons must be served on the arbitrator or umpire and on any other party to the reference.

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*[blank]*

### **73/5 Time limits and other special provisions as to appeals and applications under the Arbitration Acts**

5 (1) An application to the Court—

- (a) to remit an award under section 33 of the Arbitration Act 1986, or
- (b) to set aside an award under section 34(2) of that Act or otherwise, or

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- (c) to direct an arbitrator or umpire to state the reasons for an award under section 29(5) of that Act,

must be made, and the summons or notice must be served, within twenty-one days after the award has been made and published to the parties.

(2) In the case of an application for leave to appeal to the Court of Appeal under section 29(3)(b) of the Arbitration Act 1986, the originating summons for leave to appeal and the notice of originating motion must be served and the appeal entered, within twenty-one days after the award has been made and published to the parties—

Provided that, where reasons material to the appeal are given on a date subsequent to the publication of the award, the period of twenty-one days shall run from the date on which the reasons are given.

(3) An application, under section 30 of the Arbitration Act 1986, to determine any question of law arising in the course of a reference, must be made, and notice thereof served, within fourteen days after the arbitrator or umpire has consented to the application being made, or the other parties have so consented.

(4) For the purpose of paragraph (3) the consent must be given in writing.

(5) In the case for every application to which this rule applies, the notice of originating motion, the originating summons or the summons, as the case may be, must state the grounds of the application and, where the application is founded on evidence by affidavit, or is made with the consent of the arbitrator or umpire or of the other parties, a copy of every affidavit intended to be used, or, as the case may be, of every consent given in writing, must be served with that notice.

(6) *[blank]*

(7) Without prejudice to paragraph (5), in an application for leave to appeal under section 29(3)(b) of the Arbitration Act 1986, any affidavit verifying the facts in support of a contention that the question of law concerns a term of a contract or an event which is not a one-off term or event must be lodged with the court and served with the notice of originating motion.

(8) Any affidavit in reply to an affidavit under paragraph (7) shall be lodged with the court and served on the applicant not less than two clear days before the hearing of the application.

(9) A respondent to an application for leave to appeal under section 29(3)(b) of the Arbitration Act 1986 who desires to contend that the award should not be upheld on grounds not expressed or not fully expressed in the award and reasons shall not less than two clear days before the hearing of the application file with the court and serve on the applicant a notice specifying the grounds of his contention.

### **73/6 Applications to be entered on commercial list**

6 Every application referred to in rule 2 or 3 shall be entered on the commercial list.

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### **73/7 Service out of the jurisdiction of summons, notice, etc.**

- 7 (1) Subject to paragraph (1A), service out of the jurisdiction of—
- (a) any originating summons or notice of originating motion under the Arbitration Act 1986 or the Bermuda International Conciliation and Arbitration Act 1993, or
  - (b) 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 governed by the law of Bermuda or has been, is being, or is to be held within the jurisdiction.

(1A) Service out of the jurisdiction of an originating summons for leave to enforce an award is permissible with the leave of the Court whether or not the arbitration is governed by the law of Bermuda.

(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 a writ.

### **73/8 Registration in court of foreign awards**

8 Where an award is made in proceedings on an arbitration in the United Kingdom or in any part of Her Majesty's dominions outside the United Kingdom to which the Judgments (Reciprocal Enforcement) Act 1958 extends, then, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place, the Judgments (Reciprocal Enforcement) Act 1958 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject, however, to the following modifications—

- (a) for references to the country of the original court there shall be substituted references to the place where the award was made; and
- (b) the affidavit required by rule 3 of the Judgments (Reciprocal Enforcement) Rules 1976 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.

### **73/9 Registration of awards under the United Kingdom Arbitration (International Investment Disputes) Act 1966 as extended to Bermuda**

- 9 (1) In this rule and in any provision of these rules as applied by this rule—
- “the Act of 1966” means the United Kingdom Arbitration (International Investment Disputes) Act 1966 as extended to Bermuda;

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“the Convention” means the Convention referred to in section 1(1) of the Act of 1966;

“judgment creditor” and “judgment debtor” means respectively the person seeking recognition or enforcement of an award and the other party to the award.

(2) Subject to the provisions of this rule, the Judgments (Reciprocal Enforcement) Act 1958 shall apply with the necessary modifications in relation to an award as they apply in relation to a judgment.

(3) An application to have an award registered in the Court under section 1 of the Act of 1966 shall be made by originating summons which shall be in Form No. 10 in Appendix A.

(4) The affidavit required by rule 3 of the Judgments (Reciprocal Enforcement) Rules 1976 in support of an application for registration shall—

(a) in lieu of exhibiting the judgment or a copy thereof, exhibit a copy of the award certified pursuant to the Convention, and

(b) in addition to stating the matters mentioned in the said rule 3, state whether at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) pursuant to the Convention and whether any, and if so what, application has been made pursuant to the Convention, which, if granted, might result in a stay of the award.

(5) There shall be kept in the Registry under the direction of the Registrar a register of the awards ordered to be registered under the Act of 1966 and particulars shall be entered in the register of any execution issued on such an award.

(6) Where it appears to the court on granting leave to register an award or on an application made by the judgment debtor after an award has been registered—

(a) that the enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the Convention, or

(b) that an application has been made pursuant to the Convention, which, if granted, might result in a stay of the enforcement of the award,

the Court shall, or, in the case referred to in sub-paragraph (b) may, stay execution of the award for such time as it considers appropriate in the circumstances.

(7) An application by the judgment debtor under paragraph (6) shall be made by summons and supported by affidavit.

### **73/10 Enforcement of arbitration awards**

10 (1) An application for leave under section 37 of the Arbitration Act 1986 or under section 48 of the Bermuda International Conciliation and Arbitration Act 1993 to enforce an award, irrespective of the country in which the award was made, on an arbitration agreement in the same manner as a judgment or order may be made ex parte but the Court hearing the application may direct a summons to be issued.

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(2) If the Court directs a summons to be issued, the summons shall be an originating summons which shall be in Form No. 10 in Appendix A.

(3) An application for leave must be supported by affidavit—

- (a) exhibiting the arbitration agreement and the original award or, in either case, a copy thereof;
- (b) stating the name and the usual or last known place of abode or business of the applicant (hereinafter referred to as “the creditor”) and the person against whom it is sought to enforce the award (hereinafter referred to as “the debtor”) respectively,
- (c) stating as the case may require, either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

(4) An order giving leave must be drawn up by or on behalf of the creditor and must be served on the debtor by delivering a copy to him personally or by sending a copy to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(5) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such an order as they apply in relation to a writ.

(6) Within fourteen days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the debtor may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the debtor applies within that period to set aside the order, until after the application is finally disposed of.

(7) The copy of that order served on the debtor shall state the effect of paragraph (6).

(8) In relation to a body corporate this rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered or principal address of the body corporate; so, however, that nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

*[Order 73 repealed and replaced by BR55/2005 effective 1 January 2006]*

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**ORDER 74**

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**ORDER 75**

**ADMIRALTY PROCEEDINGS**

**75/1 Application and interpretation**

1 (1) This Order applies to Admiralty causes and matters, and the other provisions of these rules apply to those causes and matters subject to the provisions of this Order.

(2) In this Order—

“action *in rem*” means an Admiralty action *in rem*;

“caveat against arrest” means a caveat entered in the caveat book under rule 6;

“caveat against release and payment” means a caveat entered in the caveat book under rule 14;

“caveat book” means the book kept in the Registry in which caveats issued under this Order are entered;

“limitation action” means an action by shipowners or other persons under the Merchant Shipping Acts 1894-1974 of the United Kingdom for the limitation of the amount of their liability in connection with a ship or other property;

“marshal” means the Provost Marshal General acting as Admiralty Marshal;

“ship” includes any description of vessel used in navigation.

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**75/3 Issue of writ and entry of appearance**

3 (1) An action *in rem* must be begun by writ; and the writ must be in Form No. 1 in Appendix B.

(2) Order 6, rule 7, shall apply in relation to a writ by which an Admiralty action is begun, and Order 12 shall apply in relation to such an action.

**75/4 Service of writ out of jurisdiction**

4 (1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ, or notice of a writ, containing a claim relative to any Admiralty cause or matter is permissible with the leave of the Court if, but only if—

(a) the defendant has his habitual residence or a place of business within Bermuda, or

(b) the cause of action arose within the territorial waters of Bermuda, or

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- (c) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court, or
- (d) the defendant has submitted or agreed to submit to the jurisdiction of the Court.

(2) Order 11, rule 3 and rule 4(1), (2) and (4), shall apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(3) Paragraph (1) shall not apply to an action *in rem*.

(4) The proviso to rule 7(1) of Order 6 and Order 11, rule 1(2), shall not apply to a writ by which any admiralty action is begun or to notice of any such writ.

### **75/5 Warrant of arrest**

5 (1) After a writ has been issued in an action *in rem* a warrant in Form No. 3 in Appendix B for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.

(3) A party applying for the issue out of the Registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property

(4) A warrant of arrest shall not be issued until the party applying for it has filed a praecipe in Form No. 4 in Appendix B requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (7), (8) or (9) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action *in rem* against a foreign ship belonging to a port of a State having a consulate in Bermuda, being an action for the possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(6) Except with the leave of the Court, a warrant of arrest shall not be issued in an action *in rem* in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(7) Every affidavit must state—

- (a) the name, address and occupation of the applicant for the warrant;
- (b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied; and
- (c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

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(8) Every affidavit in an action *in rem* brought against a ship by virtue of section 25(4) of the Act must state—

- (a) whether the ship against which the action is brought is the ship in connection with which the claim in the action arose;
- (b) that in the belief of the deponent the person who would apart from section 4 of that Act, be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer, or in possession or control of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the action is brought; and
- (c) the grounds of the deponent's belief.

(9) Every affidavit in an action *in rem* for possession of a ship or for wages must state the nationality of the ship against which the action is brought and that the notice (if any) required by paragraph (5) has been sent.

A copy of any such notice must be annexed to the affidavit.

(10) An affidavit in such an action as is referred to in paragraph (6), must have annexed thereto a certified copy of the bottomry bond, or of the translation thereof.

### **75/6 Caveat against arrest**

6 (1) A person who desires to prevent the arrest of any property must file in the Registry a praecipe, in Form No. 5 in Appendix B, signed by him or his attorney undertaking—

- (a) to enter an appearance in any action that may be begun against the property described in the praecipe, and
- (b) within three days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into court;

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

### **75/7 Remedy where property protected by caveat is arrested (without good and sufficient reason)**

7 Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the

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applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

### **75/8 Service of writ in action *in rem***

8 (1) Subject to paragraph (2), a writ by which an action *in rem* is begun must be served on the property against which the action is brought except—

- (a) where the property is freight, in which case it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried, or
- (b) where that property has been sold and the proceeds of the sale paid into court, in which case it must be served on the Registrar.

(2) A writ need not be served on the property or the Registrar if the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(2) or (3).

(3) Where by virtue of this rule a writ is required to be served on any property, the plaintiff may request service of the writ to be effected by the marshal if, but only if, a warrant of arrest has been issued for service against the property or the property is under arrest, and in that case the plaintiff must file in the Registry and lodge—

- (a) the writ and a copy thereof, and
- (b) an undertaking to pay on demand all expenses incurred by the marshal or his substitute in respect of the service of the writ

and thereupon the marshal or his substitute shall serve the writ on the property described in the praecipe.

(4) Where the plaintiff in an action *in rem*, or his attorney, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

(5) Where a writ by which an action *in rem* is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2), shall not apply and, unless the Court otherwise directs on an application made *ex parte*, the amended writ must be served on any defendant who has entered an appearance in the action or, if no defendant has entered an appearance therein, on the property or the Registrar.

### **75/9 Committal of attorney failing to comply with undertaking**

9 Where the attorney of a party to an action *in rem* fails to comply with a written undertaking given by him to any other party or his attorney to enter an appearance in the action, give bail or pay money into court in lieu of bail, he shall be liable to committal.

### **75/10 Execution, etc. of warrant of arrest**

10 (1) A warrant of arrest is valid for twelve months beginning with the date of its issue.

- (2) A warrant of arrest may be executed only by the marshal or his substitute.

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(3) A warrant of arrest shall not be executed until an undertaking in writing, satisfactory to the marshal, to pay the fees and expenses of the marshal has been lodged in the marshal's office.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.

(7) Within seven days after the service of a warrant of arrest, the warrant must be filed in the Registry by the marshal.

### **75/11 Service on ships, etc.; how effected**

11 (1) Subject to paragraph (2), service of a warrant of arrest or writ in an action *in rem* against a ship, freight or cargo shall be effected by—

- (a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and
- (b) on removing the warrant or writ, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action *in rem* against freight or cargo or both shall, if the cargo has been landed or trans-shipped, be effected—

- (a) by placing the warrant or writ for a short time on the cargo, and, on removing the warrant or writ, leaving a copy of it on the cargo, or
- (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

### **75/12 Application with respect to property under arrest**

12 (1) The marshal may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the parties to every action against the property.

(2) The marshal shall send a copy of any order made under paragraph (1) to all the parties to every action against the property to which the order relates.

### **75/13 Release of property under arrest**

13 (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall be released only under the authority of an instrument of release (in this rule referred to as a "release"), in Form No. 7 in Appendix B, issued out of the Registry.

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(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (6), be issued with respect to that property.

(3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(6) Before a release is issued the party entitled to its issue must—

(a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his attorney requiring the caveat to be withdrawn, and

(b) file a praecipe in Form No. 8 in Appendix B requesting issue of a release.

(7) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal either—

(a) pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release, or

(b) lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(8) The Court, on the application of any party who objects to directions given to him by the marshal under paragraph (7), may vary or revoke the directions.

### **75/14 Caveat against release and payment**

14 (1) A person who desires to prevent the release of any property under arrest in an action *in rem* and the payment out of court of any money in court representing the proceeds of sale of that property must file in the Registry a praecipe in Form No. 9 in Appendix B, and on the filing of the praecipe a caveat against the issue of a release with respect to that property and the payment out of court of that money shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

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### **75/15 Duration of caveats**

15 (1) Every caveat entered in the caveat book is valid for six months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form No. 10 in Appendix B.

(2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

### **75/16 Bail**

16 (1) Bail on behalf of a party to an action *in rem* must be given by bond in Form No. 11 in Appendix B; and the sureties to the bond must enter into the bond before a commissioner to administer oaths, not being a commissioner who, or whose partner is acting as attorney or agent for the party on whose behalf the bail is to be given, or before the Registrar.

(2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the commissioner or Registrar before whom the bail bond was entered into; and after the expiration of twenty-four hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

### **75/17 Interveners**

17 (1) Where property against which an action *in rem* is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

(2) An application for the grant of leave under this rule must be made *ex parte* by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted to intervene in an action must enter an appearance therein in the Registry within the period specified in the order granting leave; and Order 12, rules 1 to 4, shall, with the necessary modifications, apply in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.

(4) The Court may order that person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

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### **75/18 Preliminary acts**

18 (1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the plaintiff must, within two months after issue of the writ, and the defendant must, within two months after entering an appearance in the action, and before any pleading is served, lodge in the Registry a document (in these rules referred to as a preliminary act) containing a statement of the following particulars:

- (i) the names of the ships which came into collision and their ports of registry;
- (ii) the date and time of the collision;
- (iii) the place of the collision;
- (iv) the direction and force of the wind;
- (v) the state of the weather;
- (vi) the state, direction and force of the tidal or other current;
- (vii) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (viii) the lights (if any) carried by the ship;
- (ix) (a) the distance and bearing of the other ship if and when her echo was first observed by radar.  
(b) the distance, bearing and approximate heading of the other ship when first seen;
- (x) what light or combination of lights (if any) of the other ship was first seen;
- (xi) what other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision, and when;
- (xii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (vii) up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when;
- (xiii) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
- (xiv) what sound signals (if any) were given, and when;
- (xv) what sound signals (if any) were heard from the other ship, and when.

(2) Every preliminary act shall be sealed by the Registrar and shall be filed in a closed envelope (stamped with an official stamp showing the date of filing and, unless the Court otherwise orders, no envelope shall be opened until the pleadings are closed and a

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consent signed by each of the parties or his attorney to the opening of the preliminary acts is filed with the Registrar.

(3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within seven days after the opening of the preliminary acts.

(4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.

(5) Order 18 rule 1, shall not apply to an action in which preliminary acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within fourteen days after the latest date on which the preliminary act of any party to the action is filed.

### **75/19 Failure to lodge preliminary act: proceedings against party in default**

19 (1) Where in such an action, as is referred to in rule 18(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action *in personam*, a defendant fails to lodge a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to lodge the preliminary act within that period was a failure by him to serve a defence on the plaintiff within the period fixed by or under these rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 77, rule 9, accordingly enter judgment against the defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.

(3) Where in such an action, being an action *in rem*, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded.

The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the

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claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 18(1) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

### **75/20 Special provisions as to pleadings in collision, etc. actions**

20 (1) Notwithstanding anything in Order 18, rule 3, the plaintiff in any such action as is referred to in rule 2(1) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

(2) If in such an action there is a counterclaim and no defence to counterclaim by the plaintiff, then, notwithstanding Order 18, rule 14(3), but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

### **75/21 Judgment by default**

21 (1) Where a writ is served under rule 8(4) on a party at whose instance a caveat against arrest was issued, then if—

- (a) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his attorney to procure the entry of the caveat, and
- (b) that party or his attorney does not within fourteen days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action *in rem* fails to enter an appearance within the time limited for appearing, then, on the expiration of fourteen days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(2), or was served on the Registrar under rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ

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indorsed as mentioned in the said rule 1(2) or indorsed by the Registrar with a statement that he accepts service of the writ must be lodged with the affidavit verifying the facts on which the action is based.

(4) Where a defendant to an action *in rem* fails to serve a defence on the plaintiff, then after the expiration of the period fixed by or under these rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action *in rem* fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the plaintiff in any such action as is referred to in rule 2(1)(a).

(7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without the reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

(8) In default actions *in rem* evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

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

(10) Order 13 and Order 19 (except rule 1) shall not apply to actions *in rem*.

### **75/22 Order for sale of ship: determination of priority of claims**

22 (1) Where in action *in rem* against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may—

(a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a), or

(b) in any other case, after obtaining judgment,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

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(2) Where in an action *in rem* against a ship the Court orders the ship to be sold, it may further order—

- (a) that the order of priority of the claims against the proceeds of the sale of the ship shall not be determined until after the expiration of ninety days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into court;
- (b) that any party to the action or to any other action *in rem* against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the order;
- (c) that within seven days after the date of payment into court of the proceeds of sale the marshal shall send for publication in Lloyd's List and such other newspaper, if any, as the court may direct, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(c) must state—

- (a) that the ship (naming her) has been sold by order of the Court in an action *in rem*, identifying the action;
- (b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;
- (c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and
- (d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.

(4) The marshal must lodge in the Registry a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.

(5) The expenses incurred by the marshal in complying with an order of the court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (2)(a) must be made by motion, and a copy of the notice of motion, must, at least three days before the day fixed for the hearing thereof, be served on each party who has begun an action *in rem* against the ship or the proceeds of sale thereof.

(7) In this rule "the Court" means a judge.

### **75/23 Appraisement and sale of property**

23 (1) A commission for the appraisement and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form No. 12 in Appendix B.

(2) Such a commission must, unless the Court otherwise orders, be executed by the marshal and must be in Form No. 13 in Appendix B.

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(3) A commission for appraisal and sale shall not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.

(4) The marshal shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.

(5) On the taxation of the marshal's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decisions of the Registrar made in taxation proceedings under Order 62, and rules 33 to 35 of that Order shall apply accordingly with the necessary modifications.

### **75/23A Undertaking as to expenses, etc.**

23A (1) Every undertaking under rule 8(3), 10(3), 13(7) or 23(3) shall be given in writing to the satisfaction of the marshal.

(2) Where a party is required by rule 8(3), 10(3), 13(7) or 23(3) to give to the marshal an undertaking to pay any fees or expenses, the marshal may accept instead of the undertaking the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court may on the application of any party who is dissatisfied with a direction or determination of the marshal under rule 13(7) or this rule, vary or revoke the direction or determination.

### **75/24 Payments into and out of court**

24 (1) Order 22 (except rules 3, 4 and 5) shall apply in relation to an Admiralty action as it applies to an action for debt or damages.

(2) Subject to paragraphs (3) and (4), money paid into court shall not be paid out except in pursuance of an order of a judge.

(3) The Registrar may with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say—

- (a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision;
- (b) where property has been sold and the proceeds of sale thereof paid into court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons;
- (c) where in any other case there is no dispute between the parties.

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### **75/25 Summons for directions**

25 (1) Order 25 shall apply to Admiralty actions (other than limitation actions and actions ordered to be tried as Admiralty short causes) as it applies to other actions, except that—

- (a) the summons for directions shall be returnable in not less than seven weeks;
- (b) any notice under Order 25, rule 7(1), must be served within twenty-one days after service of the summons for directions on the party giving the notice; and
- (c) unless a judge otherwise directs, the summons for directions shall be heard by a judge.

On the day on which any party serves on any other party a notice under Order 25, rule 7, he must lodge two copies of the notice in the registry.

(2) An order made on the summons for directions shall determine whether the trial is to be without assessors or with one or more assessors, nautical assessors or other assessors.

(3) The trial shall be in the Court before a judge without a jury unless, on the ground that there are special reasons to the contrary, an order made on the summons for directions otherwise provides.

(4) An order may be made on the summons for directions, or a direction may be given at the trial, limiting witnesses who may be called at the trial, whether they are expert witnesses or not.

(5) Any such order or direction as is referred to in paragraph (2), (3) or (4) (including an order made on appeal) may be varied or revoked by a subsequent order or direction made or given at or before the trial by a judge.

### **75/26 Fixing date of trial, etc.**

26 (1) The Court may at any stage of an action, either on an application made by summons by any party or by order made by virtue of rule 35, fix a date for the trial and vacate or alter any such date.

(2) Not later than seven days after a date for the trial of the action has been fixed, the action must be set down for trial—

- (a) where the date was fixed on an application made under paragraph (1), by the applicant;
- (b) where the date was fixed by order made by virtue of rule 35, by the plaintiff.

Where the applicant or plaintiff does not, within the period fixed by this paragraph, set the action down for trial, any other party may set it down or an application may be made to the Court to dismiss the action for want of prosecution and, on the hearing of any

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such application, the Court may order the action to be dismissed accordingly or make such other order as it thinks just.

(3) Not less than seven days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the Chief Justice, the party by whom the action was set down for trial must, unless the Court otherwise orders, file in the Registry—

- (a) if trial with one or more assessors has been ordered, a praecipe for his or their attendance, and
- (b) three copies or, in the case of a trial with one or more assessors, four copies (if with one assessor) and five copies (if with two) or any pleadings, preliminary acts, notices given under rule 18(3) and statements filed under rule 18(4).

(4) If an action which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the Registry of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

(5) Order 21, rule 2(4), Order 33, rule 4, and Order 34 (except rule 9) shall not apply to Admiralty actions.

### **75/27 Stay of proceedings in collision, etc. actions until security given**

27 Where an action *in rem*, being an action to enforce any such claim as is referred to in rule 2(1)(a), is begun and a cross action *in rem* arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then—

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest, but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

### **75/28 Inspection of ship, etc.**

28 Without prejudice to its powers under Order 29, rules 2 and 3, and Order 35 rule 8, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

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### **75/30 Examination of witnesses and other persons**

30 (1) The power conferred by Order 39, rule 1, shall extend to the making of an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by the said rule 1 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect—

- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;
- (b) any representative, being attorney, of either of the parties shall have authority to administer the oath to the witness;
- (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the attorney for the party whose witness was examined, and that attorney shall file it in the Registry;
- (d) unless the parties otherwise agree or the Court otherwise orders the transcript or a copy thereof shall, before the transcript is filed, be made available to the attorney or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript,

(4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under Order 39, rule 1, authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

### **75/31 Trial as an Admiralty short cause**

31 (1) Where any defendant has entered an appearance in an Admiralty action, the plaintiff or that defendant may, within seven days after the entry of the appearance, apply by summons, returnable before the Registrar for an order that the action be tried as an Admiralty short cause.

(2) The summons shall be served on every other party to the action not less than seven days before the hearing.

(3) On the hearing of the application the Registrar may, if he decides to make an order under paragraph (1),—

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- (a) exercise any power which could be exercised under order 18, rule 21, or order 75, rule 18(4), on an application for the trial of the action without pleadings or further pleadings,
- (b) abridge the period within which a person is required or authorised by these rules to do any act in the proceedings,
- (c) in the case of such an action as is referred to in rule 18(1), fix the time within which, notwithstanding the provisions of that rule, preliminary acts are to be lodged,
- (d) require the parties to the action to make mutual discovery of documents notwithstanding that the action is ordered to be tried without pleadings,
- (e) if the parties so agree, order that the evidence in support of their respective cases may be given in whole or in part by the production of documents or entries in books,
- (f) give such directions as could be given on a summons for directions in the action, and
- (g) fix a date for the trial of the action.

(4) The party taking out a summons under this rule shall include in it an application for such orders or directions as he desires the Registrar to make or give in the exercise of the powers set out in paragraph (3), and any party on whom the summons is served shall, within three days after service of the summons on him, give notice to every other party of any other order or direction he desires the Registrar to make or give as aforesaid and lodge a copy of such notice in the Registry.

(5) An application for an order under Order 18, rule 21, that an Admiralty action be tried without pleadings or further pleadings shall be made by way of an application for an order under paragraph (1) and not otherwise.

(6) Where an order is made under paragraph (1), the writ or originating summons by which the action was begun shall be marked in the top left-hand corner "Admiralty Short Cause."

(7) Any application subsequent to a summons under paragraph (1) and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made under the summons by two clear days' notice to the other party stating the grounds of the application.

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### **75/33 Proceedings for apportionment of salvage**

33 (1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be begun by originating motion.

(2) The notice of such motion, together with the affidavits in support thereof, must be filed in the Registry seven days at least before the hearing of the motion, unless

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the Court gives leave to the contrary, and a copy of the notice and of the affidavits must be served on all the other parties to the proceedings before the originals are filed.

(3) On the hearing of the motion the judge may exercise any of the jurisdiction conferred by section 556 of the Merchant Shipping Act 1894 of the Parliament of the United Kingdom.

### **75/34 Filing and service of notice of motion**

34 (1) Notice of a motion in any action, together with the affidavits (if any) in support thereof, must be filed in the Registry three days at least before the hearing of the motion unless the Court gives leave to the contrary.

(2) A copy of the notice of motion and of the affidavits (if any) in support thereof must be served on all the other parties to the proceedings before the originals are filed.

### **75/35 Agreement between attorneys may be made order of court**

35 (1) Any agreement in writing between the attorneys of the parties to a cause or matter, dated and signed by those attorneys, may, if the Registrar thinks it reasonable and such as a judge would under the circumstances allow, be filed in the Registry, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by a judge.

### **75/36 Originating summons procedure**

36 (1) An originating summons in Admiralty may be issued out of the Registry.

(4) Rule 26, (except paragraph (3)) shall, with any necessary modifications, apply in relation to an Admiralty cause or matter begun by originating summons, and Order 28, rule 9, shall not apply to such a cause or matter.

### **75/37 Limitation action: parties**

37 (1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) In this rule and rules 38, 39 and 40 "name" includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other

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relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

### **75/38 Limitation action: summons for decree or directions**

38 (1) In a limitation action within seven days after the entry of appearance by one of the defendants named by their names in the writ, or, if none of them enters an appearance, within seven days after the time limited for appearing, the plaintiff, without serving a statement of claim, must take out a summons returnable in chambers before a judge asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The summons must be supported by an affidavit or affidavits proving—

- (a) the plaintiff's case in the action, and
- (b) if none of the defendants named in the writ by their names has entered an appearance, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the summons must state—

- (a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names, and
- (b) the address of each of those persons, if known to the plaintiff.

(4) The summons and every affidavit in support thereof must, at least seven clear days before the hearing of the summons, be served on any defendant who has entered an appearance.

(5) On the hearing of the summons the judge, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the summons the judge, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the summons the judge does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25.

(8) Any defendant who, after the judge has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to

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that effect in the Registry and serve a copy on the plaintiff and on any other defendant who has entered an appearance.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8), the plaintiff may take out a summons returnable in chambers before the judge asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

### **75/39 Limitation action: proceedings under decree**

39 (1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or entered an appearance, any decree in the action limiting the plaintiff's liability—

- (a) need not be advertised, but
- (b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action, limiting the plaintiff's liability—

- (a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;
- (b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which rule 40 applies, take out a summons, if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2)(a), shall, unless for special reasons the judge thinks fit otherwise to provide, be a single advertisement in a newspaper specified in the decree, identifying the action, the casualty and the relation to the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the entering of appearances, the filing of claims and the taking out of summonses to set the decree aside.

The plaintiff must within the time fixed under paragraph (2)(b) file in the Registry a copy of the newspaper in which the advertisement required under paragraph (2)(a) appears.

(4) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the judge thinks fit otherwise to provide, be not less than two months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed, no appearance may be entered, claim filed or summons taken out to set aside the decree except with the leave of the judge.

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(5) Save as aforesaid, any decree limiting the plaintiff's liability may make any such provision as is authorised by section 504 of the Merchant Shipping Act 1894 of the Parliament of the United Kingdom.

### **75/40 Limitation action: proceedings to set aside decree**

40 (1) Where a decree limiting the plaintiff's liability fixes a time in accordance with rule 39(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who—

- (a) was not named by his name in the writ, as a defendant to the action, or
- (b) if so named, neither was served with the writ nor entered an appearance

may, within that time, after entering an appearance, take out a summons returnable in chambers before a judge asking that the decree be set aside.

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a *bona fide* claim against the plaintiff in respect of the casualty in question and that he has sufficient *prima facie* grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least seven clear days before the hearing of the summons, be served on the plaintiff and any defendant who has entered an appearance.

(4) On the hearing of the summons the judge, if he is satisfied that the defendant in question has a *bona fide* claim against the plaintiff and sufficient *prima facie* grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25.

### **75/41 References to Registrar**

41 (1) Any party (hereafter in this rule referred to as the "claimant") making a claim which is referred to the Registrar for decision must, within two months after the order is made, or, in a limitation action, within such other period as the Court or the Registrar may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant's claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than twenty-eight days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by summons for directions as to the proceedings on the reference, and the Registrar shall give such directions, if any, as he thinks fit including without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant's claim.

(3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the

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appointment of a particular day, the appointment must be made by order on an application by summons made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court or the Registrar for the filing of claims.

(5) Not later than seven days after an appointment for the hearing of a reference has been made, the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the Registry a praecipe requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than fourteen days before the day appointed for the hearing of the reference the claimant must file—

- (a) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item, and
- (b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed;

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

(7) If the claimant fails to comply with paragraph (1) or (6)(b), the Court may, on the application of any other party to the cause or matter, dismiss the claim.

### **75/42 Hearing of reference**

42 (1) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(2) At or before the hearing of a reference, the Registrar may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon.

(4) When the hearing of the reference has been concluded, the Registrar shall—

- (a) reduce to writing his decision on the questions arising in the reference (including any order as to costs) and cause it to be filed;
- (b) cause to be filed either with his decision or subsequently such statement (if any) of the grounds of the decision as he thinks fit; and
- (c) send to the parties to the reference notice that he has done so.

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(5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given by the Registrar that he intends to file such a statement later, any party to the reference may, within fourteen days after the filing of the decision, make a written request to the Registrar to file such a statement.

### **75/43 Objection to decision on reference**

43 (1) Any party to a reference to the Registrar may by summons in objection, apply to a judge in chambers to set aside or vary the decision of the Registrar on the reference, but the summons, specifying the points of objection to the decision must be filed within fourteen days after the date on which notice of the filing of the decision was sent to that party under rule 42(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within fourteen days after the date on which that notice was sent.

(2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but unless he or the judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing notice of a summons in objection thereto, or while such a summons is pending or remains undisposed of.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard, but may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 42(4).

### **75/44 Drawing up and entry of judgments and orders**

44 Every judgment given or order made in an Admiralty cause or matter shall be drawn up in the Registry and shall be entered by an officer of the Registry in the book kept for the purpose.

## **ORDER 76**

### **CONTENTIOUS PROBATE PROCEEDINGS**

#### **76/1 Application and interpretation**

1 (1) This Order applies to probate causes and matters, and the other provisions of these rules apply to those causes and matters subject to the provisions of this Order.

(2) In these rules "probate action" means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order "will" includes a codicil.

#### **76/2 Requirements in connection with issue of writ**

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—

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- (a) a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates; and
- (b) a memorandum signed by the Registrar showing that the writ has been produced to him for examination and that two copies of it have been lodged with him.

### **76/3 Parties to action for revocation of grant**

3 Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his grant shall be made a party to any action for revocation of the grant.

### **76/4 Lodgment of grant in action for revocation**

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 his control, he shall lodge it or them in the Registry within fourteen 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.

### **76/5 Affidavit of testamentary scripts**

5 (1) Unless the Court otherwise directs, the plaintiff and every defendant who has entered an appearance in a probate action must swear an affidavit—

- (a) describing any testamentary script of the deceased person, whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script, and
- (b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.

(2) Any affidavit required by this rule must be filed and an office copy thereof and any testamentary script referred to therein which is in the possession or under the control of the deponent must be lodged in the judge's chambers within fourteen days after the entry of appearance by a defendant to the action or, if no defendant enters an

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appearance therein 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 judge's chambers 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 judge's chambers 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 other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

(5) In this rule "testamentary script" means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any documents purporting to be evidence of the contents, or to be a copy, of a will is alleged to have been lost or destroyed.

### **76/6 Default of appearance**

6 (1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to enter an appearance, the plaintiff, upon filing an affidavit proving due service of the writ, or notice of the writ, on that defendant may, after the time limited for appearing, proceed with the action as if that defendant had entered an appearance.

(3) Where the defendant, or all the defendants, to a probate action, fails or fail to enter an appearance, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for appearing by the defendant apply to the Court for 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, or notice of the writ, on the defendant and, if no statement of claim is indorsed on the writ, he must lodge a statement of claim.

(5) Where the Court grants an order under paragraph (3), it may direct the action to be tried on affidavit evidence.

### **76/7 Service of statement of claim**

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 enters an appearance in the action and must do so before the expiration of six weeks after entry of appearance by that defendant or of eight days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

### **76/8 Counterclaim**

8 (1) Notwithstanding anything in Order 15, rule 2(1), a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of

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any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action must add to his defence a counterclaim in respect of that matter.

(2) If the plaintiff fails to serve a statement of claim, any such defendant may, with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

### **76/9 Contents of pleadings**

9 (1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.

(3) Without prejudice to Order 18, rule 7, any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say—

- (a) that the will was not duly executed,
- (b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding, and
- (c) that the execution of the will was obtained by undue influence or fraud,

shall be made by that party unless that other plea is also pleaded.

### **76/10 Default of pleadings**

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.

### **76/11 Discontinuance and dismissal**

11 (1) Order 21 shall not apply in relation to a probate action.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has entered an appearance 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

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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.

### **76/12 Compromise of action: trial on affidavit evidence**

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.

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### **76/15 Administration pendente lite**

15 (1) An application under section 14 of the Administration of Estates Act 1974 [title 26 item 12] for an order for the grant of administration may be made by summons.

(2) Where an order for a grant of administration is made under the said section 14, Order 30, rules 2, 4 and 6 and (subject to subsection (2) of the said section) rule 3, shall apply as if the administrator were a receiver appointed by the court.

## **ORDER 77**

### **PROCEEDINGS BY AND AGAINST THE CROWN**

#### **77/1 Application and interpretation**

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, unless the context otherwise requires—

- (i) “Crown action” means a civil cause or matter commenced by or on behalf of the Crown under the Crown Causes Act 1951 [title 8 item 101];
- (ii) “the Crown” includes the Attorney General, a Government Department and a Government Board;
- (iii) “civil proceedings against the Crown” means proceedings brought against the Crown under the Crown Proceedings Act 1966 [title 8 item 105];
- (iv) “Government Department” and “Department” shall be deemed to include a Government Board;
- (v) “order against the Crown” means any order (including an order for costs) made in any civil proceedings to which the Crown is a party, or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a Government Department or against an officer of the Crown as such;
- (vi) “order” includes a judgment, decree, rule, award or declaration;

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- (vii) any reference in this Order to a Crown action or to civil proceedings against the Crown or to civil proceedings to which the Crown is a party shall be construed as including a reference to civil proceedings to which the Attorney General or any Government Department or any Government officer of the Crown as such is a party:

Provided that the Crown shall not for the purposes of this Order be deemed to be a party to any proceedings by reason only that they are brought by the Attorney General upon the relation of some other person.

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### **77/3 Particulars to be included in indorsement of claim**

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 appearing, apply to the plaintiff by notice for a 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 appearing 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 matters referred to in paragraph (1) is reasonably required.

### **77/4 Service on the Crown**

4 (1) Order 10, Order 11 and any other provision of these rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.

(2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected by leaving the document at the office of the Attorney General.

(3) In relation to the service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown, Order 65, rules 5 and 9, shall not apply, and Order 65, rule 7 shall apply as if the reference therein to rules 2 and 5(1)(a) of that Order were a reference to paragraph (2) of this rule.

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### **77/6 Counterclaim and set-off**

6 (1) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, no counterclaim may be made, or set-off pleaded 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—

(a) if the Crown is sued or sues in the name of a Government Department and the subject-matter of the counterclaim or set-off does not relate to that department; or

(b) if the Crown is sued or sues in the name of the Attorney General.

(3) Any application for leave under this rule must be made by summons.

### **77/7 Summary judgment**

7 (1) No application against the Crown shall be made under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Crown nor under Order 14, rule 5, in any proceedings by the Crown.

(2) Where an application is made by the Crown under Order 14, rule 1, Order 14, rule 5, or Order 86, rule 1, the affidavit required in support of the application must be made by—

(a) the Attorney General, or

(b) an officer duly authorised by the Attorney General;

and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

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### **77/9 Judgment in default**

9 (1) Except with the leave of the Court, no judgment in default of appearance or of pleading shall be entered against the Crown in civil proceedings against the Crown or in third party proceedings against the Crown.

(2) Except with the leave of the Court, Order 16, rule 5(1)(a), shall not apply in the case of third party proceedings against the Crown.

(3) An application for leave under this rule may be made by summons or, except in the case of an application relating to Order 16, rule 5, by motion; and the summons or, as the case may be, notice of the motion must be served not less than seven days before the return day.

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### **77/10 Third party notices**

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.

### **77/11 Interpleader: application for order against Crown**

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 seven days before the return day.

### **77/12 Discovery and interrogatories**

12 (1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the Crown is a party.

(2) In any civil proceedings to which the Crown is a party any order of the Court made under the powers conferred by section 19 of the Crown Proceedings Act 1966 [*title 8 item 105*], 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 government, 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 an order is made under the said section 19 for interrogatories to be answered by the Crown, the Court shall direct by what officer of the Crown the interrogatories are to be answered.

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### **77/14 Evidence**

14 (1) Civil proceedings against the Crown may be instituted under Order 39, rule 15, in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.

(2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

### **77/15 Execution and satisfaction of orders**

15 (1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown.

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### **77/16 Attachment of debts, etc**

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 a receiver under Order 30 or 51,

shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.

### **77/17 Proceedings relating to postal packets**

17 (1) An application by any person under section 9(4) of the Crown Proceedings Act 1966 [*title 8 item 105*], for leave to bring proceedings in the name of the sender or addressee of a postal packet or his estate 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) No appearance need be entered to a summons under this rule.

### **77/18 Applications under sections 14 and 20 of the Crown Proceedings Act 1966**

18 (1) Every application to the Court under section 14(1) of the Crown Proceedings Act 1966 [*title 8 item 105*] must be made by summons.

(2) An application such as is referred to in section 20 of the Crown Proceedings Act 1966 [*title 8 item 105*] 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**

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### **ORDER 79**

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### **ORDER 80**

### **DISABILITY**

### **80/1 Interpretation**

1 In this Order—

“the Act” means the Mental Health Act 1968 [*title 11 item 36*];

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“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.

### **80/2 Person under disability must sue, etc. by next friend or guardian ad litem**

2 (1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order, notice of which has been served on him, except by his guardian *ad litem*.

(2) Subject to the provisions of these rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian *ad litem*.

(3) A next friend or guardian *ad litem* of a person under disability must act by an attorney.

### **80/3 Appointment of next friend or guardian ad litem**

3 (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 authorised under Part IV of the Act to conduct legal proceedings in the name of a patient or on his behalf, that person shall be entitled to be next friend or guardian *ad litem* as the case may be, of the patient in any proceedings to which his authority extends unless, in a case to which paragraph (4) or (5) or rule 6 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian *ad litem*, as the case may be, of the patient in those proceedings.

(4) Where a person has been or is next friend or guardian *ad litem* of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

(5) Where, after any proceedings have been begun, a party to the proceedings becomes a patient, an application must be made to the Court for the appointment of a person to be next friend or guardian *ad litem*, as the case may be, of that party.

(6) Except where the next friend or guardian *ad litem*, as the case may be, of a person under disability has been appointed by the Court—

- (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability,
- (b) an appearance shall not be entered in a cause or matter for a person under disability, and

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- (c) a person under disability shall not be entitled to appear by his guardian *ad litem* on the hearing of a petition, summons or motion which, or notice of which, has been served on him,

unless and until the documents listed in paragraph (8) have been filed in the Registry.

- (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; and
  - (c) 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 authorised as aforesaid; and
    - (iii) that the person so named has no interest in the cause or matter in question adverse to that of the person under disability.

80/4  
and [blank]  
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### **80/6 Appointment of guardian where person under disability does not appear**

- 6 (1) Where—
  - (a) in an action against a person under disability begun by writ, or originating summons to which an appearance is required to be entered, no appearance is entered in the action for that person, or
  - (b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no appearance is entered for that person,

an application for the appointment by the Court of a guardian *ad litem* of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for appearing and before proceeding further with the action or counterclaim.

(2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no appearance is entered for that person to 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 appearing and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by petition or motion, or by originating summons to which no appearance need be entered, that

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person does not appear by a guardian *ad litem* at the hearing of the petition, motion, or summons, as the case may be, the Court hearing it may appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.

(5) An application under paragraph (1) or (2) must be supported by evidence proving—

- (a) that the person to whom the application relates is a person under disability,
- (b) that the person proposed as guardian *ad litem* is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability,
- (c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability, and
- (d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for appearing and at least seven 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) must be supported by evidence proving the matters referred to in paragraph (5)(b).

### **80/7 Application to discharge or vary certain orders**

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 fourteen days after the service of the order on that person;
- (b) if there is no next friend or guardian *ad litem* acting for that person in that cause or matter, within fourteen days after the appointment of such a friend or guardian to act for him.

### **80/8 Admission not to be implied from pleading of person under disability**

8 Notwithstanding anything in Order 18, rule 13(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

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### **80/9 Discovery and interrogatories**

9 Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian *ad litem*.

### **80/10 Compromise, etc. by person under disability**

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.

### **80/11 Approval of scheme**

11 (1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, notwithstanding anything in Order 5, rule 2, the claim may be made in proceedings begun by originating summons and in the summons an application may also be made for—

- (a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under rule 12, or
- (b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*], the originating summons must include the particulars mentioned in section 3 of that Act.

- (3) No appearance need be entered to an originating summons under this rule.
- (4) In this rule "settlement" includes a compromise.

### **80/12 Control of money recovered by person under disability**

12 (1) Where in any proceedings—

- (a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability, or
- (b) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and

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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 court to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Court.

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under a disability 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.

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### **80/15 Proceedings under Fatal Injuries (Actions for Damages) Act 1949: apportionment by Court**

15 (1) Where a single sum of money is paid into court under Order 22, rule 1, in satisfaction of causes of action arising under the Fatal Injuries (Actions for Damages) Act 1949 [title 8 item 66] and the Survival of Actions Act 1949 [title 8 item 68] and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it under rule 12 (if that rule applies) or when authorising its payment out of court.

(2) Where, in an action in which a claim under the Fatal Injuries (Actions for Damages) Act 1949 [title 8 item 66] is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or sum of money paid into court under Order 22, rule 1, is accepted in satisfaction of the cause of action under the said Act, then, unless the sum has been apportioned between the persons entitled thereto by the jury, it shall be apportioned between those persons by the Court.

The reference in this paragraph to a sum of money paid into court shall be construed as including a reference to part of a sum so paid being the part apportioned by the Court under paragraph (1) to the cause of action under the said Act.

### **80/16 Service of certain documents on person under disability**

16 (1) Where in any proceedings a document is required to be served personally on any person and that person is a person under disability this rule shall apply.

(2) Subject to the following provisions of this rule and to Order 24 rule 16 (3), and Order 26, rule 6 (3), the document must be served—

- (a) in the case of an infant who is not also a patient, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;

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- (b) in the case of a patient, on the person (if any) who is authorised under Part IV of the Act to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is;

and must be served in the manner required by these rules with respect to the document in question.

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph 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**

##### **81/1 Actions by and against firms within jurisdiction**

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.

##### **81/2 Disclosure of partners' names**

2 (1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their attorneys a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their attorneys to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the action be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiffs in the writ.

(3) Paragraph (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners

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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.

### **81/3 Service of writ**

3 (1) Where by virtue of rule 1 partners are sued in the name of a firm, the writ may, except in the case mentioned in paragraph (2), be served—

- (a) on any one or more of the partners, or
- (b) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there;

and where service of the writ is effected in accordance with this paragraph, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of the jurisdiction.

(2) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun must be served on every person within the jurisdiction sought to be made liable in the action.

(3) Every person on whom a writ is served under paragraph (1) must at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as 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.

### **81/4 Entry of appearance in an action against a firm**

4 (1) Where persons are sued as partners in the name of their firm, appearance may not be entered in the name of the firm but only by the partners thereof in their own names, but the action shall nevertheless continue in the name of the firm.

(2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may enter an appearance in the action and state in his memorandum of appearance that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An appearance entered in accordance with this paragraph shall, unless and until it is set aside, be treated as an appearance for the defendant firm.

(3) Where an appearance has been entered for a defendant in accordance with paragraph (2), then—

- (a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;

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(b) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in an action in which a defendant has entered an appearance in accordance with paragraph (2), on the application of the plaintiff or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

(5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not enter an appearance in the action unless he is a member of the firm sued.

### **81/5 Enforcing judgment or order against firm**

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) entered an appearance in the action as a partner, or
- (b) having been served as a partner with the writ of summons, failed to enter an appearance in the action, or
- (c) admitted in his pleading that he is a partner, or
- (d) was adjudged to be a partner.

(3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ of summons was issued unless he—

- (a) entered an appearance in the action as a partner, or
- (b) was served within the jurisdiction with the writ as a partner, or
- (c) was, with the leave of the Court given under Order 11, served out of the jurisdiction with the writ, or notice of the writ, as a partner;

and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and

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the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person, the application to be made by summons which must be served personally on that person.

(5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3), give leave to issue execution against that person, and, where that person disputes his liability the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

### **81/6 Enforcing judgment or order in actions between partners, etc.**

- 6 (1) Execution to enforce a judgment or order given or made in—
- (a) an action by or against a firm in the name of the firm against or by a member of the firm, or
  - (b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue except with the leave of the Court.

(2) The Court hearing an application under this rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

### **81/7 Attachment of debts owed by firm**

7 (1) An order may be made under Order 49, rule 1, in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.

(2) An order to show cause under the said rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.

(3) Where an order made under the said rule 1 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

### **81/8 Actions begun by originating summons**

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.

### **81/9 Application to person carrying on business in another name**

9 An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and rules 2 to 8 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

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### **81/10 Applications for orders charging partner's interest in partnership property, etc.**

10 (1) Every application to the Court by a judgment creditor of a partner for an order under section 23 of the Partnership Act 1902 [*title 17 item 25*] (which authorises the Court to make certain orders on the application of a judgment creditor of a partner including an order charging the partner's interest in the partnership property), and every application to the Court by a partner of the judgment debtor made in consequence of the first-mentioned application must be made by summons.

(3) Every summons issued by a judgment creditor under this rule, and every order made on such a summons, must be served on the judgment debtor and on such of his partners as are within the jurisdiction.

(4) Every summons issued by a partner of a judgment debtor under this rule, and every order made on such a summons, must be served—

(a) on the judgment creditor, and

(b) on the judgment debtor, and

(c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction.

(5) A summons or order served in accordance with this rule, on some only of the partners thereof, shall be deemed to have been served on all the partners of that partnership.

## **ORDER 82**

### **DEFAMATION ACTIONS**

#### **82/1 Application**

1 These rules apply to actions for libel or slander subject to the following rules of this Order.

#### **82/2 Indorsement of claim in libel action**

2 Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

#### **82/3 Obligation to give particulars**

3 (1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, 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

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matter of public interest, or pleads to the like effect, he must give particulars stating which of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

### **82/4 Provisions as to payment into court**

4 (1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with Order 22, rule 3(1), accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in rule 3(4) of that Order, the action shall be stayed as against that defendant only, but—

- (a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the action by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the action has been stayed, and
- (b) the plaintiff shall not be entitled to his costs of the action against the other defendant after the date of the payment into court unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.

(2) Where in an action for libel a party pleads the defence for which section 2 of the Libel Act 1857 [*title 8 item 65*] provides, Order 22, rule 7, shall not apply in relation to that pleading.

### **82/5 Statement in open Court**

5 (1) Where a party accepts money paid into court in satisfaction of a cause of action for libel or slander, the plaintiff or defendant, as the case may be, may apply to a judge in Chambers by summons for leave to make in open Court a statement in terms approved by the judge.

(2) Where a party to an action for libel or slander which is settled before trial desires to make a statement in open Court, an application must be made to the Court for

## **RULES OF THE SUPREME COURT 1985**

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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.

### **82/6 Interrogatories not allowed in certain cases**

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.

### **82/7 Evidence in mitigation of damage**

7 In an action for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

### **ORDER 83**

[blank]

### **ORDER 84**

[blank]

### **ORDER 85**

## **ADMINISTRATION AND SIMILAR ACTIONS**

### **85/1 Interpretation**

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.

### **85/2 Determination of questions, etc. without administration**

2 (1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

(2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions—

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- (a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;
  - (b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;
  - (c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.
- (3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs—
- (a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;
  - (b) an order requiring the payment into court of money held by a person in his capacity of executor, administrator or trustee;
  - (c) an order directing a person to do or abstain from doing a particular act in his capacity of executor, administrator or trustee;
  - (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity of 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.

### **85/3 Parties**

3 (1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration action or such an action as is referred to in rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.

(2) Notwithstanding anything in Order 15, rule 4(2), and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the action; but the plaintiff may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate shall

## **RULES OF THE SUPREME COURT 1985**

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be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

### **85/4 Grant of relief in action begun by originating summons**

4 In an administration action or such an action as is referred to in rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun by originating summons, but the foregoing provision is without prejudice to the power of the Court to make an order under Order 28, rule 8, in relation to the action.

### **85/5 Judgments and orders in administration actions**

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 beneficiary entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may—

- (a) order that proceedings in the action be stayed for a period specified in the order and that the executors, administrators or trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;
- (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the action relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the judge.

### **85/6 Conduct of sale of trust property**

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.

## **RULES OF THE SUPREME COURT 1985**

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### **ORDER 86**

#### **ACTIONS FOR SPECIFIC PERFORMANCE, ETC.: SUMMARY JUDGMENT**

##### **86/1 Application by plaintiff for summary judgment**

- 1 (1) In any action begun by writ indorsed with a claim—
- (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase or exchange of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages, or
  - (b) for rescission of such an agreement, or
  - (c) for the forfeiture or return of any deposit made under such an agreement,

the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.

(2) An application may be made against a defendant under this rule whether or not he has entered an appearance in the action.

##### **86/2 Manner in which application under rule 1 must be made**

2 (1) An application under rule 1 must be made by summons supported by an affidavit made by some person who can swear positively to the facts verifying the cause of action and stating that in his belief there is no defence to the action.

(2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.

(3) The summons, a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than four clear days before the return day.

86/3

*[blank]*

##### **86/4 Judgment for plaintiff**

4 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 be a trial of the action, the Court may give judgment for the plaintiff in the action.

##### **86/5 Leave to defend**

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

(2) The Court may give a defendant against whom such an application is made leave to defend the action either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

## **RULES OF THE SUPREME COURT 1985**

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(3) On the hearing of such an application the Court may order a defendant showing cause or, where that defendant is a body corporate, any director, manager, secretary or other similar officer thereof, or any person purporting to act in any such capacity—

- (a) to produce any document;
- (b) if it appears to the court that there are special circumstances which make it desirable that he should do so, to attend and be examined on oath.

### **86/6 Directions**

6 Where the Court orders that a defendant have leave to defend the action, the Court shall give directions as to the further conduct of the action, and Order 25 rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 were a summons for directions.

### **86/7 Costs**

7 If the plaintiff makes an application under rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on the contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

### **86/8 Setting aside judgment**

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

## **ORDER 87**

[blank]

## **ORDER 88**

### **MORTGAGE ACTIONS**

#### **88/1 Application and interpretation**

1 (1) This Order applies to any action (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being an action in which there is a claim for any of the following reliefs, namely—

- (a) payment of moneys secured by the mortgage,

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- (b) sale of the mortgaged property,
- (c) foreclosure,
- (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property,
- (e) redemption,
- (f) reconveyance of the property or its release from the security,
- (g) delivery of possession by the mortgagee.

(2) In this Order “mortgage” includes a legal and an equitable mortgage, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) An action to which this Order applies is referred to in this Order as a mortgage action.

(4) These rules apply to mortgage actions subject to the following provisions of this Order.

88/2

and *[blank]*

88/3

### **88/4 Documents to be lodged on taking appointment for hearing**

4 (1) The plaintiff in a mortgage action begun by originating summons, on applying for an appointment under Order 28, rule 2(1), must produce the originating summons and leave in the Registry—

- (a) a copy of the originating summons, and
- (b) the copy memorandum of appearance, stamped in accordance with Order 12, rule 4, of any defendant to the action or, if any defendant has failed to enter an appearance, a certificate of his non-appearance.

(2) Not less than two clear days before the day fixed for the first or any adjourned hearing of the originating summons the plaintiff must leave in the Registry the original or an office copy of any affidavit intended to be used by him at the hearing with the exhibits thereto.

### **88/5 Claim for possession: non-appearance by defendant**

5 (1) Where in a mortgage action begun by originating summons, being an action in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to enter an appearance, the following provisions of this rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant.

This rule shall not be taken as affecting Order 28, rule 3, or rule 5(2), in so far as it requires any document to be served on, or notice given to, a defendant who has entered an appearance in the action.

## **RULES OF THE SUPREME COURT 1985**

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(2) Not less than four clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the affidavit in support of the summons.

(3) Where the plaintiff claims delivery of possession there must be indorsed on the outside fold of the copy of the affidavit served on the defendant a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the mortgaged property and for such other relief (if any) claimed by the originating summons as the plaintiff intends to apply for at the hearing.

(4) Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than two clear days before the day fixed for the hearing.

A copy of any affidavit served under this paragraph must be indorsed in accordance with paragraph (3).

(5) Service under paragraph (2) or (4), and the manner in which it was effected, may be proved by a certificate signed by the plaintiff, if he sues in person, and otherwise by his attorney.

The certificate may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.

(6) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (2) or (4).

(7) Where the plaintiff gives notice to the defendant under Order 3, rule 6, of his intention to proceed, service of the notice, and the manner in which it was effected, may be proved by a certificate signed as mentioned in paragraph (5).

### **88/6 Action for possession or payment**

6 (1) The affidavit in support of the originating summons by which an action to which this rule applies is begun must comply with the following provisions of this rule.

This rule applies to a mortgage action begun by originating summons in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

(2) The affidavit must exhibit a true copy of the mortgage and the original mortgage.

(3) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of—

- (a) the amount of the advance,
- (b) the amount of the repayments,

## **RULES OF THE SUPREME COURT 1985**

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(c) the amount of any interest or instalments in arrear at the date of issue of the originating summons and at the date of the affidavit, and

(d) the amount remaining due under the mortgage.

(4) Where the plaintiff claims delivery of possession, the affidavit must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property.

(5) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and mortgagee, the affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.

(6) Where the plaintiff claims payment of moneys secured by the mortgage, the affidavit must prove that the money is due and payable and give the particulars mentioned in paragraph (3).

(7) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.

### **88/7 Action by writ: judgment in default**

7 (1) Notwithstanding anything in Order 13 or Order 19, in a mortgage action begun by writ judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(3) Where a summons for leave under this rule is issued in an action, rule 5(2) to (7) shall apply in relation to the action subject to the modification that for references therein to the originating summons, and for the reference in paragraph (2) to the notice of appointment, there shall be substituted references to the summons.

(4) Where a summons for leave under this rule is issued in an action to which rule 6 would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that rule.

### **88/8 Foreclosure in redemption action**

8 Where foreclosure has taken place by reason of the failure of the plaintiff in a mortgage action for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply by motion or summons for an order for delivery to him of possession of the mortgaged property, and the Court may make such order thereon as it thinks fit.

## RULES OF THE SUPREME COURT 1985

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### ORDER 89

#### PROCEEDINGS UNDER THE LAW REFORM (HUSBAND AND WIFE) ACT 1977

##### 89/1 Provisions as to actions in tort

1 (1) This Order 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) On the first application by summons or motion in an action to which this Order applies, the Court shall consider, if necessary of its own motion, whether the power to stay the action under section 12(2) of the Law Reform (Husband and Wife) Act 1977 [title 26 item 26] should or should not be exercised.

(3) Notwithstanding anything in Order 13 or Order 19, judgment in default of appearance or of defence shall not be entered in an action to which this Order 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 be served on the defendant.

(5) If the summons is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing.

### ORDER 90

#### PROCEEDINGS RELATING TO INFANTS

90/1

and [blank]

90/2

##### 90/3 Application to make infant a ward of court

3 (1) Where an action to which an infant is a party is proceeding, an 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.

##### 90/4 When infant ceases to be ward of court

4 (1) An infant who becomes a ward of court on the issue of a summons under rule 3 shall cease to be a ward of court—

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- (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 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 a ward of court.

(3) If no application for an appointment for the hearing of a summons under rule 1 is made within the period of twenty-one days after the issue of the summons, a notice stating whether the applicant intends to proceed with the application made by the summons must be left at the Registry immediately after the expiration of that period.

### **ORDER 91**

[blank]

### **ORDER 92**

#### **LODGMET, INVESTMENT, ETC., OF FUNDS IN COURT**

92/1

[blank]

#### **92/2 Payment into court under Trustee Act 1975**

2 (1) Subject to paragraph (2), any trustee wishing to make a payment into court under section 54 of the Trustee Act 1975 [*title 26 item 51*] must make and file an affidavit setting out—

- (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose,
- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him,
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the court may make or direct, and
- (d) an address where he may be served with any summons or order, or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represents a legacy, or residue or any share thereof, to which an infant or a person resident outside Bermuda is absolutely entitled, no affidavit need be filed under paragraph (1) and the money or securities may be paid into court.

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92/3 [blank]

### **92/4 Notice of lodgement**

4 Any person who has lodged money or securities in court in accordance with rule 2 must forthwith send notice of the lodgment to every person appearing from the affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

### **92/5 Applications with respect to funds in court**

- 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 or money comprised in such funds;
  - (b) for the investment, or change of investment, of any funds in court;
  - (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or
  - (d) for the payment or transfer out of court of any such funds as are mentioned in 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 five thousand dollars 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.

- (5) This rule does not apply to any application for an order under Order 22.

## **ORDER 93**

### **APPLICATION UNDER SECTION 48 OF TRUSTEE ACT 1975**

93/1 to  
93/5 [blank]

## **RULES OF THE SUPREME COURT 1985**

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### **93/6 Application under section 48 of the Trustee Act 1975**

6 (2) In addition to any other persons who are necessary and proper defendants to the originating summons by which an application under section 48 of the Trustee Act 1975 [*title 26 item 51*] is made, the settlor and any other person who provided property for the purposes of the trusts to which the application relates must, if still alive and not the plaintiff, be made a defendant unless the Court for some special reason otherwise directs.

#### **ORDER 94**

[blank]

#### **ORDER 95**

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#### **ORDER 96**

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#### **ORDER 97**

[blank]

#### **ORDER 98**

[blank]

#### **ORDER 99**

### **THE SUCCESSION ACT 1974**

99/1

[blank]

### **99/2 Assignment to Chancery List**

2 Proceedings in the Court under the Succession Act 1974 [*title 26 item 1*] (in this Order referred to as “the Act”), shall be heard in the Chancery jurisdiction.

99/3

[blank]

### **99/4 Powers of Court as to parties**

4 (1) Without prejudice to its powers under Order 15, the Court may at any stage of proceedings under the Act by order direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.

## **RULES OF THE SUPREME COURT 1985**

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(2) Order 15, rule 13, shall apply to proceedings under the Act as it applies to the proceedings mentioned in paragraph (1) of that rule.

### **99/5 Affidavit in support to be filed**

5 An affidavit in support of an originating summons by which an application under section 13 or 15 of the Act is made must be filed before the first hearing of the summons and Order 28, rule 3(3), shall apply accordingly.

99/6

and *[blank]*

99/7

### **99/8 Disposal of application in chambers, etc.**

8 Any application under the Act in which it appears to the Court that the interests of an infant or other person under a disability are affected may, if the Court thinks fit so to direct, be disposed of in chambers, but any permission of the Court under section 18 of the Act and any order under section 13, 15, 19, 20 or 23 of the Act shall be given or made by the judge.

99/9 to

99/11 *[blank]*

### **99/12 Applications in proceedings under section 13 or 15 of Act**

12 Where an order has been made on an application under section 13 or 15 of the Act, any subsequent application, whether made by a party to the proceedings in which such order was made, or by a person on whom notice of the application for the order was served or by or on behalf of such person as is mentioned in section 19 of the Act, must be made by summons in those proceedings.

### **99/13 Indorsement of memorandum on probate, etc.**

13 (1) The estate representatives of the deceased to whose estate an application under the Act relates must produce in court at the hearing of the application the probate or letters of administration under which the estate is being administered; and if the Court makes an order under the Act or an order dismissing the application the probate or letters of administration shall remain in the custody of the Court until section 21(4) of the Act has been complied with.

(3) The memorandum of the order required by section 21(4) of the Act to be indorsed or annexed as therein mentioned must set out the title of the proceedings in question and the operative part of the order in full.

## **ORDER 100**

### **THE TRADE MARKS ACT 1974**

#### **100/1 Assignment to Chancery List**

1 Proceedings in the Court under the Trade Marks Act 1974 [*title 17 item 43*] shall be heard in the Chancery jurisdiction.

## **RULES OF THE SUPREME COURT 1985**

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### **100/2 Appeals and applications under the Trade Marks Act 1974**

2 (1) Every appeal to the Court under the Trade Marks Act 1974 [*title 17 item 43*] shall be heard and determined by a single judge.

(2) Subject to rule 3, every application to the Court under the said Act of 1974 must be begun by originating motion.

(3) Notice of the motion by which any such application is made must be served on the Registrar General.

(4) Where the Registrar General refers to the Court an application under the said Act of 1974 made to him, then, unless within one month after receiving notification of the decision to refer, the applicant makes to the Court the application referred, he shall be deemed to have abandoned it.

(5) The period prescribed by Order 55, rule 4(2), in relation to an appeal to which paragraph (1) applies or the period prescribed by paragraph (4) in relation to an application to which that paragraph applies, may be extended by the Registrar General on the application of any party interested and may be so extended although the application is not made until after the expiration of that period, but the foregoing provision shall not be taken to affect the power of the Court under Order 3, rule 5, to extend that period.

(6) Where under subsection (7) of section 18, or subsection (9) of section 19, of the said Act of 1974 an appellant becomes entitled and intends to withdraw his application which is the subject-matter of the appeal, he must give notice of his intention to the Registrar General and to any other party to the appeal within one month after the Court has given leave under the said subsection (7) or the said subsection (9), as the case may be, for further grounds of objection to be taken.

### **100/3 Proceedings for infringement of registered trade mark: validity of registration disputed**

3 (1) Where in any proceedings a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may in his defence put in issue the validity of the registration of that trade mark or may counterclaim for an order that the register of trade marks be rectified by cancelling or varying the relevant entry or may do both those things.

(2) A party to any such proceedings who in his pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered trade mark must serve with the pleading particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of trade marks be rectified must serve on the Registrar General a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Registrar General shall be entitled to take such part in the proceedings as he may think fit but need not serve a defence or other pleading unless ordered to do so by the Court.

## **RULES OF THE SUPREME COURT 1985**

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### **ORDER 101**

[blank]

### **ORDER 102**

#### **THE COMPANIES ACT 1981**

##### **102/1 Interpretation**

1 In this Order “the Act” means the Companies Act 1981 [*title 17 item 5*].

##### **102/2 Applications to be made by originating summons**

2 (1) Except in the case of the applications mentioned in rules 3, 4 and 5 and applications made in proceedings relating to the winding up of companies, every application under the Act must, in accordance with Order 5, rule 3, be made by originating summons.

(2) No appearance need be entered to an originating summons under this rule unless the application made by the summons is—

(a) an application under section 101 of the Act for an order to make provision for all or any of the matters mentioned in subsection (1) of that section where an order sanctioning the compromise or arrangement to which the application relates has previously been made, or

(b) an application under section 271 of the Act for an order directing a receiver or manager of a company to make good any such default as is mentioned in subsection (1) of that section.

(4) An originating summons under this rule and rule 3 may be issued out of the Registry.

##### **102/3 Application to be made by originating summons or motion**

3 (1) An application under section 67 of the Act for rectification of the register of members of a company may be made by originating summons or originating motion.

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

(3) The notice of the motion by which such an application is made may be issued out of the Registry.

##### **102/4 Application to be made by originating motion**

4 (1) The following application under the Act must be made by originating motion, namely, an application under section 260 for an order declaring a dissolution of a company which has not been wound up to have been void.

(2) The notice of the motion by which such application is made may be issued out of the Registry.

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### **102/5 Applications to be made by petition**

5 (1) The following applications under the Act must be made by petition, namely applications—

- (a) under section 12 to annul the alteration of a company's memorandum;
- (g) under section 47 to cancel any variation or abrogation of the rights attached to any class of shares in a company;
- (h) under section 99 to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them;
- (i) under section 261(6) for an order restoring the name of a company to the register;
- (k) under section 281(2) for relief from liability of an officer of a company or a person employed by a company as auditor.

(2) A petition by which any such application is made may be presented in the Registry, and Order 9, rule 3, shall not apply in relation to such a petition.

### **102/6 Assignment and entitlement of proceedings**

6 (1) All proceedings to which this Order relates shall be assigned to the Chancery jurisdiction.

(2) Every originating summons, notice of originating motion and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in the matter of the Companies Act 1981.

### **102/7 Summons for directions**

7 (1) After presentation of a petition by which any such application as is mentioned in rule 5 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a summons for directions under this rule.

(2) The application referred to in paragraph (1) is—

- (b) an application under section 99 of the Act to sanction a compromise or arrangement unless there is included in the petition for such sanction an application for an order under section 101 of the Act; and
- (c) an application under section 261(6) of the Act for an order restoring the name of a company to the register.

(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.

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**ORDER 103**

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**ORDER 104**

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**ORDER 113**

**SUMMARY PROCEEDINGS FOR POSSESSION OF LAND**

**113/1 Proceedings to be brought by originating summons**

## **RULES OF THE SUPREME COURT 1985**

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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.

### **113/2 Forms of originating summons**

2 (1) Subject to paragraph (2), the originating summons shall be in Form No. 10 in Appendix A.

(2) Where the person claiming possession is unable, after taking reasonable steps, to identify every person occupying the land for the purpose of making him a defendant, the originating summons shall be in Form No. 11A in Appendix A.

(3) No appearance need be entered to the originating summons.

### **113/3 Affidavit in support**

3 The plaintiff shall file in support of the originating summons an affidavit stating—

- (a) his interest in the land;
- (b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and
- (c) where the summons is in Form No. 11A, that he has taken all reasonable steps (describing them) to identify the persons occupying the land who are not named in the summons.

### **113/4 Service of originating summons**

4 (1) Where the plaintiff has identified any person in occupation of the land the originating summons together with a copy of the affidavit in support shall be served on him—

- (a) in accordance with Order 10, rule 5, 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 the plaintiff has not identified every person in occupation of the land, the originating summons shall, in addition to being served on the identified defendants (if any) in accordance with paragraph (1), be served by affixing a copy of it to the main door or other conspicuous part of the premises, unless the Court directs service in some other manner.

(3) Order 28, rule 3 shall not apply to proceedings under this Order.

### **113/5 Application by occupier to be made a party**

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

## **RULES OF THE SUPREME COURT 1985**

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whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

### **113/6 Order for possession**

6 (1) A final order shall not be made on the originating summons except by a judge and shall, except in case of urgency and by leave of the Court, not be made less than seven clear days after the date of service.

(2) An order for possession in proceedings under this Order shall be in Form No. 42A.

### **113/7 Writ for possession**

7 (1) Notwithstanding the provisions of Order 45, rule 3, a writ of possession to enforce an order for possession under this Order may be issued without the leave of the Court.

(2) The writ of possession shall be in Form No. 66A.

### **113/8 Setting aside order**

8 The judge may on such terms as he thinks just, set aside or vary any order made in proceedings under this Order.

## **ORDER 114**

### **FUNDAMENTAL RIGHTS AND FREEDOMS PROCEEDINGS**

#### **114/1 Institution of proceedings**

1 Proceedings instituted pursuant to section 15(1) of the Constitution shall be commenced by originating summons.

#### **114/2 Issue of contents of summons**

2 (1) Every summons issued under rule 1 shall—

- (a) be signed by the Registrar;
- (b) be deemed to have been issued on the date of its signature by the Registrar;
- (c) state concisely and clearly the facts giving rise to the issue of the summons;
- (d) specify the provision or provisions of the Constitution alleged to have been, to be or to be likely to be contravened;
- (e) specify the redress sought by the person who issues the summons (in this Order referred to as “the plaintiff”):

## **RULES OF THE SUPREME COURT 1985**

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Provided that the Court may, in any case where it is satisfied that redress ought to be made, substitute for the redress sought any other form of redress within its jurisdiction which it may consider to be more appropriate.

(2) Non-compliance with any of the requirements of sub-paragraphs (c), (d) and (e) of paragraph (1) shall not nullify the proceedings; but the Court may, in the case of any such non-compliance, either of its own motion or on the application of the person against whom the summons is issued (in this Order referred to as “the defendant”), order the plaintiff to file within such time as the Court shall fix, a statement fulfilling such requirements, and the costs of any such application made by the defendant and of any order made by the Court, whether of its own motion or on application by the defendant, shall be borne by the plaintiff in any event.

### **114/3 Service of summons and fixing of hearing date**

3 Every originating summons issued under this Order shall be served on the defendant as soon as practicable after it has been issued, and shall be set down for hearing at the earliest date convenient to the Court, and the Registrar shall forthwith give notice to the parties of the date of hearing.

### **114/4 Reference of questions by other Courts**

4 (1) Where a question is referred to the Court pursuant to section 15(3) of the Constitution, the order of reference shall state concisely and clearly the facts out of which the question arises and indicate the provision or provisions of the Constitution the contravention of which is alleged.

(2) Where any such order of reference has been made, it shall be forwarded without delay to the Registrar with four copies of the record of the proceedings in the court which has made the order, and the Registrar shall forthwith bring the order and the record to the notice of a Judge who shall fix the earliest date convenient to the Court for the hearing and determination of the question referred, and the Registrar shall forthwith give notice to the parties of the date fixed.

## **ORDER 115**

### **PROCEEDINGS UNDER THE LIFE INSURANCE ACT 1978**

#### **115/1 Payment into court by insurance companies**

1 Where an insurance company pays money into court under section 43(2) of the Life Insurance Act 1978 [*title 17 item 50*] (hereinafter in this Order referred to as “the Act”) it shall at the time it pays the money into court file an affidavit or affidavits setting forth—

- (a) a short description of the insurance policy;
- (b) the names and addresses of the persons whom it believes may be interested in the insurance money and where an address is unknown so stating and stating the last known address;

## **RULES OF THE SUPREME COURT 1985**

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- (c) the person or persons whom it believes may be entitled to the insurance money setting out its reasons for such belief;
- (d) the reason why it has not paid the insurance money and why it believes it will not be able to get an adequate and sufficient discharge;
- (e) the manner in which it has made known that it is paying the insurance money into court; and
- (f) the place where it may be served with notice of any proceedings.

### **115/2 Notice to be given of payment into court**

2 An insurance company that pays insurance money into court shall forthwith give notice thereof by registered letter to the persons named in its affidavit whom it believes may be interested in the insurance money.

### **115/3 Interested persons may apply to the Court**

3 Any person believing himself to be entitled to any insurance money that has been paid into court under section 43 of the Act may apply within ninety days of the payment being made to the Court for the money to be paid to him and shall file an affidavit stating the grounds upon which he bases his claims and may support that affidavit with the affidavits of other persons.

### **115/4 Copies of applications to be sent to interested parties**

4 Any person applying to the Court for insurance money to be paid to him under rule 3 shall forthwith send by registered post copies of his application and any affidavits filed by him to the insurance company and to all the persons named by the insurance company as being likely to be interested in the insurance money and to any other person whom he believes is likely to be interested in the money.

### **115/5 Money to be paid to sole claimant**

5 If ninety days after any insurance money is paid into court only one person has applied under rule 3 for the money to be paid to him the Court shall make an order that the money shall be paid to that person unless it has reason to believe that such an order would not be just.

### **115/6 Summons for directions to issue where more than one claimant**

6 If more than one person has within ninety days applied under rule 3 to the Court for insurance money to be paid to him the Registrar shall within the next twenty days himself issue a summons for directions addressed to the insurance company and all persons who have applied for the insurance money to be paid to them and shall fix the date of the hearing of the summons bearing in mind the address of any claimant living outside Bermuda.

### **115/7 Order 25 to apply**

7 Order 25 shall apply *mutatis mutandis* to a summons for directions under these rules.

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### **115/8 Application for money to be paid into court**

8 Any person who applies under section 43(1) of the Act for an order that insurance money be paid into court shall file with his application an affidavit setting forth—

- (a) the name and address of the insurance company;
- (b) a short description of the policy;
- (c) the names and addresses of the persons likely to be interested in the insurance money and where an address is unknown so stating and stating the last known address;
- (d) the person he believes to be entitled to the insurance money; and
- (e) the reason why he wishes the money paid into court.

### **115/9 Notice of applications under section 43(1) to be given**

9 Any person who makes an application under section 43(1) of the Act shall at the same time as he files an application under rule 8 give notice of such application by registered post to the insurance company and to the persons he has named in his affidavit as likely to be interested in the insurance money.

### **115/10 Summons for directions to be applied for if money not paid into court**

10 If within twenty-one days the insurance company does not pay the money into court he shall issue a summons for directions which shall be served by registered post on the insurance company and on all the persons to whom he has given notice of his application and Order 25 shall apply *mutatis mutandis* to such a summons.

### **115/11 Procedure if money is paid into court**

11 If the insurance money is paid into court by the insurance company then subject to any special directions by the Court the procedure shall be the same as if the money had been paid into court under section 43(2) of the Act.

## **ORDER 115A**

### **CONFISCATION AND FORFEITURE IN CONNECTION WITH CRIMINAL PROCEEDINGS**

#### **Interpretation**

1 (1) In this Order, “the Act” means the Proceeds of Crime Act 1997, and a section referred to by number means the section so numbered in the Act.

(2) Expressions used in this Order which are used in the Act have the same meanings in this Order as in the Act.

#### **Proceedings to be heard in chambers**

2 The jurisdiction of the Court under the Act shall be exercised by a judge in chambers.

## **RULES OF THE SUPREME COURT 1985**

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### **Title of proceedings**

2A An originating process under this Order shall be entitled in the matter of the defendant, naming him, and in the matter of the Act, and all subsequent documents in the matter shall be so entitled.

### **Application for confiscation order**

2B (1) An application by the Attorney-General for a confiscation order under section 22 shall be made by summons where there have been proceedings against the defendant in the Supreme Court, and shall otherwise be made by originating motion.

(2) The application shall be supported by an affidavit giving full particulars of the following matters—

- (a) the grounds for believing that the defendant has died or absconded;
- (b) the date or approximate date on which the defendant died or absconded;
- (c) where the application is made under section 22(1), the offence or offences of which the defendant was convicted, and the date of conviction;
- (d) where the application is made under section 22(2), the proceedings which have been initiated against the defendant (including particulars of the offence and the date of institution of those proceedings); and
- (e) where the defendant is alleged to have absconded, the steps taken to contact him.

(3) The Attorney-General's statement under section 13 shall be exhibited to the affidavit and shall include the following particulars—

- (a) the name of the defendant;
- (b) the name of the person by whom the statement is given;
- (c) such information known to the Attorney-General as is relevant to the determination whether the defendant has benefited from drug trafficking or relevant offences and the assessment of his proceeds of drug trafficking or benefit from relevant offences.

(4) Unless the Court otherwise orders, an affidavit under paragraph (2) may contain statements of information or belief, with their sources and grounds.

(5) The application and the affidavit in support shall be served not less than 7 days before the date fixed for the hearing of the application on—

- (a) the defendant, or on the estate representatives of a deceased defendant;
- (b) any person who the Attorney-General reasonably believes is likely to be affected by the making of a confiscation order; and
- (c) the receiver, where one has been appointed in the matter.

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### **Application for restraint order or charging order**

3 (1) An application for a restraint order under section 28 or for a charging order under section 29 (to either of which may be joined an application for the appointment of a receiver) may be made by the Attorney-General ex parte by originating motion to the Court.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall—

- (a) state the grounds for the application; and
- (b) to the best of the deponent's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) Unless the Court otherwise directs, an affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

### **Restraint order and charging order**

4 (1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to living expenses and legal expenses of the defendant, but the Attorney-General shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order.

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall be an order to show cause, imposing the charge until such a day.

(3) Where a restraint order is made the Attorney-General shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the Attorney-General shall serve copies of the order and of the affidavit in support on the defendant and, where property to which the order relates is held by another person, on that person and the Registrar-General or, where the charging order relates to land, the Land Title Registrar for registration in accordance with section 30(2).

### **Discharge or variation of order**

5 (1) Any person on whom a restraint order or a charging order is served or who is notified of such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be lodged with the Court and served on the Attorney-General and, where he is not the applicant, on the defendant, not less than two clear days before the date fixed for the hearing of the summons.

(3) Upon the Court being notified that proceedings for the offences have been concluded or that the amount, payment of which is secured by a charging order has been

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paid into Court, any restraint order or charging order, as the case may be, shall be discharged.

(4) The Court may also discharge a restraint order or a charging order upon receiving notice from the Attorney-General that it is no longer appropriate for the order to remain in place.

### **Further application by Attorney-General**

6 (1) Where a restraint order or a charging order has been made, the Attorney-General may apply by summons or, where the case is one of urgency or the giving of notice would cause a reasonable apprehension of dissipation of assets, *ex parte*—

- (a) to vary such order; or
- (b) for a restraint order or a charging order in respect of other realisable property; or
- (c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which, where the application is for a restraint order or a charging order, shall to the best of the deponent's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The summons and affidavit in support shall be lodged with the Court and served on the defendant and, where one has been appointed in the matter, on the receiver, not less than two clear days before the date fixed for the hearing of the summons.

(4) Rule 4(3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

### **Realisation of property**

7 (1) An application by the Attorney-General under section 31 shall be made by summons.

(2) The summons shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the summons on—

- (a) the defendant;
- (b) any person holding any interest in the realisable property to which the application relates; and
- (c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by an affidavit, which shall, to the best of the deponent's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property, and a copy of the confiscation order, of any certificate issued by the Court under section 15(2) and of any charging order made in the matter shall be exhibited to such affidavit.

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- (4) The Court may, on an application under section 31—
- (a) exercise the power conferred by section 32 to direct the making of payments by the receiver;
  - (b) give directions in respect of the property interests to which the application relates; and
  - (c) make declarations in respect of those interests.

### **Receivers**

8 (1) Subject to the provisions of this rule, the provisions of Order 30, rules 2 to 6 shall apply where a receiver is appointed in pursuance of a charging order or under section 28 or 31.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Act, it shall not be necessary for an affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall apply by summons for directions as to the distribution of such sums.

(4) A summons under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the summons on—

- (a) the defendant; and
- (b) any other person who held property realised by the receiver.

(5) A receiver may apply for an order to discharge him from his office by making an application, which shall be served, together with any evidence in support, on all persons affected by his appointment not less than 7 days before the day fixed for the hearing of the application.

### **Certificate of inadequacy**

9 (1) The defendant or a receiver appointed under section 28 or 31 or in pursuance of a charging order may apply by summons for a certificate under section 21(1).

(2) A summons under paragraph (1) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the summons on the Attorney-General and, as the case may be, on either the defendant or the receiver (where one has been appointed).

### **Certificate of increase in realisable property**

9A An application under section 20(2) shall be served with any supporting evidence not less than 7 days before the date fixed for the hearing of the application on the defendant and, as the case may be, on either the Attorney-General or (where one has been appointed) on the receiver.

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### **Compensation**

10 An application for an order under section 60 shall be made by summons, which shall be served, with any supporting evidence, on the person alleged to be in default and on the Attorney-General not less than 7 days before the date fixed for the hearing of the summons.

### **Disclosure of information**

11 (1) An application by the Attorney-General under section 40 shall be made by summons, which shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed under section 28 or 31 or in pursuance of a charging order, or to a police officer.

(2) The summons and affidavit in support shall be served on the Government Department in accordance with Order 77, rule 4 not less than 7 days before the date fixed for the hearing of the summons.

(3) The affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 40(4) and, if appropriate, section 40(7) are fulfilled.

### **Compensation for, discharge and variation or confiscation order**

11A (1) An application under section 23 or 24 shall be made by summons which, together with any evidence in support, shall be lodged with the Court and served on the Attorney-General not less than 7 days before the day fixed for the hearing of the summons.

(2) Notice shall also be served on any receiver appointed in pursuance of a charging order or under section 28 or 31.

(3) An application for an order under section 24(3) shall be supported by an affidavit giving details of—

- (a) the confiscation order made under section 22(2);
- (b) the acquittal of the defendant;
- (c) the realisable property held by the defendant;
- (d) the loss suffered by the defendant as a result of the confiscation order.

(4) An application for an order under section 24(2) shall be supported by an affidavit giving details of—

- (a) the confiscation order made under section 22(2);
- (b) the date on which the defendant ceased to be an absconder;
- (c) the date on which proceedings against the defendant were instituted and a summary of the steps taken in the proceedings since then; and
- (d) any indication by the Attorney-General that he does not intend to proceed against the defendant.

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(5) An application made under section 23 shall be supported by an affidavit giving details of—

- (a) the confiscation order under section 22(2);
- (b) the circumstances in which the defendant ceased to be an absconder; and
- (c) the amounts referred to in section 23(2).

(6) Where an application is made for an order under section 23(3) or 24(3), the affidavit shall also include—

- (a) details of the realisable property to which the application relates; and
- (b) details of the loss suffered by the applicant as a result of the confiscation order.

(7) Unless the Court otherwise orders, an affidavit under paragraphs (3) to (6) may contain statements of information and belief, with the sources and grounds thereof.

### **Application for registration of external confiscation order**

13 An application for registration of an external confiscation order under section 54(1) may be made ex parte.

### **Evidence in support of application under section 54**

15 (1) An application for registration of an external confiscation order must be supported by an affidavit—

- (a) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the English language, a translation thereof into English certified by a notary public or authenticated by affidavit; and
- (b) stating—
  - (i) that the order is in force and is not subject to appeal;
  - (ii) where the person against whom the order was made did not appear in the proceedings, that he received notice thereof in sufficient time to enable him to defend them;
  - (iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered; and
  - (iv) to the best of the deponent's knowledge, particulars of what property the person against whom the order was made holds in Bermuda, giving the source of the deponent's knowledge.

(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.

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### **Register of orders**

16 (1) There shall be kept in the Registry under the direction of the Registrar a register of the orders registered under the Act.

(2) There shall be included in such register particulars of any variation or setting aside of a registration, and of any execution issued on such an order.

### **Notice of registration**

17 (1) Notice of the registration of an order must be served on the person against whom it was obtained by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6, and 8 shall apply in relation to such a notice as they apply in relation to a writ.

### **Application to vary or set aside registration**

18 An application by the person against whom an order was made to vary or set aside the registration of an order shall be made by summons supported by affidavit.

### **Enforcement of order**

19 (2) If an application is made under rule 18, an order shall not be enforced until after such application is determined.

### **Variation, satisfaction and discharge of registered order**

20 Upon the Court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

### **Rules to have effect subject to orders made by the Minister**

21 Rules 13 to 18 shall have effect subject to the provisions of any order made under section 53.

### **Criminal Justice (International Co-operation) (Bermuda) Act 1994: external forfeiture orders**

21A The provisions of this Order shall, with such modifications as are necessary and subject to the provisions of any order made under section 9 of the Criminal Justice (International Co-operation) (Bermuda) Act 1994, apply to proceedings for the registration and enforcement of external forfeiture orders as they apply to such proceedings in relation to external confiscation orders.

## **RULES OF THE SUPREME COURT 1985**

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For the purposes of this rule, an external forfeiture order is an order made by a court in a country or territory outside Bermuda which is enforceable in Bermuda by virtue of any such order.

*[Order 115A inserted by BR 7/1998 effective 23 January 1998; amended by 2017 : 9 s. 11 effective 20 February 2017]*

### **ORDER 115B**

#### **Civil Recovery Proceedings**

##### **Scope and Interpretation**

1 (1) Part I of this Order contains provisions about applications to the Court under Part IIIA of the Proceeds of Crime Act 1997 for—

- (a) a recovery order;
- (b) a property freezing order;
- (c) an interim receiving order; and
- (d) a management receiving order.

(2) Part II of this Order contains provisions about applications to the Court under Part IV of the Proceeds of Crime Act 1997 for any of the following types of order or warrant in connection with a civil recovery investigation—

- (a) a production order;
- (b) a search warrant;
- (c) a customer information order; and
- (d) a monitoring order.

(3) Part III of this Order contains further provisions about applications for each of the specific types of order and warrant listed under paragraph (2).

(4) In this Order—

“the Act” means the Proceeds of Crime Act 1997, and a section referred to by number means the section as numbered in the Act;

“civil recovery proceedings” means proceedings under Part IIIA of the Act;

“enforcement authority” has the meaning given in section 36F;

“interim receiving order” has the meaning given in section 36O;

“legal costs” means legal expenses;

“management receiving order” means an order to appoint a receiver under section 36L;

“property freezing order” has the meaning given in section 36H;

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“recovery order” means an order made under section 36X; and other expressions in this Order which are used in the Act have the same meanings in this Order as in the Act.

### *Part I*

#### *Civil Recovery Proceedings Under Part IIIA of the Act*

##### **Claim for a recovery order**

2 (1) A claim by the enforcement authority for a recovery order shall be made by originating summons under Order 7 (originating summonses: general provisions).

(2) Notwithstanding paragraph (1), the Court may direct that the claim should continue as if begun by writ under Order 6 (writs of summons: general provisions) and, in such event, give such consequential directions as may be appropriate.

(3) The originating summons shall—

- (a) identify the property in relation to which a recovery order is sought;
- (b) state, in relation to each item or description of property—
  - (i) whether the property is alleged to be recoverable property or associated property; and
  - (ii) either—
    - (aa) who is alleged to hold the property; or
    - (bb) where the enforcement authority is unable to identify who holds the property, the steps that have been taken to try to establish their identity;
- (c) set out the matters relied upon in support of the claim; and
- (d) give details of the person nominated by the enforcement authority to act as trustee for civil recovery in accordance with section 36Y.

(4) The evidence in support of the claim shall include the signed, written consent of the person nominated by the enforcement authority to act as trustee for civil recovery if appointed by the Court.

### Applications

##### **Applications for a property freezing order, an interim receiving order or a management receiving order**

3 (1) An application for a property freezing order, an interim receiving order or a management receiving order shall be made—

- (a) to the Court; and

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- (b) in accordance with Order 29 (interlocutory injunctions).
- (2) The application may be made without notice in the circumstances set out in—
  - (a) section 36H(3) (in the case of an application for a property freezing order);
  - (b) section 36O(3) (in the case of an application for an interim receiving order);
  - (c) section 36L(3) (in the case of an application for a management receiving order).
- (3) An application for a property freezing order shall be supported by written evidence which shall—
  - (a) set out the grounds on which the order is sought; and
  - (b) give details of each item or description of property in respect of which the order is sought, including—
    - (i) an estimate of the value of the property; and
    - (ii) the additional information referred to in paragraph (4)(a).
- (4) Order 30 (Court's power to appoint a receiver) applies to an application for an interim receiving order with the following modifications—
  - (a) the enforcement authority's affidavit evidence shall state in relation to each item or description of property in respect of which the order is sought—
    - (i) whether the property is alleged to be—
      - (aa) recoverable property; or
      - (bb) associated property,and the facts relied upon in support of that allegation; and
    - (ii) in the case of any associated property—
      - (aa) who is believed to hold the property; or
      - (bb) if the enforcement authority is unable to establish who holds the property, the steps that have been taken to establish their identity; and
  - (b) the enforcement authority's affidavit evidence shall always identify an individual whom the Court is to be asked to appoint as receiver ('the nominee'), and should—
    - (i) state the name, address and position of the nominee;
    - (ii) include affidavit evidence by a person who knows the nominee, stating that he believes the nominee is a suitably qualified person to be appointed as receiver, and the basis of that belief; and

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(iii) be accompanied by written consent, signed by the nominee, to act as receiver if appointed.

(5) Where an application is made for a property freezing order, an interim receiving order or management receiving order, a draft of the order which is sought shall be filed with the summons.

(6) If possible, the draft of the order sought should also be supplied to the Court in an electronic form compatible with the word processing software used by the Court.

### **Property freezing order or interim receiving order made before commencement of claim for recovery order**

4 A property freezing order or an interim receiving order which is made before a claim for a recovery order has been commenced shall—

- (a) specify a period within which the enforcement authority shall either start the claim or apply for the continuation of the order while the enforcement authority carries out its investigation; and
- (b) provide that the order shall be set aside if the enforcement authority does not start the claim or apply for its continuation before the end of that period.

### **Exclusions when making a property freezing order or an interim receiving order**

5 (1) When the Court makes a property freezing order or an interim receiving order on an application without notice, it may make an initial exclusion from the order for the purpose of enabling the respondent to meet his reasonable legal costs so that he may—

- (a) take advice in relation to the order;
- (b) prepare a statement of assets in accordance with rule 8(3); and
- (c) if so advised, apply for the order to be varied or set aside.

(2) The total amount specified in the initial exclusion will not normally exceed Bermuda dollars 5,000.

(3) When it makes a property freezing order or an interim receiving order before a claim for a recovery order has been commenced, the Court may also make an exclusion to enable the respondent to meet his reasonable legal costs so that (for example) when the claim is commenced—

- (a) he may file an acknowledgment of service and any affidavit evidence on which he intends to rely; or
- (b) he may apply for a further exclusion for the purpose of enabling him to meet his reasonable costs of the proceedings.

(4) Rule 8 contains general provisions about exclusions made for the purpose of enabling a person to meet his reasonable legal costs.

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### **Interim receiving order or management receiving order: application for directions**

6 (1) An application for directions as to the exercise of the functions of—

- (a) the interim receiver under section 36S; or
- (b) the management receiver under section 36N,

may be made at any time by—

- (i) the interim receiver or management receiver, as appropriate;
  - (ii) any party to the proceedings; and
  - (iii) any person affected by any action taken, or proposed to be taken, by the interim receiver or management receiver.
- (2) The application must be made by summons, which shall be served on—
- (a) the interim receiver or management receiver as appropriate (unless he is the applicant);
  - (b) every party to the proceedings; and
  - (c) any other person who may be interested in the application.

### **Application to vary or set aside an order**

7 (1) An application to vary or set aside a property freezing order, an interim receiving order or a management receiving order (including an application for, or relating to, an exclusion from the order) may be made at any time by—

- (a) the enforcement authority; or
- (b) any person affected by the order.

(2) Unless the Court otherwise directs or exceptional circumstances apply, a copy of the summons shall be served on—

- (a) every party to the proceedings;
- (b) in the case of an application to vary or set aside an interim receiving order or management receiving order, the interim receiver or management receiver (as appropriate); and
- (c) any other person who may be affected by the Court's decision.

(3) The evidence in support of an application for an exclusion from a property freezing order or an interim receiving order for the purpose of enabling a person to meet his reasonable legal costs must—

- (a) contain full details of the stage or stages in civil recovery proceedings in respect of which the costs in question have been or will be incurred;
- (b) include a detailed estimate of the costs which the person has incurred and will incur in relation to each stage to which the application relates;

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- (c) include a statement of assets containing the information set out in rule 8(3) of this Order (unless the person has previously filed such a statement in the same civil recovery proceedings and there has been no material change in the facts set out in that statement);
- (d) where the Court has previously made an exclusion in respect of any stage to which the application relates, explain why the person's costs will exceed the amount specified in the exclusion for that stage; and
- (e) state whether the terms of the exclusion have been agreed with the enforcement authority.

### **Exclusions for the purpose of meeting legal costs: general provisions**

8 (1) Subject to paragraph (2), when the Court makes an order or gives directions in civil recovery proceedings it will at the same time consider whether it is appropriate to make or vary an exclusion for the purpose of enabling any person affected by the order or directions to meet his reasonable legal costs.

(2) The Court will not make an exclusion for the purpose of enabling a person to meet his reasonable legal costs, other than an exclusion to meet the costs of taking any of the steps referred to in rule 5(1), unless that person has made and filed a statement of assets.

(3) A statement of assets is a witness statement which sets out all the property which the maker of the statement owns, holds or controls, or in which he has an interest, giving the value, location and details of all such property; and information given in a statement of assets under this Order will be used only for the purpose of the civil recovery proceedings.

(4) The Court—

- (a) shall not make an exclusion for the purpose of enabling a person to meet his reasonable legal costs (including an initial exclusion under rule 5; and
- (b) may set aside any exclusion which it has made for that purpose or reduce any amount specified in such an exclusion,

if it is satisfied that the person has property to which the property freezing order or an interim receiving order does not apply from which he may meet those costs.

(5) The Court may refer to the Registrar any question relating to the amount which an exclusion should allow for reasonable legal costs in respect of proceedings or a stage in proceedings.

(6) An exclusion made for the purpose of enabling a person to meet his reasonable legal costs must specify—

- (a) the stage or stages in civil recovery proceedings to which it relates;
- (b) the maximum amount which may be released in respect of legal costs for each specified stage; and

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(c) the total amount which may be released in respect of legal costs pursuant to the exclusion.

(7) A person who becomes aware that his legal costs—

(a) in relation to any stage in civil recovery proceedings have exceeded or will exceed the maximum amount specified in the exclusion for that stage; or

(b) in relation to all the stages to which the exclusion relates have exceeded or will exceed the total amount that may be released pursuant to the exclusion,

should apply for a further exclusion or a variation of the existing exclusion as soon as reasonably practicable.

### **Assessment of costs where recovery order is made**

9 (1) Where the Court—

(a) makes a recovery order in respect of property which was the subject of a property freezing order or an interim receiving order; and

(b) has made an exclusion from the property freezing order or an interim receiving order for the purpose of enabling a person to meet his reasonable legal costs,

the recovery order will make provision under section 36X(8) for the payment of those costs.

(2) Where the Court makes a recovery order which provides for the payment of a person's reasonable legal costs in respect of civil recovery proceedings, it will at the same time order the taxation of those costs.

(3) Order 62 applies to a taxation pursuant to such an order.

## *Part II*

### *Applications Under Part IV of The Act in Respect of Civil recovery Investigations*

#### **Application for an order or warrant**

10 (1) An application for an order or warrant under Part IV of the Act in connection with a civil recovery investigation shall be made—

(a) to a judge;

(b) by filing a summons.

(2) The application may be made without notice.

#### **Confidentiality of Court documents**

11 (1) When an application is issued, the Court file will be sealed and, unless a judge grants permission, the Court records relating to the application (including the

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summons, documents filed in support, and any order or warrant that is made) will not be made available by the Court for any person to inspect or copy, either before or after the hearing of the application.

(2) An application for permission under paragraph (1) shall be made on notice to every other party in accordance with Order 32 (applications and proceedings in chambers) and shall be made to a judge in chambers.

(Order 32(3) provides that unless the Court otherwise orders or any of these rules otherwise provides, a summons shall be served on every other party not less than two clear days before the day specified in the summons for the hearing.)

### **Summons and evidence**

12 (1) The application for an order or a warrant under rule 10 must be supported by affidavit evidence, which shall be filed with the summons.

(2) The evidence shall set out all the matters on which the applicant police officer relies in support of the application, including any matters required to be stated by the relevant sections of the Act, and all material facts of which the Court should be made aware.

(3) There shall also be filed with the summons a draft of the order sought.

(4) If possible, the draft of the order sought should also be supplied to the Court on disk in a form compatible with the word processing software used by the Court.

### **Hearing of the application**

13 The application shall be heard and determined in private, unless the judge hearing it directs otherwise.

### **Variation or discharge of order or warrant**

14 (1) An application to vary or discharge an order or a warrant may be made by—

- (a) the applicant police officer for the order or warrant; or
- (b) any person affected by the order or warrant.

(2) An application under paragraph (1) to stop an order or a warrant from being executed shall be made immediately upon it being served.

(3) A person applying to vary or discharge a warrant shall first inform the applicant police officer that he is making the application.

(4) The application shall be made to the judge who made the order or issued the warrant or, if he is not available, to another judge.

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### *Part III*

#### *Further Provisions About Specific Applications Under Part IV of the Act*

#### **Production order**

- 15 (1) The summons shall name as a respondent the person believed to be in possession or control of the material in relation to which a production order is sought.
- (2) The summons shall specify—
- (a) whether the application is for an order under paragraph (a) or (b) of section 37(2);
  - (b) the material, or description of material, in relation to which the order is sought; and
  - (c) the person who is believed to be in possession or control of the material.
- (3) An application under section 37(5) for an order to grant entry may be made either—
- (a) together with an application for a production order; or
  - (b) by separate application, after a production order has been made.
- (4) A summons for an order to grant entry shall—
- (a) specify the premises in relation to which the order is sought; and
  - (b) be supported by affidavit evidence explaining why the order is needed.
- (5) A production order, or an order to grant entry, shall contain a statement of the right of any person affected by the order to apply to vary or discharge the order.

#### **Search warrant**

- 16 (1) The summons should name as the respondent the occupier of the premises to be subject to the warrant, if known.
- (2) The affidavit evidence in support of the application shall state—
- (a) the matters relied on by the applicant police officer to show that one of the requirements in section 39(2) for the issue of a warrant is satisfied;
  - (b) details of the premises to be subject to the warrant, and of the possible occupier or occupiers of those premises;
  - (c) the name and rank of the police officer who it is intended will execute the warrant.
- (3) There must be filed with the summons drafts of—
- (a) the warrant; and
  - (b) a written undertaking by the police officer who is to execute the warrant to comply with paragraph (8).

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(4) A search warrant shall—

- (a) specify the statutory power under which it is issued and, unless the Court orders otherwise, give an indication of the nature of the investigation in respect of which it is issued;
- (b) state the address or other identification of the premises to be subject to the warrant;
- (c) state the name of the police officer who is authorised to execute the warrant;
- (d) set out the action which the warrant authorises the person executing it to take under the relevant sections;
- (e) give the date on which the warrant is issued;
- (f) contain a statement of the right of any person affected by the order to apply to discharge or vary the order.

(5) A search warrant shall be in Form 97 in Appendix A.

(6) Order 42 (judgments and orders) applies to a search warrant and the warrant shall bear the date on which it was issued.

(Order 42(3) provides that an order must be marked with the name of the judge by whom it was made and shall be sealed.)

(7) Upon the issue of a warrant the Court will provide to the applicant police officer—

- (a) the sealed warrant; and
- (b) a copy of it for service on the occupier or person in charge of the premises subject to the warrant.

(8) A person attending premises to execute a warrant shall, if the premises are occupied produce the warrant on arrival at the premises, and as soon as possible thereafter personally serve a copy of the warrant and an explanatory notice on the occupier or the person appearing to him to be in charge of the premises.

(9) The person executing the warrant shall also comply with any order which the Court may make for service of any other documents relating to the application.

### **Customer information order**

17 (1) The summons shall name as respondents the relevant institution or institutions to which it is proposed that an order should apply, unless it is impracticable to do so because they are too numerous.

(2) A customer information order shall—

- (a) specify the relevant institution, or description of relevant institutions, to which it applies;

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- (b) state the name of the person in relation to whom customer information is to be given, and any other details to identify that person;
- (c) contain a statement of—
  - (i) the offences relating to customer information orders under section 41D; and
  - (ii) the right of any person affected by the order to apply to discharge or vary the order.

(3) Where, pursuant to a customer information order, the applicant police officer gives to a financial institution a notice to provide customer information, he shall also at the same time serve a copy of the order on that institution.

### **Monitoring order**

18 (1) The summons shall name as a respondent the banking institution against which a monitoring order is sought.

(2) The summons shall—

- (a) state the matters required by section 41(4)(b); and
- (b) give details of—
  - (i) the person whose account or accounts the application relates to;
  - (ii) each account or description of accounts in relation to which the order is sought, including if known the number of each account and the branch at which it is held;
  - (iii) the information sought about the account or accounts;
  - (iv) the period for which the order is sought;
  - (v) the manner in which, and the frequency with which, it is proposed that the financial institution should provide account information during that period.

(3) A monitoring order shall contain a statement of the right of any person affected by the order to apply to vary or discharge the order.

*[Order 115B inserted by BR 98 / 2013 effective 20 November 2013]*

## **ORDER 116**

### **REFERENCES UNDER SECTION 53(2) OF THE STAMP DUTIES ACT 1976**

#### **116/1 Manner of making reference**

1 (1) Where the Registrar is dissatisfied with a declaration of value in an affidavit furnished for the purposes of section 47 or section 50 of the Stamp Duties Act 1976 [*title 14 item 24*] he shall serve on the estate representative or other person acting in the administration of the estate a summons to attend before the Court or a Judge on a day

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specified in the summons. Such summons shall set out briefly the reasons why the Registrar is so dissatisfied.

(2) A summons under this rule shall be served not less than two clear days before the day fixed for the hearing of the matter.

### **116/2 Order upon summons**

2 On the day specified in the summons the Court or Judge shall give such directions as he may think fit as to the proceedings on the reference including, without prejudice to the generality of the foregoing words, a direction requiring the valuation of any property to be made by a person appointed by the Court in accordance with section 53(3) of the Stamp Duties Act 1976 [*title 14 item 24*].

### **116/3 Disposal of matters in summary manner**

3 The Court or a Judge may, with the consent of both the Registrar and the estate representative or other person acting in the administration of the estate, if having regard to the value of the subject matter in dispute it seems desirable to do so, decide the matter in a summary manner and on such terms as may be just and he may also deal with and decide the matter if the respondent does not appear in pursuance of the summons.

### **116/4 Costs**

4 Subject to section 53(4) of the Stamp Duties Act 1976 [*title 14 item 24*], the Court or Judge may in or for the purposes of any proceedings under this Order, make all such orders as to costs and other matters as may be just and reasonable.

## **ORDER 117**

### **PROCEEDINGS UNDER THE LAW REFORM (MISCELLANEOUS PROVISIONS) (No. 2) ACT 1977**

#### **117/1 Application under section 2 of the Law Reform (Miscellaneous Provisions) (No. 2) Act 1977**

1 (1) An application under section 2 of the Law Reform (Miscellaneous Provisions) (No. 2) Act 1977 [*title 8 item 11*] (hereafter in this Order referred to as “the Act”) must be made by summons, stating the grounds on which the application is made, and be supported by an affidavit, which must—

- (a) verify the special damages, if any, claimed by the plaintiff up to the date of the application;
- (b) exhibit the hospital and medical reports, if any, relied upon by the plaintiff in support of the application; and
- (c) if the plaintiff’s claim is made under the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*], contain the particulars mentioned in section 3 of that Act.

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(2) The summons and a copy of the affidavit in support and any exhibit referred to therein must be served on the defendant against whom the order is sought not less than ten clear days before the return day.

(3) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown by reason of a change of circumstances.

### **117/2 Directions on application under rule 1**

2 When an application is made under rule 1 the Court or a Judge may give directions as to the further conduct of the action and in such a case Order 25 shall, with any necessary modification, apply as if the application were a summons for directions and in particular the Court or Judge may order an early trial of the action.

### **117/3 Non-disclosure of order for interim payment**

3 The fact that an order for an interim payment has been made 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 of any question or issue as to liability or damages until all questions of liability and the amount of the damages have been decided.

### **117/4 Payment into court**

4 Where, after making an interim payment, 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.

### **117/5 Adjustment on final judgment or order**

5 Where a defendant has made an interim payment, the Court may on giving or making a final judgment or order determining that defendant's liability to the plaintiff in the action, make any such order with respect to the interim payment as may be necessary for giving effect to the determination and in particular—

- (a) an order for the repayment by the plaintiff of any sum by which the interim payment exceeds the amount which that defendant is liable to pay the plaintiff; or
- (b) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

### **117/6 Interim order on a counterclaim**

6 When a defendant applies under section 4 of the Act for an interim payment rules 1 to 5 shall apply to the application with the necessary modifications.

### **117/7 Application under section 5 of the Act**

7 An application by a plaintiff for an order under section 5 of the Act may be made after notice to the other parties at any time after the issue of the writ of summons; an

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application by any other party may be made on notice to the other parties at any time after appearance by the party making the application.

### **ORDER 118**

#### **PROCEEDINGS UNDER THE INTERNATIONAL CHILD ABDUCTION ACT 1998**

##### **118/1 Interpretation**

1 In this Order—

“the Act” means the International Child Abduction Act 1998;

“the Convention” means the Convention on the Civil Aspects of International Child Abduction which was signed at the Hague on 25th October 1980.

##### **118/2 Mode of application**

2 Every application under the Convention shall be made by originating summons.

##### **118/3 Contents of originating summons: general provisions**

3 The originating summons under which any application is made under the Convention shall state—

- (a) the name and date of birth of the child in respect of whom the application is made;
- (b) the names of the child’s parents or guardians;
- (c) the whereabouts or suspected whereabouts of the child;
- (d) the interest of the plaintiff in the matter and the grounds of the application; and
- (e) particulars of any proceedings (including proceedings out of the jurisdiction and concluded proceedings) relating to the child,

and shall be accompanied by all relevant documents including but not limited to the documents specified in Article 8 of the Convention.

##### **118/4 Contents of originating summons: particular provisions**

4 In applications under the Convention, in addition to the matters specified in rule 3—

- (a) the originating summons under which an application is made for the purposes of Article 8 for the return of a child shall state the identity of the person alleged to have removed or retained the child and, if different, the identity of the person with whom the child is presumed to be;
- (b) the originating summons under which an application is made for the purposes of Article 15 for a declaration shall identify the proceedings in which the request that such a declaration be obtained was made.

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### **118/5 Defendants**

- 5 The defendants to an application under the Act shall be—
- (a) the person alleged to have brought into Bermuda the child in respect of whom an application under the Bermuda Convention is made;
  - (b) the person with whom the child is alleged to be;
  - (c) any parent or guardian of the child who is within Bermuda and is not otherwise a party;
  - (d) the person in whose favour a decision relating to custody has been made if he is not otherwise a party; and
  - (e) any other person who appears to the court to have a sufficient interest in the welfare of the child.

### **118/6 Acknowledgement of service**

6 The time limited for acknowledging service of an originating summons by which an application is made under the Convention shall be seven days after service of the originating summons (including the day of service) or, in the case of a defendant referred to in rule 5(d) or (e), such further time as the court may direct.

### **118/7 Evidence**

7 (1) The plaintiff, on issuing an originating summons under the Convention, may lodge affidavit evidence in the Registry in support of his application and serve a copy of the same on the defendant with the originating summons.

(2) A defendant to an application under the Convention may lodge affidavit evidence in the Registry and serve a copy of the same on the plaintiff within seven days after service of the originating summons on him.

(3) The plaintiff in an application under the Convention may within seven days thereafter lodge in the Registry a statement in reply and serve a copy thereof on the defendant.

### **118/8 Hearing**

8 Any application under the Act shall be heard and determined by a judge and shall be dealt with in chambers unless the court otherwise directs.

### **118/9 Dispensing with service**

9 The court may dispense with service of any summons in any proceedings under the Act.

### **118/10 Adjournment of summons**

10 The hearing of the originating summons under which an application under the Convention is made may be adjourned for a period not exceeding 21 days at any one time.

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### **118/11 Interim directions**

11 An application for interim directions under section 7 of the Act may, where the case is one of urgency, be made ex parte on affidavit but shall otherwise be made by summons.

*[Order 118 inserted by BR61/1999 effective 29 October 1999]*

### **ORDER 119**

#### **PROCEEDINGS RELATING TO ORDERS MADE**

#### **BY THE BERMUDA MONETARY AUTHORITY WITH RESPECT TO TAKEOVERS**

### **119/1 Interpretation**

1 In this Order—

“the Authority” means the Bermuda Monetary Authority established by the Bermuda Monetary Authority Act 1969;

“relevant enactment” means—

- (i) the Jardine Matheson Holdings Limited Consolidation and Amendment Act 1988,
- (ii) the Jardine Strategic Holdings Limited Consolidation and Amendment Act 1988,
- (iii) the Dairy Farm International Holdings Limited Consolidation and Amendment Act 1988,
- (iv) the Mandarin Oriental International Limited Consolidation and Amendment Act 1988,
- (v) the Hongkong Land Holdings Limited Company Act 1989,

and includes any other enactment declared by the Authority by notice published in the Gazette to be a relevant enactment for the purposes of this Order.

### **119/2 Application**

2 This Order applies where a person is entitled to apply to the Court for relief or interim relief in connection with an order made by the Authority under a relevant enactment or in connection with any application to the Authority for the making of such order.

### **119/3 Form of application**

3 (1) A person may make an application to the Court in accordance with this Order—

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- (a) in respect of an order made by the Authority under a relevant enactment;
  - (b) in respect of the refusal of the Authority to make such order;
  - (c) in respect of the failure of the Authority to make such order within the period prescribed by the relevant enactment.
- (2) An application under paragraph (1) shall be by originating summons.
- (3) Order 28 does not apply to an originating summons issued under this Order.

### **119/4 Form of originating summons**

- 4 (1) The originating summons shall be in Form No. 10 in Appendix A.
- (2) No appearance need be entered to the originating summons.

### **119/5 Contents of summons**

- 5 (1) Every originating summons issued under rule 3 shall—
- (a) identify the relevant enactment under which the application is made;
  - (b) identify the order of the Authority or, where no order has been made, the application made to the Authority with which the summons is concerned; and
  - (c) include a concise statement of the relief (including, if applicable, the interim relief) or remedy sought by the person taking out the summons (in this Order referred to as “the plaintiff”).
- (2) The issue of an originating summons under this Order shall not operate as a stay of proceedings on, or of the taking of appropriate action to put into effect, the order of the Authority to which the proceedings under this Order relate unless the Court so orders.

### **119/6 Service of summons**

- 6 (1) Subject to paragraph (2), every originating summons issued under this Order shall be served on each of the persons against whom the summons is issued (in this Order referred to as “the defendants”) as soon as practicable after it has been issued and, in the case of a summons to which rule 7(2) applies, in any event within 2 days of issue (but subject always to any delay resulting from compliance with the law of the country in which service is effected).
- (2) The Authority shall be made a defendant to every summons issued under this Order. The summons shall be served on the Authority as soon as possible after, and in any event on the day of, issue.

### **119/7 Service out of the jurisdiction**

- 7 (1) Subject to paragraph (2), Order 11 rule 9 shall apply to any originating summons issued under this Order.

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(2) Service out of the jurisdiction of an originating summons issued under this Order is permissible without the leave of the Court in any case where the subject matter of the application concerns the affairs of a company incorporated in Bermuda.

(3) Order 11 rules 5, 6 and 8 shall apply in relation to the service out of the jurisdiction of an originating summons issued under this Order.

(4) Nothing in this Order or in any order or direction of the Court shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

### **119/8 Service - general provisions**

8 (1) In addition to any other method of service permitted by these Rules or directed by any order of the Court, an originating summons issued under this Order may be served on the defendants (whether within or out of the jurisdiction) by fax.

(2) An affidavit shall be filed by or on behalf of the plaintiff proving due service of the originating summons on each of the defendants.

(3) In the event that service of the summons is effected by fax the affidavit made under paragraph (2) shall confirm the date and time of transmission of each fax serving the summons on each defendant and the grounds on which the plaintiff believes that the summons will, by virtue of such transmission, have come to the attention of the defendants.

(4) The affidavit made under paragraph (2) shall be filed with the Court and a copy thereof served on each defendant, in each case no later than the day before the day listed for the first hearing of the summons under rule 9(1) of this Order.

### **119/9 Hearing for directions etc, by Court**

9 (1) Upon issue of an originating summons under this Order the Court shall fix a day and time for the attendance of the parties before the Court for the first hearing of the summons.

(2) The day fixed under paragraph (1) shall be no more than 4 days from the date of issue of the summons.

(3) Unless on the first hearing of the summons the Court disposes of the summons altogether, the Court shall give such directions as to the further conduct of proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(4) Without prejudice to the generality of paragraph (3), 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.

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(5) Without prejudice to the generality of paragraph (3), and subject to paragraph (4), 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.

### **119/10 Affidavit evidence**

10 (1) Where the plaintiff intends to adduce evidence in support of an originating summons at the first hearing thereof he must do so by affidavit.

(2) Upon issuing a summons under this Order the plaintiff must file with the Court the affidavit evidence on which he intends to rely.

(3) Copies of the affidavit evidence filed with the Court under paragraph (2) must be served by the plaintiff on each defendant (including the Authority) at the same time as that defendant is served with the summons.

### **119/11 Adjournment of summons**

11 (1) The hearing of the originating 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 9 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, any party may with the leave of the Court restore it to the list on 2 days' notice to all the other parties (except a defendant who has not been served with the summons).

### **119/12 Proceeding in absence of party failing to attend**

12 (1) Where any party to an originating summons under this Order fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeds in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

### **119/13 Counterclaim by defendant**

13 (1) A defendant to an action begun by originating summons issued under rule 3 who alleges that he is entitled to any relief or remedy under the relevant enactment

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identified in the summons under rule 5 may make a counterclaim in the action in respect of that entitlement instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at the first hearing of the originating summons by the Court 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 9.

(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.

### **119/14 Order for hearing or trial**

14 (1) Unless on the first hearing of an originating summons issued under this Order the Court disposes of the summons altogether, at the first hearing or at as early a stage of the proceedings on the summons as appears to the Court to be practicable, the Court shall make an order for the hearing or trial in accordance with this rule.

(2) The Court shall by order determine the place and mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

(3) Order 33, rule 4(2), and Order 34, rules 1 to 8, shall apply in relation to a cause or matter begun by originating summons under this Order and to an order made therein under this rule as they apply in relation to an action begun by writ and to an order made therein under the said rule 4 and shall have effect accordingly with the necessary modifications and with the further modification that for references therein to the summons for directions there shall be substituted references to the first or any resumed hearing of the originating summons by the Court.

### **119/15 Failure to prosecute proceedings with despatch**

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

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 13 as it applies in relation to a plaintiff.

### **119/16 Abatement etc. of action**

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

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### **119/17 Court expert**

17 Order 40 rule 6 shall not apply to proceedings under this Order, and the application allowed by Order 40 rule 4 shall be made within 2 days after receiving a copy of the court expert's report.

### **119/18 Costs**

18 (1) The Court shall not order the Authority to pay any costs of or incidental to or relating to proceedings commenced by originating summons under this Order, and shall order that such costs incurred by the Authority shall be paid by whichever of the other parties to the proceedings the Court in its discretion thinks fit and, if by more than one other such party, in such proportion as the Court considers appropriate.

(2) This rule is without prejudice to the generality of the discretion of the Court with respect to orders as to costs and the provisions of Order 62 insofar as parties other than the Authority are concerned.

### **119/19 Application to have order of Authority registered**

19 Any application under any relevant enactment to have an order made by the Authority registered in the Court shall be made by summons in chambers.

### **119/20 Form of application**

20 (1) The application to have an order of the Authority registered shall be by an originating summons which shall be in Form No. 10 in Appendix A.

(2) No appearance need be entered to the originating summons.

### **119/21 Affidavit in support**

21 The application shall be supported by an affidavit of the facts—

- (a) identifying the relevant enactment under which registration is sought;
- (b) exhibiting the order of the Authority or a verified or certified or otherwise duly authenticated copy thereof;
- (c) stating, so far as the deponent can, the full name, title, trade or business and usual or last known place of abode or business of the applicant and the person against whom the order was made respectively; and
- (d) stating that to the best of the information and belief of the deponent the applicant is entitled to have the order registered and the order does not fall within any of the cases in which, under the relevant enactment, an order of the Authority cannot properly be ordered to be registered.

### **119/22 Title**

22 The summons and the affidavit shall be entitled—

““In the matter of the .....Act ....., and in the matter of an order of the Bermuda Monetary Authority dated the .....day of.....20.....”.

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### **119/23 Order for registration**

23 (1) An order to register shall be drawn up by or on behalf of the applicant and shall be served on the person against whom the order of the Authority was made.

(2) The order to register an order of the Authority shall state the time within which the person against whom the order of the Authority was made is to be entitled to apply to set aside the registration.

(3) Such time, where the person against whom the order of the Authority was made is, or is ordinarily resident, out of the jurisdiction of the Court, shall depend on the distance from Bermuda of the place where such person resides and the postal facilities between Bermuda and that place.

(4) The Court may, on an application made at any time where it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

### **119/24 Register of orders**

24 (1) A register of orders of the Authority ordered to be registered under this Order shall be kept in the Registry.

(2) The order of the Authority shall be registered in the said register in accordance with the order to register it.

(3) The register shall be arranged in alphabetical order in the surname of the person against whom the order of the Authority was made, and there shall be entered in the register the date of the order for registration and of the registration, the name, title, trade or business of the person against whom the order of the Authority was made and of the applicant, and any special directions in the order for registration.

### **119/25 Notice of registration**

25 (1) Notice in writing of the registration of the order of the Authority must be served on the person against whom the order was made within a reasonable time after such registration.

(2) Such notice shall (in the absence of an order by the Court as to the mode of service thereof) be served on the person against whom the order of the Authority was made by delivering it to him personally or by sending it to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

(3) Service of such notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.

(4) The notice of registration must state -

(a) full particulars of the order registered and of the order for such registration;

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- (b) the name and address of the applicant or of his counsel or agent on whom, and at which, any summons issued by the person against whom the order of the Authority was made may be served;
- (c) the right of such person to apply to have the registration set aside; and
- (d) the period within which an application to set aside the registration may be made.

### **119/26 Application to set aside**

26 (1) The person against whom the order of the Authority was made may, at any time within the time limited by the order to register after service on him of the notice of registration of the order of the Authority, apply by summons in chambers to set aside the registration.

(2) Where the Court hearing an application to set aside such registration is satisfied that the case comes within any of the cases under the relevant enactment in which no order of the Authority can be ordered to be registered or that it is not just or convenient that the order should be registered in Bermuda or that there is other sufficient reason for setting aside the registration, it may order the registration to be set aside either unconditionally or on such terms as it thinks fit and either altogether or until such time as it directs.

(3) The summons referred to in paragraph (1) of this rule shall be an ordinary summons entitled in the same manner as the summons and affidavit referred to in rule 22.

*[Order 119 inserted by BR 41/2000 effective 12 May 2000]*

## **ORDER 120**

### **OBTAINING EVIDENCE FOR TAX INFORMATION EXCHANGE AGREEMENT TREATIES**

#### **120/1 Interpretation and exercise of jurisdiction**

- 1 (1) In this Order “the Acts” mean the—
- (a) U.S.A. - Bermuda Tax Convention Act 1986; and
  - (b) International Cooperation (Tax Information Exchange Agreements) Act 2005,

and the expressions used in this Order which are used in the Acts shall have the same meaning as in the Acts.

(2) Applications under this Order shall be filed in the Commercial List and shall be heard in camera.

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### **120/2 Application for production order or other relief**

2 (1) An application for a production order under section 5 of the Acts shall, with the necessary modifications, be made by an ex parte originating summons with respect to which no appearance is required and shall be supported by an affidavit.

(2) There must 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, an English translation thereof shall also be exhibited.

(3) An application pursuant to this Order may request additional, ancillary or alternative orders pursuant to—

- (a) sections 6, 7, 8, and 10 of the U.S.A. - Bermuda Tax Convention Act 1986;
- (b) sections 6, 6A, 7, and 8 of the International Cooperation (Tax Information Exchange Agreements) Act 2005.

### **120/3 Application for review of a production order**

3 An application for review of a production order within the meaning of—

- (a) section 5(7) of the U.S.A. – Bermuda Tax Convention Act 1986; or
- (b) section 5(6) of the International Cooperation (Tax Information Exchange Agreements) Act 2005,

shall be made by summons upon notice to the Minister.

*[Order 120 inserted by BR 10/2014 effective 7 February 2014]*

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**APPENDIX A**

**FORMS**

**No. 1**

**General form of writ of summons**

(O.6, r.1)

19[blank] No. [blank]

IN THE SUPREME COURT OF BERMUDA

Between A.B. .... Plaintiff,  
and  
C.D. .... Defendant

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 C.D. of [blank] in the [blank] of [blank]

We command you that within 14 days after the service of this writ on you, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of A.B.: and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness the Honourable [blank] Chief Justice of Our said Court the [blank] day of [blank] 19 [blank]

*Note*—This writ may not be served more than twelve calendar months after the above date unless renewed by order of the Court.

**DIRECTIONS FOR ENTERING APPEARANCE**

The defendant may enter an appearance in person or by an attorney either (1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court in Hamilton, Bermuda, or (2) by sending them to the Registry by post.

*Indorsements to be made on writ before issue*

*Indorsement of claim*

The plaintiff's claim is for [blank]

*(If the plaintiff's claim is for a debt or liquidated demand only, the following indorsement must be added at the foot of that claim.)*

And \$[blank] (or such sum as may be allowed on taxation (for costs, and also, if the plaintiff obtains an order for substituted service, the further sum of \$[blank] (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the

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plaintiff, or his attorney within 14 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

*(If the plaintiff sues, or the defendant is sued, in a representative capacity this must be stated in the indorsement of claim.)*

*Indorsement as to attorney and address*

This writ was issued by [blank] of [blank] attorney for the said plaintiff whose address is [blank] (or where the plaintiff sues in person. This writ was issued by the said plaintiff who resides at [blank] and is [state occupation] and [if the plaintiff does not reside within the jurisdiction] whose address for service is [blank]).

*Indorsement as to service*

This writ was served by me at [blank] on the defendant C.D. on [blank] the [blank] day of [blank] 19 [blank]

Indorsed the [blank] day of [blank] 19 [blank]

(Signed) [blank]

(Address) [blank]

**No. 2**

[blank]

**No. 3**

**Writ of summons indorsed with statement of claim**

(O.6, r. 1)

*[As in No. 1 except that the following note shall be inserted after the directions for entering an appearance and that a statement of claim in the following form shall be substituted for the indorsement of claim.]*

*Note*—If the defendant enters an appearance, then, unless a summons for judgment is served on him in the meantime, he must also serve a defence on the attorney for the plaintiff within fourteen days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against him without notice.

*Statement of claim*

The plaintiff's claim is [blank]

Particulars—

(Signed) [blank]

*[If the plaintiff's claim is for debt or liquidated demand only, the indorsement in Form No. 1 beginning "And \$" must be added.]*



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*the indorsement of claim either (1) the words "The above is the plaintiff's statement of claim" or (2) the heading "Plaintiff's statement of claim" followed by the statement, whichever is appropriate.)*

### No. 5

#### **Writ of summons which, or notice of which, is to be served out of Jurisdiction**

(O.6, r.1)

*[Heading as in No. 1 or 4]*

ELIZABETH THE SECOND, etc. *[as in No. 1]*.

To C.D. of *[blank]*

We command you, C.D., that within *[insert here the number of days fixed by the order of the Court giving leave for service out of the jurisdiction]* days after service of this writ or notice of this writ] on you, inclusive of the day of service, you do cause an appearance to be entered for you in our Supreme Court of Bermuda in an action at the suit of A.B., and take notice that in default of your so doing the plaintiff may proceed therein and judgment may be given in your absence.

Witness *[as in No. 1]*.

*Note*—This writ may not be served more than twelve calendar months after the above date unless renewed by order of the Court.

#### DIRECTIONS FOR ENTERING APPEARANCE

*[As in No. 1 or 4, whichever is appropriate]*

*Indorsements to be made on writ before issue*

*\*Indorsement of claim*

The plaintiff's claim is for *[blank]*

*[If the plaintiff's claim is for a debt or liquidated demand only, the following indorsement must be added at the foot of that claim.]*

And \$*[blank]* (or such sum as may be allowed on taxation) for costs, and also, if the plaintiff obtains an order for substituted service, the further sum of \$*[blank]* (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff, or his attorney within *[insert here the number of days limited for appearing]* days after service (of notice) hereof (inclusive of the day of service), further proceedings will be stayed.

*(If the plaintiff sues, or the defendant is sued, in a representative capacity, this must be stated in the indorsement of claim.)*

*Indorsement as to attorney and address*

*[As in No. 1]*

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*Indorsement as to service*

This writ (or notice of this writ) was served by me at [blank] on the defendant C.D. on [blank] the [blank] day of [blank]

Indorsed the [blank] day of [blank] 19 [blank]

(Signed) [blank]

(Address) [blank]

*\*(If writ is indorsed with a statement of claim, the form should be modified to comply with the directions given in No. 3 or 4, whichever is appropriate.)*

**No. 6**

*[Form 6 repealed by BR55/2005 effective 1 January 2006]*

**No. 7**

[blank]

**No. 8**

**Originating summons-appearance required**

(O.7, r.2)

19....., No. ....

IN THE SUPREME COURT OF BERMUDA

(In the matter of .....

Between A.B. .... Plaintiff,  
and  
C.D. .... Defendant

To C.D. of [blank] in the [blank] of [blank]

Let the defendant, within 14 days (or if the summons is to be served out of the jurisdiction, insert here the time for appearance fixed by the order giving leave to issue the summons and serve it out of the jurisdiction) after service of this summons on him, inclusive of the day of service, cause an appearance to be entered to this summons, which is issued on the application of the plaintiff A.B. of [blank]

By this summons the plaintiff claims against the defendant [blank] (or seeks the determination of the Court on the following questions, namely, [blank] or as may be).

If the defendant does not enter an appearance, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated the [blank] day of [blank] 19 [blank]

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*Note*—This summons may not be served more than twelve calendar months after the above date unless renewed by order of the Court.

This summons was taken out by [blank] of [blank] attorney for the said plaintiff whose address is [blank]

*(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 is *(state occupation)* and *(if the plaintiff does not reside within the jurisdiction)* whose address for service is [blank]).

**DIRECTIONS FOR ENTERING APPEARANCE**

The defendant may enter an appearance in person or by an attorney either (1) by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court in Hamilton, Bermuda, or (2) by sending them to the Registry by post.

**No. 9**

[blank]

**No. 10**

**Originating summons-appearance not required**

(O.7, r.2)

19....., No. ....

IN THE SUPREME COURT OF BERMUDA

(In the matter of .....)

Between A.B. .... Plaintiff,  
and  
C.D. .... Defendant

Let C.D. of [blank] attend before the Judge in Chambers *(or the Registrar)* at the Supreme Court in Hamilton, Bermuda, on [blank] day, the [blank] day of [blank] 19 [blank] at [blank] o'clock, on the hearing of an application by the plaintiff that [blank]

Dated the [blank] day of [blank] 19 [blank]

*Note*—This summons may not be served more than twelve calendar months after the above date unless renewed by order of the Court.

This summons was taken out by [blank] of [blank] attorney for the said plaintiff whose address is [blank]

*(or where the plaintiff sues in person.*

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This summons was taken out by the said plaintiff who resides at [blank] and is (*state occupation*) and (*if the plaintiff does not reside within the jurisdiction*) whose address for service is [blank]).

*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.

**No. 11**

**Ex parte originating summons**

(O.7, r.2)

19....., No. ....

IN THE SUPREME COURT OF BERMUDA

In the matter of .....

Let all parties concerned attend before the Judge in Chambers (*or the Registrar*) at the Supreme Court in Hamilton, Bermuda, on [blank] day of [blank] 19 [blank] at [blank] o'clock, on the hearing of an application by A.B. that [blank]

Dated the [blank] day of [blank] 19 [blank]

This summons was taken out by [blank] of [blank]

Attorney for the applicant whose address is [blank]

**No. 12**

**Notice of appointment to hear originating summons**

(O.28, r.2)

(*Heading as in summons*)

To (*name of defendant*) of [blank]

Take notice that the originating summons issued herein on the [blank] day of [blank] 19 [blank] will be heard by the Judge in Chambers (*or the Registrar*) at the Supreme Court in Hamilton, Bermuda, on [blank] day, the [blank] day of [blank] 19 [blank] at [blank] o'clock. You may attend in person, or by your attorney. If you fail to attend, such order will be made as the Court may think just and expedient.

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]  
Attorney for the plaintiff

**No. 13**

**Notice of originating motion**

(O.8, r.3)

19....., No. ....

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IN THE SUPREME COURT OF BERMUDA

In the matter of .....

and

In the matter of .....

Take notice that the Supreme Court of Bermuda in Hamilton, Bermuda will be moved (before his Lordship, Mr Justice [blank]) at the expiration of [blank] days from the service upon you of this notice (or on [blank] day, the [blank] day of [blank] 19 [blank] 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 [blank] (or for the following relief, namely [blank]).

And that costs of and incidental to this (application) (appeal) may be paid by [blank]

(And further take notice that the grounds of this (application) (appeal) are: [blank])

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]

C.D. of [blank] attorney for the above named (applicant) (appellant) A.B. whose address is [blank] or A.B. whose address for service is [blank] (applicant) (appellant) in person [blank]

To [blank] of [blank]

**No. 14**

**Memorandum of Appearance**

(O.12, r.3)

*To be completed in duplicate and delivered or sent to the Registrar the Supreme Court in Hamilton, Bermuda.*

IN THE SUPREME COURT  
OF BERMUDA

( ..... JURISDICTION)

19....., No. .... 1

Between A.B. ....<sup>2</sup>

Plaintiff(s)

and

C.D. ....<sup>3</sup>

Defendant(s)

- 
- 1 Copy year, letter and number from writ.
  - 2 Copy name(s) of plaintiff(s) from writ.
  - 3 Copy name(s) of defendant(s) from writ.

**RULES OF THE SUPREME COURT 1985**

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Please enter an Appearance for<sup>4</sup> [sued as<sup>5</sup> .....] in this Action .....

Dated the [blank] day of [blank] 19 [blank]

Signed<sup>6</sup> [blank]

Whose address for service is<sup>7</sup>

N.B. Additional notes for the guidance of defendants seeking to enter an appearance are given on the back. Please read them carefully. *The form may have to be returned if any of the information required is omitted or given incorrectly.* The delay may result in judgment being entered against the defendant. If judgment is entered, the defendant or his attorney may have to pay the costs of applying to set it aside.

(BACK)

ADDITIONAL NOTES

1 The defendant must give his or her full name and a female defendant must add her description, such as spinster, married woman, widow or divorced.

2 Where the defendant is a firm, the appearance must be entered by the individual partners by name with the description "Partner in the firm of [blank]"

3 Where the defendant is an individual trading in a name other than his own, the appearance must be entered by him in his own name with the addition of the description "Trading as [blank]"

4 Where the defendant is a limited liability company, or an infant or other person under disability, the appearance must be entered by an attorney.

5 If the defendant has no defence or admits the plaintiff's claim, the entry of appearance will delay judgment and may increase the costs payable by the defendant. Any proposal for the payment of a debt by instalments or otherwise must be made direct to the plaintiff or his attorney and not to the Court.

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4 Give full name of defendant wishing to appear (see Note 1 on back).  
5 Give name by which defendant is described in writ if this differs from defendant's full name, otherwise delete words in square brackets.  
6 To be signed by the defendant or attorney entering the appearance.  
7 A defendant appearing in person must give his residence and, if he does not reside in Bermuda some other place in Bermuda to which communications for him should be sent. Where the defendant appears by attorney, the attorney's place of business in Bermuda should be given.

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6 A defendant who wishes to appear in person may obtain help in completing this form from the Registry of the Supreme Court in Hamilton, Bermuda.

7 Where the defendant is unable to give the number of the action or any other information required to identify it, the writ served on the defendant should be produced for the court’s inspection when the appearance is entered.

8 Where the appearance is being entered by leave of the Court, a copy of the order granting leave must accompany this form.

9 These notes deal only with the more usual cases. In cases of any difficulty it is advisable to attend at the Registry for the purpose of entering an appearance.

**No. 15**

[blank]

**No. 16**

[blank]

**No. 17**

**Notice to be indorsed on copy of counterclaim**

(O. 15, r.3(6))

To: X.Y.

Take notice that, if you intend to defend this counterclaim, an appearance must be entered to the counterclaim on your behalf within 14 days [*or if the counterclaim is to be served out of the jurisdiction insert here the time fixed by the order giving leave to serve the counterclaim out of the jurisdiction*] after the service of this defence and counterclaim on you, inclusive of the day of service, otherwise judgment may be given against you without further notice.

**DIRECTIONS FOR ENTERING APPEARANCE**

The person served with this counterclaim may enter an appearance in person or by an attorney either (1) by handing in the appropriate forms, duly completed, at the Registry, or (2) by sending them to the Registry by post.

**No. 18**

**Memorandum of appearance to counterclaim**

(O.15, r.3)

*(As in No. 14 but substituting for the title of the action the following:)*

Between A.B. .... Plaintiff(s)  
and

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---

C.D. ..... Defendant(s)  
(by original action)

And between  
the said ..... Plaintiff(s)  
and  
the said ..... Defendant(s)  
(by counterclaim)

[and substituting for the request to enter appearance the following:]

Please enter an appearance for (full name of defendant to counterclaim wishing to appear) to the counterclaim of the above-named defendant [blank] in this action.

**No. 19**

**Memorandum of appearance of person added as defendant**

(O. 15, r.8)

(As in No. 14 but substituting for the title of the action the following:)

Between A.B. ..... Plaintiff(s)  
and  
C.D. ..... Defendant(s)

And between ..... Plaintiff(s)  
and  
..... Defendant

(By original writ and by order)

[and substituting for the request to enter appearance the following:]

Please enter an appearance for (full name of added defendant) who has been served with an order dated the [blank] day of [blank] 19 [blank] making him a defendant to the action.

**No. 20**

**Third party notice claiming contribution or indemnity or other relief or remedy**

(O.16)

19....., No. ....

IN THE SUPREME COURT OF BERMUDA

Between A.B. ..... Plaintiff  
and



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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 if you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant, an appearance must be entered on your behalf within 14 days (*or if the notice is to be served out of the jurisdiction, insert here the time for appearance fixed by the order giving leave to issue the notice and serve it out of the jurisdiction*) after the service of this notice on you, inclusive of the day of service, otherwise you will be bound by any judgment or decision given in the action in so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with Order 16 of the Rules of the Supreme Court.

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]  
Attorney for the defendant

**DIRECTIONS FOR ENTERING APPEARANCE**

(As in No. 20)

**No. 22**

**Memorandum of appearance of third party**

(O. 16, r. 3)

(*As in No. 14 but substituting for the title of the action, the title on the third party notice and substituting for the request to enter appearance the following:*)

Please enter an appearance for (*full name of third party*) to the third party notice issued in this action on [blank] 19 [blank] by the defendant [blank] and served on the said [blank] on [blank] 19 [blank]

**No. 23**

**Notice of payment into court**

(O.6, r.2; O.22, rr. 1,2)

(*Heading as in action*)

Take notice that—

The defendant [blank] has paid \$ [blank] into court.

The said \$ [blank] 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 [blank] in respect of which he counterclaims).

or

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The said \$ [blank] is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely [blank] (and after taking into account *as above*).

*or*

Of the said \$ [blank], \$ [blank] is in satisfaction of the plaintiff's cause(s) of action for [blank] (and after taking into account *as above*) and \$ [blank] is in satisfaction of the plaintiff's cause(s) of action for [blank] (and after taking into account *as above*).

Dated the [blank] day of [blank] 19 [blank]

**No. 24**

**Notice of acceptance of money paid into court**

(O.22, r.3)

*(Heading as in action)*

Take notice that the plaintiff accepts the sum of \$ [blank] 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 [blank] day of [blank] 19 [blank]

**No. 25**

[blank]

**No. 26**

**List of Documents**

(O.24, r.5)

*(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 [blank] day of [blank] 19 [blank])

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*).

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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 [blank] 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 1

*(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 [blank] day of [blank] 19 [blank]

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 [blank] day of [blank] 19 [blank] between the hours of [blank] and [blank]

To the defendant (or plaintiff) C.D. and his attorney.

Served the [blank] day of [blank] 19 [blank] by [blank] of [blank] attorney for the (plaintiff) (defendant).

**No. 27**

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**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 [blank] 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 Supreme Court in Hamilton, Bermuda at the sitting of our Supreme Court) 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 [blank] Chief Justice of Bermuda the [blank] day of [blank] 19 [blank]

Issued the [blank] day of [blank] 19 [blank] by [blank] attorney for the [blank]

*\*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)

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*(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 *[blank]*) in chambers, at the Supreme Court in Hamilton, Bermuda on *[blank]* day the *[blank]* day of *[blank]* 19 *[blank]* at *[blank]* 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**

*[blank]*

### **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 (or Registrar) in chambers at the Supreme Court in Hamilton, Bermuda on *[blank]* the *[blank]* day of *[blank]* 19 *[blank]* at *[blank]* o'clock on the hearing of an application on the part of *[blank]* that A.B. a witness on behalf of the *[blank]* be examined forthwith before a Judge, *[the Registrar]* or one of the examiners of the Court (*or an examiner to be agreed upon*) upon the usual terms, and that the costs of this application be (costs in the cause).

Dated the *[blank]* day of *[blank]* 19 *[blank]*

This summons was taken out by *[blank]* of *[blank]* attorney for the *[blank]*

To the above-named *[blank]* (and *[blank]* his attorney).

### **No. 32**

#### **Order for examination within jurisdiction of witness before trial**

(O.39, r.1)

*(Heading as in cause or matter)*

On hearing (the attorney on both sides) and on reading the affidavit of *[blank]* filed herein the *[blank]* day of *[blank]* 19 *[blank]*

It is ordered that *[blank]* a witness on behalf of the *[blank]* be examined *viva voce* on oath or affirmation before a Judge, the Registrar *or* one of the examiners of the Court (*or [blank] Esq., the examiner agreed upon or an examiner to be agreed upon*), the plaintiff's

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(or defendant's) attorney giving to the defendant's (or plaintiff's) attorney [blank] days' notice in writing of the time and place where the examination is to take place (or state the time and place if 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 that the affidavit of the attorney 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 [blank] day of [blank] 19 [blank]

### **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 [blank] for an order that a letter of request shall issue to the proper judicial authority of [blank] for the examination of E.F. and G.H. and other witnesses on the plaintiff's (or the defendant's) behalf at [blank] 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 as in No. 31).

### **No. 34**

#### **Order for issue of letter of 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 [blank]

G.H. [blank]

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 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).

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Dated the [blank] day of [blank] 19 [blank]

### **No. 35**

#### **Letter of request for examination of witness out of jurisdiction**

(O. 39, r.3)

To the Competent Judicial Authority of [blank] in the [blank] of [blank]

WHEREAS an action is now pending in the Supreme Court of Bermuda in which [blank] is plaintiff and [blank] is defendant and in which the plaintiff claims [blank]

AND WHEREAS it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath touching such matters, namely [blank] of [blank] and [blank] of [blank] and it appears that such witnesses are resident within your jurisdiction.

NOW I [blank] the Registrar of the Supreme Court of Bermuda, hereby request that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined *viva voce* (or upon the interrogatories which accompany this letter of request) touching the said matters in question in the presence of the agents of the plaintiff and defendant or such of them as shall, on due notice given, attend the examination.

And I further request that you will permit the agents of both the plaintiff and defendant or such of them as shall be present to examine (upon interrogatories and *viva voce* upon the subject-matter thereof or arising out of the answers thereto) such witnesses as may, after due notice in writing, be produced on their behalf, and the other party to cross-examine the said witnesses (upon cross-interrogatories and *viva voce*) and the party producing the witness for examination to re-examine him *viva voce*.

And I further request that you will be pleased to cause the evidence of the said witnesses (or the answers of the said witnesses and all additional *viva voce* questions, whether on examination, cross-examination or re-examination) to be reduced into writing and all books, letters, papers and documents produced on such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure and to return it together with (the interrogatories and cross-interrogatories and) a note of the charges and expenses payable in respect of the execution of this request through the British Consul from whom the same was received (or [blank] one of Her Majesty's Secretaries of State) for transmission to the Supreme Court of Bermuda.

And I further request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.

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Dated the [blank] day of [blank] 19 [blank]

### **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 [blank] for an order that (the British Consul at [blank] in (*name of country*) or his deputy) ([blank] 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 [blank] and [blank], witnesses on behalf of the [blank] at [blank] 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 [blank] filed the [blank] day of [blank] 19 [blank]

It is ordered that the British Consul or his deputy at [blank] (or [blank] 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 [blank] witnesses on the part of [blank] at [blank] 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 [blank] attorneys to give to the [blank] attorneys [blank] days' notice in writing of the date on which they propose to send out this order to [blank] for execution, and that [blank] days after the service of such notice the attorneys for the plaintiff and defendant respectively do exchange the names of their agents at [blank] to whom notice relating to the examination of the said witnesses may be sent.

And that [blank] days (exclusive of Sunday) before the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party, unless such notice be dispensed with. And that the depositions when taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be sent by the examiner, under seal, to the Registrar of the Supreme Court in Hamilton, Bermuda, on or before the [blank] day of [blank] 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

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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 [blank] day of [blank] 19 [blank]

### **No. 38**

#### **Notice of Motion**

(O.8, r. 3)

*(Heading as in cause or matter)*

Take notice that (pursuant to the leave of [blank] given on the [blank] day of [blank] 19 [blank]) the Court (or Mr Justice [blank]) will be moved [blank] the [blank] day of [blank] 19 [blank] at [blank] o'clock, or so soon thereafter as counsel can be heard, by (Mr [blank] of [blank]) attorney for the above-named plaintiff (or defendant) that [blank] and that the costs of the application be [blank]

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank] of [blank] Attorney for [blank]

To

Attorney for [blank]

### **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 [blank] day of [blank] 19 [blank]

No appearance having been entered (or no defence having been served) by the defendant herein, it is this day adjudged that the defendant do pay the plaintiff \$ [blank] and \$ [blank] costs (or costs to be taxed).

(The above costs have been taxed and allowed at \$ [blank] as appears by the Registrar's certificate dated the [blank] day of [blank] 19 [blank]).

### **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 [blank] day of [blank] 19 [blank]

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No appearance having been entered (*or no defence having been served*) by the defendant herein, it is this day adjudged that the defendant do pay the plaintiff damages to be assessed.

The amount found due to the plaintiff under this judgment having been certified at \$ [blank] as appears by the (Judge's *or* Registrar's certificate *or as may be*) filed the [blank] day of [blank] 19 [blank]

It is adjudged that the defendant do pay the plaintiff \$ [blank] and costs to be taxed.

The above costs, etc. (*as in No. 39*)

*(Note—This form is a combined form of interlocutory and final judgment. The plaintiff may at his option enter interlocutory judgment by omitting the words below the line in the form and enter a separate final judgment in Form No. 43.)*

### **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 [blank] day of [blank] 19 [blank]

No appearance having been entered (*or no defence having been served*) by the defendant herein.

It is this day adjudged that the defendant do deliver to the plaintiff the 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).

*or*

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 \$ [blank] (and damages at \$ [blank]) as appears by the (Judge's *or* Registrar's certificate *or as may be*) filed the [blank] day of [blank] 19 [blank]

It is adjudged that the defendant do pay the plaintiff \$ [blank] and costs to be taxed.

The above costs, etc. (*as in No. 39*)

*(Note—See the note to No. 40)*

### **No. 42**

#### **Default judgment in action for possession of land**

(O.13, r.4; O.19, r.5; O.42, r.1)

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*(Heading as in action)*

The [blank] day of [blank] 19 [blank]

No appearance having been entered (or no defence having been served) by the defendant herein, it is this day adjudged that the defendant do give the plaintiff possession of the land described in the writ of summons (or statement of claim) as [blank] and pay the plaintiff \$ [blank] costs (or costs to be taxed).

The above costs, etc. (as in No. 39).

### **No. 43**

#### **Final judgment after assessment of damages, etc.**

(O.42, r.1)

*(Heading as in action)*

The [blank] day of [blank] 19 [blank]

The plaintiff having on the [blank] day of [blank] 19 [blank] 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 \$ [blank] as appears by the (Judge's or Registrar's certificate or as may be) filed the [blank] day of [blank] 19 [blank]

It is this day adjudged that the defendant do pay the plaintiff \$ [blank] 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 [blank] day of [blank] 19 [blank]

The defendant having entered appearance herein and the Court having under Order 14, rule 3 ordered that judgment as hereinafter provided be entered for the plaintiff against the defendant.

It is this day adjudged that the defendant do pay the plaintiff \$ [blank] and \$ [blank] costs (or costs to be taxed)

*or*

pay the plaintiff damages to be assessed and costs to be taxed

*or*

deliver to the plaintiff the goods described in the writ of summons (or statement of claim) as [blank] (or pay the plaintiff the value of the said goods to be assessed) (and also damages for their detention to be assessed) and costs to be taxed

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*or*

give the plaintiff possession of the land described in the writ of summons (*or* statement of claim) as *[blank]* 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 *[blank]* day of *[blank]* 19 *[blank]*

This action having been tried before the Honourable Mr Justice *[blank]* without a jury, at the Supreme Court Bermuda, and the said Mr Justice *[blank]* having on the *[blank]* day of *[blank]* 19 *[blank]* 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 \$ *[blank]* and his costs of 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 *[blank]* days and if within that time the *[blank]* 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 *[blank]* day of *[blank]* 19 *[blank]*

This action having been tried before the Honourable Mr Justice *[blank]* with a jury and the jury having found (state findings) and the said Mr Justice *[blank]* having on the *[blank]* day of *[blank]* 19 *[blank]* ordered that judgment as hereinafter provided be entered for (*etc. as in No. 45*).

### **No. 47**

*[blank]*

### **No. 48**

#### **Judgment after decision of preliminary issue**

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(O.33, r.7; O.42, r.1)

*(Heading as in cause or matter)*

Dated and entered the [blank] day of [blank] 19 [blank]

The issue (or question) arising in this cause (or matter) by the order dated the [blank] day of [blank] 19 [blank] ordered to be tried before [blank] having on the [blank] day of [blank] 19 [blank] been tried before the said [blank] and the said [blank] having found [blank] and having ordered that judgment as hereinafter provided be entered for the [blank] (or having dismissed the cause or matter).

It is adjudged that (the defendant do pay the plaintiff \$ [blank] and his costs of action to be taxed) (the plaintiff do pay the defendant his cost of defence to be taxed) *or as may be according to the order made.*

**No. 49**

**Judgment for liquidated sum against estate representative**

(O.42, r. 1)

*(Heading as in action)*

Dated and entered the [blank] day of [blank] 19 [blank]

*(Recital as in No. 39, 43-48 according to the circumstances in which judgment was obtained).*

It is adjudged that the defendant as executor (or administrator) of the above named [blank] deceased do pay the plaintiff \$ [blank] 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 authorized by law to be seized in execution *(or as may be according to the order made).*

The above costs, etc. *(as in No. 39).*

**No. 50**

**Judgment for defendant's costs on discontinuance**

(O.62, r.10(1))

*(Heading as in action)*

The [blank] day of [blank] 19 [blank].

The plaintiff having by a notice in writing dated the [blank] day of [blank] 19 [blank] discontinued this action (or withdrawn his claim in this action for [blank]) and the defendant's costs of the action (or of the claim withdrawn) having been taxed and allowed

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at \$ [blank] as appears by the Registrar's certificate dated the [blank] day of [blank] 19 [blank] and the plaintiff not having paid the sum within four days after taxation.

It is this day adjudged that the plaintiff do pay the defendant \$[blank] the said taxed costs.

### **No. 51**

#### **Judgment for costs after acceptance of money paid into court**

(O.62, r.10(2), (3))

*(Heading as in action)*

The [blank] day of [blank] 19 [blank]

The defendant having paid into court in this action the sum of \$[blank] in satisfaction of the plaintiff's cause(s) of action (or in satisfaction of the plaintiff's cause of action for [blank]), and the plaintiff having by his notice dated the [blank] day of [blank] 19 [blank] accepted that sum in satisfaction of his cause(s) of action (or in satisfaction of his cause of action for [blank] and abandoned his other cause(s) of action), and the plaintiff's costs herein having been taxed and allowed at \$ [blank] as appears by the Registrar's certificate dated the [blank] day of [blank] 19 [blank] and the defendant not having paid the sum within forty-eight hours after taxation.

It is this day adjudged that the defendant do pay the plaintiff \$ [blank] the said taxed costs.

### **No. 52**

#### **Notice of judgment or order**

(O.44, r.3)

*(Heading as in cause or matter)*

Take notice that a judgment (or order) of this Court was given (or made) on the [blank] day of [blank] 19 [blank] 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 [blank] or the patient [blank] *as may be*) will be bound by the said judgment (or order) to the same extent as you (or he) would have been if you (or he) had originally been made a party.

And also take notice that without entering an appearance you (or the said infant or patient) may within one month after the service of this notice apply to the Court to discharge, vary or add to the said judgment (or order) and that after entering an appearance at the Registry of the Supreme Court you (or the said infant or patient) may attend the proceedings under the said judgment (or order).

Dated the [blank] day of [blank] 19 [blank]

To [blank]

(Signed) [blank]

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**No. 53**

**Writ of fieri facias**

(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 Provost Marshal General [blank] greeting:

Whereas in the above named action it was on the [blank] day of [blank] 19 [blank] adjudged (*or* ordered) that the defendant C.D. do pay the plaintiff A.B. \$ [blank] (and \$ [blank] costs *or* costs to be taxed, which costs have been taxed and allowed at \$ [blank] as appears by the certificate of the Registrar dated the [blank] day of [blank] 19 [blank]):

We command you that of the goods, chattels, lands, houses and other property of C.D. authorized by law to be seized in execution you cause to be made the sums of \$ [blank] and \$ [blank] for costs of execution and also interest on \$ [blank] at the rate of [blank] per cent per annum from the [blank] day of [blank] 19 [blank] until payment (together with Provost Marshal General's 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 further command you that, in case you shall not be able to find sufficient property of the said defendant, or the said defendant shall fail to point out to you any property whereon to levy, you do forthwith arrest the said defendant and deliver him into the custody of the Commissioner of Prisons to be kept in a prison as a prisoner for debt for the period of [blank] unless he shall be sooner discharged from the said imprisonment in due course of law.]

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.

And the court has fixed support and maintenance allowance at the rate of [blank] a day

Witness [blank] Chief Justice of Bermuda, the [blank] day of [blank] 19 [blank]

This writ was issued by [blank] of [blank] attorney for [blank] the [blank] (*or* this writ was issued by A.B. (the plaintiff) in person who resides at [blank]).

*N.B. The words in square brackets are only to be included on the express instructions of the party applying for the writ of fieri facias to issue.*

**No. 54**

**Writ of fieri facias on order for costs**

**RULES OF THE SUPREME COURT 1985**

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(O.45, r.12)

*(Heading as in cause or matter)*

ELIZABETH THE SECOND *(as in No. 53)*.

To the Provost Marshal General *[blank]* greeting:

Whereas in the above named cause *(or matter)* it was on the *[blank]* day of *[blank]* 19 *[blank]* ordered that the *[blank]* C.D. do pay the *[blank]* A.B. costs to be taxed, which costs have been taxed and allowed at \$ *[blank]* as appears by the Registrar's certificate dated the *[blank]* day of *[blank]* 19 *[blank]*:

We command you that of the goods, chattels, lands, houses and other property of C.D. authorized by law to be seized in execution you cause to be made the sum of \$ *[blank]* and \$ *[blank]* for cause of execution, and also interest on \$ *[blank]* at the rate of *[blank]* per cent per annum from the *[blank]* day of *[blank]* 19 *[blank]* until payment together with Provost Marshal General's fees, cost 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)*.

And we further *(as in No. 53)*.

And the court *(as in No. 53)*.

Witness *(as in No. 53)*.

This writ *(as in No. 53)*.

**No. 55**

*[blank]*

**No. 56**

**Writ of fieri facias after levy of part**

(O.45, r.12)

*(Heading as in action)*

ELIZABETH THE SECOND *(as in No. 53)*.

To the Provost Marshal General *[blank]* greeting:

Whereas *(as in No. 53)*.

And whereas by our writ issued the *[blank]* day of *[blank]* 19 *[blank]* we commanded you that of the goods, chattels, lands, houses and other property of C.D. you should cause to be made the sums of \$ *[blank]* and *[blank]* for costs of execution and also interest on \$ *[blank]* at *[blank]* per cent per annum from the *[blank]* day of *[blank]* 19 *[blank]* 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

## RULES OF THE SUPREME COURT 1985

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a statement of the manner in which you had executed it and send a copy of the statement to A.B.

And whereas the indorsement on the said writ states that by virtue thereof you caused to be made of the property aforesaid the sum of \$ [blank]

We command you that of the goods, chattels, lands, houses and other property of C.D. authorized by law to be seized in execution you cause to be made the sum of \$ [blank] the residue of the said \$ [blank] and \$ [blank] for costs of execution and also interest on \$ [blank] at the rate of \$ [blank] per cent per annum from the [blank] day of [blank] 19 [blank] until payment (*continue as in No. 53*).

And we also (*as in No. 53*).

And we further (*as in No. 53*).

And the court (*as in No. 53*).

Witness (*as in No. 53*).

This writ (*as in No. 53*).

### No. 57

#### Writ of fieri facias against estate representative

(O.45, r.12)

(*Heading as in action*)

ELIZABETH THE SECOND (*as in No. 53*).

To the Provost Marshal General [blank] greeting:

Whereas in the above named action it was on the [blank] day of [blank] 19 [blank] adjudged (*or ordered*) that the defendant C.D. an executor (*or administrator*) of E.F. deceased do pay the plaintiff A.B. \$ [blank] and \$ [blank] costs (*or costs to be taxed which costs have been taxed and allowed at \$ [blank] as appears by the certificate of the Registrar dated the [blank] day of [blank] 19 [blank]*), 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, lands, houses and other property of the defendant C.D. authorized 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, which is in the hands of C.D. as his executor (*or administrator*) to be administered you cause to be made the sums of \$ [blank] and \$ [blank] for costs of execution and also interest on \$ [blank] at the rate of [blank] per cent per annum from the [blank] day of [blank] 19 [blank] until payment (together with Provost Marshal General's 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, lands, houses and other property of C.D. authorized by law to be seized in execution the sum of \$ [blank] for costs) and that immediately after execution of

**RULES OF THE SUPREME COURT 1985**

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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*)

Witness (*as in No. 53*).

This writ (*as in No. 53*).

**Nos. 58 to 63**

[*blank*]

**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 Provost Marshal General [*blank*] greeting:

Whereas in the above named action it was on the [*blank*] day of [*blank*] 19 [*blank*] 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 \$ [*blank*] damages) and \$ [*blank*] costs (*or costs to be taxed, which costs have been taxed and allowed at \$ [*blank*] as appears by the certificate of the Registrar dated the [*blank*] day of [*blank*] 19 [*blank*]*):

We command you that you cause the said goods to be delivered to A.B. and that of the goods, chattels, lands, houses and other property of C.D. authorized by law to be seized in execution you cause to be made the sums of \$ [*blank*] and \$ [*blank*] for costs of execution and also interest on \$ [*blank*] at the rate of \$ [*blank*] per cent per annum from the [*blank*] day of [*blank*] 19 [*blank*] until payment together with Provost Marshal General's fees, cost 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*).

Witness (*as in No. 53*).

This writ (*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*).

## **RULES OF THE SUPREME COURT 1985**

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To the Provost Marshal General [blank] greeting:

Whereas in the above named action it was on the [blank] day of [blank] 19 [blank] 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 \$ [blank] being the assessed value of the said goods, (and \$ [blank] damages) and \$ [blank] costs (or costs to be taxed, which costs have been taxed and allowed at \$ [blank] as appears by the certificate of the Registrar dated the [blank] day of [blank] 19 [blank]).

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, lands, houses and other property of C.D. authorized by law to be seized in execution \$ [blank] the assessed value of the said goods and 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 \$ [blank] for (damages and) costs and \$ [blank] for cost of execution and also interest on \$ [blank] at the rate of \$ [blank] per cent per annum from the [blank] day of [blank] 19 [blank] until payment together with Provost Marshal General's fees, cost 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*).

Witness (*as in No. 53*).

This writ (*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 Provost Marshal General [blank] greeting:

Whereas in the above named action it was on the [blank] day of [blank] 19 [blank] adjudged (or ordered) that the defendant C.D. do give the plaintiff A.B. possession of [*describe the land delivery of which has been adjudged or ordered*] and do pay him (\$ [blank] and) \$ [blank] costs (or costs to be taxed, which costs have been taxed and allowed at \$ [blank] as appears by the Registrar's certificate dated the [blank] day of [blank] 19 [blank]):

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, land, houses and other property (*remainder as in No. 53*).

And we also command you that you indorse (*as in No. 53*).

**RULES OF THE SUPREME COURT 1985**

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Witness (*as in No. 53*).

This writ (*as in No. 53*).

**No. 67**

**Writ of sequestration**

(O.45, r. 12)

*[Heading as in cause or matter]*

ELIZABETH THE SECOND (*as in No. 53*).

To: (*names of not less than four commissioners*) greeting:

Whereas in the above named action (*or matter*) in our Supreme Court of Bermuda it was on the *[blank]* day of *[blank]* 19 *[blank]* adjudged (*or ordered*) that C.D. should (pay into court the sum of \$ *[blank]* *or as may be*):

Know ye, therefore, that we, in confidence of your prudence and fidelity, do by this writ authorize and command you, or any two or three 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 \$ *[blank]* *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 Provost Marshal General *[blank]* greeting:

Whereas in the above named action it was on the *[blank]* day of *[blank]* 19 *[blank]* 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 *[blank]* day of *[blank]* 19 *[blank]* 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 *[blank]* day of *[blank]* 19 *[blank]* ordered that a writ of restitution should issue in respect of the said land:

## **RULES OF THE SUPREME COURT 1985**

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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*).

Witness (*as in No. 53*).

This writ (*as in No. 53*).

### **No. 69**

#### **Writ of assistance**

(O.46, r. 1)

*(Heading as in action)*

ELIZABETH THE SECOND (*as in No. 53*).

To the present and any future Provost Marshal General [*blank*] greeting:

Whereas by an order dated the [*blank*] day of [*blank*] 19 [*blank*] made in an action in the 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 [*blank*] day of [*blank*] 19 [*blank*] 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. 70**

[*blank*]

### **No. 71**

#### **Notice of renewal of writ of execution**

(O.46, r.8)

*[Heading as in cause or matter]*



**RULES OF THE SUPREME COURT 1985**

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**Garnishee order absolute where garnishee owes less than 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 *[blank]* filed herein, and the order to show cause made herein dated the *[blank]* day of *[blank]* 19 *[blank]* 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 *[blank]* day of *[blank]* 19 *[blank]* for the sum (or to answer an order made in the Supreme Court dated the *[blank]* day of *[blank]* 19 *[blank]* ordering payment by the said judgment debtor to the above-named judgment creditor of the sum) of \$ *[blank]* (debt and \$ *[blank]* costs) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of \$ *[blank]* remained due and unpaid:

It is ordered that the said garnishee do forthwith pay to the said judgment creditor \$ *[blank]* being so much of the debt from the said garnishee to the said judgment debtor as is sufficient to satisfy the said judgment debt and costs, together with \$ *[blank]* the costs of the garnishee proceedings, and that the said garnishee be at liberty to retain \$ *[blank]* for his costs of this application out of the balance of the debt due from him to the judgment debtor.

Dated the *[blank]* day of *[blank]* 19 *[blank]*

**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 \$ *[blank]* for his costs of this application) do forthwith pay to the said judgment creditor \$ *[blank]* the debt due from the said garnishee to the said judgment debtor. And that the sum of \$ *[blank]* the costs or 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 *[blank]* day of *[blank]* 19 *[blank]*

**Nos. 75 to 81**

*[blank]*

**No. 82**

**Summons for appointment of receiver**

(O.51, r.3)

## **RULES OF THE SUPREME COURT 1985**

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*[Heading as in action]*

Let the defendant C.D. attend the (Judge in chambers, at the Supreme Court in Hamilton, Bermuda) on [blank] the [blank] day of [blank] 19 [blank] at [blank] 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 [blank] day of [blank] 19 [blank] and for an order as to the costs of this application.

Dated the [blank] day of [blank] 19 [blank]

This summons was taken out by [blank] of [blank]

To the above named [blank] (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 [blank] filed the [blank] day of [blank] 19 [blank]:

Let the defendant C.D. attend the (Judge in chambers, at the Supreme Court of Justice in Hamilton, Bermuda) on the [blank] day of [blank] 19 [blank] at [blank] 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 \$ [blank] debt and \$ [blank] costs, and interest on the said sums at the rate of \$ [blank] per cent per annum from the [blank] day of [blank] 19 [blank] due under the judgment (or order) in this action dated the [blank] day of [blank] 19 [blank]

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 servants, or otherwise, be restrained, and an injunction is hereby granted restraining him, until after the hearing of the above application, from assigning, charging or otherwise dealing with the said property.

Dated the [blank] day of [blank] 19 [blank]

**No. 84**

**Order appointing receiver by way of equitable execution**

(O.51)

## RULES OF THE SUPREME COURT 1985

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*[Heading as in action]*

Upon hearing *[blank]* and upon reading the affidavit of *[blank]* filed the *[blank]* day of *[blank]* 19 *[blank]*

*(If security ordered)* It is ordered that P.R. of *[blank]* on first giving security to the satisfaction of the Court, be and is hereby appointed to receive the rents, profits and moneys receivable in respect of the above-named defendant's interest in the following property, namely *(describe the property)*.

*(If no security ordered and receiver is not the plaintiff)* The plaintiff being answerable for the acts and defaults of the receiver, it is ordered that P.R. of *[blank]* 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 do attorn and pay their rents in arrear and growing rents to the receiver.

And that the receiver have liberty, if he shall think proper (but not otherwise), out of the rents, profits and moneys to be received by him to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments, if any, in passing his accounts.

And that the receiver shall on the *[blank]* day of *[blank]* *(three months after the date of order)*, and at such further and other times as may be ordered by the Court leave and pass his accounts, and shall on the *[blank]* day of *[blank]* *(four months after the date of order)* and at such further and other times as may be hereafter ordered by the Court 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 *[blank]* day of *[blank]* for the sum of \$ *[blank]* debt and \$ *[blank]* costs, making together the sum of \$ *[blank]*

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 ten per cent of the amount due under the said judgment or the amount recovered by the receiver, whichever is the less, provided that not less than *[blank]* be allowed unless otherwise ordered. Such costs shall be taxed unless assessed by the Court and shall be primarily payable out of the sums received by

## **RULES OF THE SUPREME COURT 1985**

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the receiver, but if there shall be no sums received or the amount shall be insufficient, then upon the certificate of the Court 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 Court 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 judge in chambers as there may be occasion.

Dated the [blank] day of [blank] 19 [blank]

**No. 85**

**Order of committal**

(O.52)

*[Heading as in action]*

Upon motion this day made unto this Court by the attorney for the plaintiff and upon reading (an affidavit of [blank] filed the [blank] day of [blank] 19 [blank] of service on the defendant C.D. of a copy of the order of the Court dated the [blank] day of [blank] 19 [blank] and of notice by 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 [blank] Prison to be there imprisoned [until further order].

(It is further ordered that this order shall not be executed if the defendant C.D. complies with the following terms, namely, [blank]).

Dated the [blank] day of [blank] 19 [blank]

**No. 86**

**Notice of motion for judicial review (O.53, r.5)**

[Royal Arms]

In the Supreme Court of Bermuda

Civil Jurisdiction

In the matter of an application for judicial review

and

In the matter of [blank]

Take Notice that pursuant to the leave of a Judge of the Supreme Court [or the Honourable Mr. Justice [blank] given on [blank] the Court will be moved as soon as

**RULES OF THE SUPREME COURT 1985**

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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 [blank]

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 Supreme Court [or the Honourable Mr. Justice [blank] by order dated [blank] directed that all proceedings in [or on] the said [blank] be stayed until after the hearing of this motion or further order].

Dated the [blank] day of [blank] 20[blank].

(Signed)

of

To

Attorney for

Attorney for

**IMPORTANT**

Any respondent who intends to use an affidavit at the hearing should inform the Registry of his intention within ten 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 fifty-six days of service.

*[Form 86 inserted by BR55/2005 effective 1 January 2006]*

**No. 86A**

**In the Supreme Court of Bermuda**

[Royal Arms]

Applicant’s Ref. No	Notice of APPLICATION for leave to apply for Judicial Review (O.53, r.5)	Supreme Court Ref. No.
This form must be read together with Notes for Guidance obtainable from the Registry.		
To the Registrar of the Supreme Court, Supreme Court Registry, Hamilton, HM 12		
Name, address and description of applicant (s)		

**RULES OF THE SUPREME COURT 1985**

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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)

**GROUND 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.

*[Form 86A inserted by BR55/2005 effective 1 January 2006]*

**No. 86B (O.53, r.3 (5))**

**In the Supreme Court of Bermuda**

Applicant's Ref No.	Notice of RENEWAL of application for leave to apply for Judicial Review	Supreme Court Ref. No.
To the Registrar of the Supreme Court Supreme Court Registry, Hamilton, HM 12		
The applicant intends to renew his application for leave to apply for Judicial Review.		
Signed:		Date:
Received in the Registry	NOTE: This notice must be lodged in the Registry within 10 days of the service on the applicant or his solicitor of notice that the original application for leave has been refused.	

*[Form 86B inserted by BR55/2005 effective 1 January 2006]*

**No. 87**

**Notice of motion for writ of habeas corpus ad subjiciendum (O.54, r.2)**

[Royal Arms]

**RULES OF THE SUPREME COURT 1985**

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In the Supreme Court of Bermuda

Criminal Jurisdiction [or Civil Jurisdiction as the case may be]

20 . No.

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 [blank] [or the Supreme Court], the Supreme Court will be moved on the [blank] day of [blank] 20[blank],, or so soon thereafter as counsel can be heard on behalf of A.B. for an order that the writ of habeas corpus do issue directed 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 [blank] and the exhibits therein respectively referred to used on the application to the Honourable Mr. Justice [blank] [or the Supreme Court] 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 for himself and the said [blank] and the exhibits therein referred to.

Dated the [blank] day of [blank] 20[blank].

(Signed)

of

Attorney for

To

Attorney for

*[Form 87 inserted by BR55/2005 effective 1 January 2006]*

**No. 88**

**Notice directed by Court of adjourned application for writ of habeas corpus (O.54, r.2)**

[Heading as in No. 2]

## **RULES OF THE SUPREME COURT 1985**

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Take notice that an application for the above writ was made to the Supreme Court [or to the Honourable Mr. Justice *[blank]* ] in the above matter on the *[blank]* day of *[blank]* 20*[blank]*, 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 the Honourable Mr. Justice *[blank]*] on *[blank]* the *[blank]* day of *[blank]* 20*[blank]* at *[blank]* o'clock.

Dated the *[blank]* day of *[blank]* 20*[blank]* .

(Signed)

of

Attorney for

To

Attorney for

*[Form 88 inserted by BR55/2005 effective 1 January 2006]*

### **No. 89**

#### **Writ of habeas corpus ad subjiciendum (O.54, r.10)**

ELIZABETH THE SECOND [as in No. 53]

To the Commissioner of Prisons greeting:

We command you that you have in the Supreme Court [or before a judge in chambers] at Hamilton, 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 *[blank]* Chief Justice of Bermuda the *[blank]* day of *[blank]* 20*[blank]*.

Indorsement

By order of court [or of Mr. Justice *[blank]*]

This writ was issued by *[blank]* of *[blank]* attorney for *[blank]*.

*[Form 89 inserted by BR55/2005 effective 1 January 2006]*

### **No. 90**

#### **Notice to be served with writ habeas corpus ad subjiciendum (O.54, r.6)**

In the Supreme Court of Bermuda

Criminal Jurisdiction [or Civil Jurisdiction as the case may be].

[If in a cause already begun, here insert the title, not otherwise]

## **RULES OF THE SUPREME COURT 1985**

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Whereas this court [or the Honourable Mr. Justice *[blank]*] has granted a writ of habeas corpus directed to *[blank]* [or other person having the custody of *[blank]* 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, Hamilton, 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 *[blank]* the *[blank]* day of *[blank]* 20 *[blank]* at *[blank]* o'clock and to make a return to the said writ. In default 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 *[blank]* day of *[blank]* 20 *[blank]*

(Signed)

of

Attorney for

To

Attorney for

*[Form 90 inserted by BR55/2005 effective 1 January 2006]*

### **No. 91**

#### **Writ of habeas corpus ad testificandum (O.54, r.10)**

ELIZABETH THE SECOND [as in No. 53]

To the Commissioner of Prisons at *[blank]* greeting:

We command you that you have before the Supreme Court on *[blank]* the *[blank]* day *[blank]* of *[blank]* 20*[blank]*, at *[blank]* the body of *[blank]*, 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 *[blank]* 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. 4]

Indorsement

By order of court [or of Mr. Justice *[blank]*].

This writ was issued *[blank]* of *[blank]* attorney for *[blank]*

*[Form 91 inserted by BR55/2005 effective 1 January 2006]*

## **RULES OF THE SUPREME COURT 1985**

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### **No. 92**

#### **Writ of habeas corpus ad respondendum (O.54, r.10)**

ELIZABETH THE SECOND [as in No. 53]

To the Commissioner of Prisons at *[blank]* greeting:

We command you that you have before the Supreme Court on *[blank]* the *[blank]* day of *[blank]* 20*[blank]*, at *[blank]* the body of *[blank]*, 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 *[blank]* 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. 4]

Indorsement

[As in No. 6]

*[Form 92 inserted by BR55/2005 effective 1 January 2006]*

### **No. 94**

#### **Order for production of documents in marine insurance action (O.72, r.10)**

[Heading as in action]

Upon hearing *[blank]* [and upon reading the affidavit of *[blank]* filed the *[blank]* day of *[blank]* 19 *[blank]*]:

It is ordered that the plaintiff and all other persons interested in this action, and in the insurance the subject of this action, do produce and show to the defendant, his solicitors or agents on oath [or by oath of their proper officer] all insurance slips, policies, letters of instruction or other orders for effecting such slips or policies, or relating to the insurance or the subject-matter of the insurance on the ship *[blank]*, or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said ship, cargo or freight, and all correspondence with any person relating in any manner to the effecting of the insurance on the said ship, cargo or freight, or any other insurance whatsoever effected on the said ship, cargo or freight, on the voyage insured by the policy sued on in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby on the same voyage. Also all correspondence between the captain or agent of the ship and any other person with the owner or any person before the commencement of or during the voyage on which the alleged loss happened. Also all books and documents, whatever their nature and whether originals, duplicates or copies, which in any way relate or refer to any matter in question in this action and which are now in the custody, possession or power of the plaintiff or any other person on his behalf, his or their, or any of their brokers, solicitors or agents, with liberty for the defendant, his solicitors or agents to inspect and take copies of, or extracts from, any of those books or documents. And that in the like manner the plaintiff

## **RULES OF THE SUPREME COURT 1985**

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and every other person interested as aforesaid do account for all other books and documents relating or referring to any matter in question in this action which were once but are not now in his custody, possession and power.

And that [in the meantime all further proceedings be stayed and that] the costs of and occasioned by this application be costs in the action.

Dated the [blank] day of [blank] 20[blank].

*[Form 94 inserted by BR55/2005 effective 1 January 2006]*

### **No. 95**

#### **Certificate of order against the Crown**

(O.77, r.15(3))

*[Heading as in cause or matter]*

By a judgment [or order] of this Court dated the [blank] day of [blank] 19 [blank] it was adjudged [or ordered] that [give particulars of the judgment or order].

I hereby certify that the amount payable to [blank] by [blank] in pursuance of the said judgment (or order) is \$ [blank] (together with interest thereon at the rate of \$ [blank] per cent per annum until payment and together with costs which have been taxed and certified by the Registrar at \$ [blank] per cent per annum from the [blank] day of [blank] 19 [blank] until payment).

(This certificate does not include the amount payable under the said judgment or order in respect of costs).

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]

*(Note—The final paragraph is to be included where a separate certificate with respect to costs has been directed to be issued).*

### **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 [blank] day of [blank] 19 [blank] it was adjudged (or ordered) that [give particulars of the judgment or order].

I hereby certify that the costs payable to [blank] by [blank] in pursuance of the said judgment [or order] have been taxed and certified by the Registrar at \$ [blank] (and interest is payable thereon at the rate of \$ [blank] per cent per annum from the [blank] day of [blank] 19 [blank] until payment).

**RULES OF THE SUPREME COURT 1985**

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Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]

**No. 97**

**Search Warrant Under Part IV of the Proceeds of Crime Act 1997**

**(O. 115B, r.16)**

**CLAIM NO.      of 20**

**IN THE SUPREME COURT**

**IN THE MATTER OF THE PROCEEDS OF CRIME ACT 1997 AND IN THE MATTER OF  
A CIVIL RECOVERY INVESTIGATION**

**APPLICANT**

**[insert name of police officer making application]**

**PREMISES TO WHICH THIS WARRANT RELATES:**

**[insert address]**

**WARRANT TO ENTER PREMISES IN RESPECT OF A CIVIL RECOVERY  
INVESTIGATION AND EXERCISE POWERS UNDER SECTION 39 OF THE PROCEEDS  
OF CRIME ACT 1997**

To [insert name of person/organisation], who is believed to be the occupier of the premises described above (“the premises”) and to any person in charge of, or operating at or from, the premises:

**You should read the terms of this warrant and the accompanying notice very carefully. You are advised to consult an attorney as soon as possible. If you intentionally obstruct or fail to comply with any requirement of a police officer exercising his or her powers under the warrant, you may be committing a contempt of court for which you may be imprisoned or fined.**

An application was made on [insert date] by Counsel for the [insert appropriate officer] to The Honourable Mr/Mrs Justice [insert name] (“the Judge”) for a warrant under section 39 of the Proceeds of Crime Act 1997 (“the Act”).

The Judge read the evidence in support of the application and was satisfied that the requirement for the issue of a warrant in section 39(2)(d) of the Act has been met.

As a result of the application, this warrant in relation to the premises was issued by the Judge on [insert date].

1. This warrant is issued in respect of a civil recovery investigation by the [insert appropriate officer] in relation to [indicate the property subject to the investigation] (“the investigation”).



**RULES OF THE SUPREME COURT 1985**

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**APPENDIX B  
SPECIAL ADMIRALTY FORMS**

**No. 1**

**Writ of summons in action in rem**

(O.75, r.3)

19....., Folio .....

IN THE SUPREME COURT

Admiralty action in rem against:

[The ship "X" or as may be describing the res]

[The owners of the ship "Y" or as may be] Plaintiffs

and

[The owners of the ship "X" or as may be describing the res] Defendants

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 [owners of and other] persons interested in the ship [blank] of the port of [blank] [or cargo, etc., as may be].

We command you that within 14 days after the service of this writ, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of [blank]: and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence, and if the res described in this writ is then under arrest of the Court it may be sold by order of the Court.

Witness [blank], Chief Justice of Bermuda, the [blank] day of [blank] 19 [blank]

*Note*—This writ may not be served more than twelve calendar months after the above date unless renewed by order of the Court.

**DIRECTIONS FOR ENTERING APPEARANCE**

The defendants may enter an appearance in person or by an attorney either (1) by handing in the appropriate forms duly completed, at the Registry, the Supreme Court, in Hamilton, Bermuda, or (2) by sending them to that office by post.

*Indorsements to be made on writ before issue*

*Indorsement of claim*

The Plaintiff's claim is for [blank]

[If the plaintiffs sue, or the defendants are sued, in a representative capacity this must be stated in the indorsement of claim.]

## RULES OF THE SUPREME COURT 1985

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### *Indorsement as to attorneys address*

This writ was issued by [blank] of [blank] attorney for the said plaintiffs whose address is [blank] (or This writ was issued by the said plaintiffs who reside at [blank] and [if the plaintiffs do not reside within the jurisdiction] whose address for service is [blank]).

### *Indorsement as to service*

This writ was served by me at [blank] on [blank] on [blank] the [blank] day of [blank] 19 [blank] by [stating manner of service].

(Signed) [blank]

(Address) [blank]

### **No. 2**

[blank]

### **Writ of summons in Admiralty action *in personam***

*Note*—Form 1, 3 or 5 in Appendix A, as is appropriate, should be used.

### **No. 3**

#### **Warrant of arrest**

(O.75, r.5(1))

*[Heading as in action]*

ELIZABETH THE SECOND, etc. (as in Form No. 1).

To the Provost Marshal General, Greeting. We hereby command you to arrest the ship [blank] of the port of [and the cargo now or lately laden therein, together with the freight due for the transportation thereof] or [and the freight due for the transportation of the cargo now or lately laden therein], and to keep the same under safe arrest until you shall receive further orders from Us.

Witness (as in Form No. 1).

The plaintiff's claim is for [copy from the writ]

Taken out by [blank] [attorneys for] the [blank]

#### **Provost Marshal General's indorsement as to service**

### **No. 4**

#### **Praeceptum for warrant of arrest**

(O.75, r.5(4))

*[Heading as in action]*

We [blank] of [blank] [attorneys for] the plaintiffs request a warrant to arrest [description of property giving name, if a ship].

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Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]

**No. 5**

**Praecipe for caveat against arrest**

(O.75, r.6)

*[Description of property giving name, if a ship]*

We [blank] of [blank] [attorneys for [blank] of [blank]] request a caveat against the arrest of [description of property giving name, if a ship] and hereby undertake to enter an appearance in any action that may be begun in the Supreme Court against the said [blank] and, within three days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding [blank] dollars or to pay that sum into court. We consent that the writ of summons and any other document in the action may be left for us at [blank]

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]

**No. 6**

**Praecipe for service of writ in rem by Provost Marshal General**

(O.75, r.8(3))

*[Heading as in action]*

We [blank] of [blank] [attorneys for] the plaintiffs request that the writ of summons left herewith be duly served on [blank]

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]

**No. 7**

**Release**

(O.75, r.13(1))

*[Heading as in action]*

ELIZABETH THE SECOND, etc. (as in Form No. 1)

To the Provost Marshal General, Greeting.

Whereas in this action We did command you to arrest the [blank] and to keep the same under safe arrest until you should receive further orders from Us. Now We do hereby command you to release the said [blank] from the arrest effected by virtue of Our warrant in this action.

**RULES OF THE SUPREME COURT 1985**

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Witness (*as in Form No.1*)

Taken out by [blank] [attorneys for] [blank]

**Provost Marshal General's indorsement**

On [blank] the [blank] day of [blank] 19 [blank] the [blank] was released from arrest pursuant to this Instrument.

(Signed) [blank]  
Provost Marshal General

**No. 8**

**Praeceptum for issue of release**

(O.75, r.13(6))

*[Heading as in action]*

We [blank] of [blank] [attorneys for] the plaintiffs [or defendants] in this action against [description of property giving name, if a ship], now under arrest by virtue of a warrant issued out of the Supreme Court, request the issue of a release with respect to the said [blank].

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]

**No. 9**

**Praeceptum for caveat against release and payment**

(O.75, r.14(1))

*[Description of property giving name, if a ship]*

We [blank] of [blank] [attorneys for] [blank] of [blank] request a caveat against the issue of a release with respect to [description of property giving name, if a ship] now under arrest and, should the said property be sold by order of the Court, a caveat against payment out of court of the proceeds of sale.

The intending caveator claims to have an interest [to the extent of approximately \$ [blank] if known] in the above-mentioned property in respect of [state nature of claim, e.g. salvage, collision damage, etc.].

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]

**No. 10**

**Praeceptum for withdrawal of caveat**

(O.75, r.15(1))

*[Description of property giving name, if a ship]*

**RULES OF THE SUPREME COURT 1985**

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We [blank] of [blank] [attorneys for] [blank] of [blank] request that the caveat (*state nature of caveat*) entered on the [blank] day of [blank] 19 [blank] on behalf of [blank] be withdrawn.

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]

**No. 11**

**Bail bond**

(O.75, r.16(1))

*[Heading as in action]*

Whereas this Admiralty action in rem against the above-mentioned property is pending in the Supreme Court and the parties to the said action are the above-mentioned plaintiffs and defendants:

NOW, THEREFORE, WE, A.B. of [blank] and C.D. of [blank] hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the above-mentioned defendants, [*or plaintiffs, in the case of a counterclaim*] do not pay what may be adjudged against them in this action, with costs, or do not pay any sum due to be paid by them in consequence of any admission of liability therein or under any agreement by which this action is settled before judgment and which is filed in the said Court, execution may issue against us, our executors or administrators, goods and chattels, for the amount unpaid or an amount of [blank] dollars whichever is the less.

(Signed) [blank]

This bail bond was signed by the said A.B. and C.D., the sureties, the [blank] day of [blank] 19 [blank]

Before me [blank]  
A Commissioner for Oaths.

**No. 12**

**Praecipe for commission for appraisalment and sale**

(O.75, r.23(1))

*[Heading as in action]*

We [blank] of [blank] [attorneys for] the plaintiffs [*or defendants*] request a commission for the appraisalment and sale of [*description of property giving name, if a ship*] which was ordered by the Court on the [blank] day of [blank] 19 [blank]

Dated the [blank] day of [blank] 19 [blank]

(Signed) [blank]

**No. 13**

**Commission for Appraisalment and Sale**

**RULES OF THE SUPREME COURT 1985**

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(O.75, r.23(2))

*[Heading as in action]*

ELIZABETH THE SECOND, etc. (*as in Form No. 1*).

To the Provost Marshal General, Greeting.

Whereas in this action the Court has ordered [*description of property giving name, if a ship*] to be appraised and sold.

We hereby authorize and command you to choose one or more experienced persons and to swear him or them to appraise the said [*blank*] according to the true value thereof, and such value having been certified in writing by him or them to cause the said [*blank*] to be sold by (*private treaty*) (*public auction*) for the highest price that can be obtained for it, but not for less than the appraised value unless the Court on your application allows it to be sold for less.

AND WE further command you, immediately upon the sale being completed, to pay the proceeds thereof into court and to file the certificate of appraisal signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Witness (*as in Form No. 1*).

Taken out by [*blank*] [attorneys for] the [*blank*]

**No. 14**

**Release and Warrant of Possession**

(O.75)

*[Heading as in action]*

ELIZABETH THE SECOND, etc. (*as in Form No. 1*).

To the Provost Marshal General, Greeting:

WHEREAS in this action the Court has ordered possession of the ship [*name to be stated*], her tackle, apparel and furniture to be delivered up to [*blank*] or to his attorney for his use [*blank*]

We hereby command you to release the said ship, her tackle, apparel and furniture from the arrest made by virtue of Our warrant in that behalf and to deliver possession thereof to the said [*blank*] or to his attorney for his use.

Witness [*as in Form No. 1*]

Taken out by [*blank*] [attorneys for] the [*blank*]

Provost Marshal General's Indorsement

On the [*blank*] day of [*blank*] 19 [*blank*] the ship [*blank*] was released from arrest pursuant to this warrant.

(Signed) [*blank*]

**RULES OF THE SUPREME COURT 1985**

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Provost Marshal General

**Receipt**

Received from the Provost Marshal General on the [blank] day of [blank] 19 [blank] the ship [blank] and everything on board belonging to her.

(Signed) [blank]

**No. 15**

[blank]

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*[Amended by:*

BR 3 / 1986  
BR 7 / 1998  
BR 61 / 1999  
BR 81 / 1999  
BR 41 / 2000  
BR 86 / 2000  
BR 55 / 2005  
BR 98 / 2013  
BR 10 / 2014  
2017 : 9  
BR 62 / 2018  
2022 : 4  
BR 10 / 2024  
BR 4 / 2025  
BR 13 / 2026]