CHAPTER 336
WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

• Act • Subsidiary Legislation •

ACT

Act No. 17 of 1971

Amended by

Act No. 22 of 1961
Act No. 9 of 1974
Act No. 4 of 1979
Act No. 14 of 1979
Act No. 28 of 1979
Act No. 20 of 1991
SRO 27 of 1991
Act No. 36 of 2000
Act No. 7 of 2009
SRO 26 of 2009

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CHAPTER 336
WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

An Act to repeal and replace the Supreme Court Act (Chapter No. 289 of 1958) and to confer jurisdiction on the West Indies Associated States Supreme Court, and for connected matters.

[Act No. 17 of 1971 amended by Act No. 22 of 1961, Act No. 9 of 1974, Act No. 4 of 1979, Act No. 14 of 1979, Act No. 28 of 1979, Act No. 20 of 1991, SRO 27 of 1991, Act No. 36 of 2000, Act No. 7 of 2009, SRO 26 of 2009.]

[16*th April*, 1971.]

Preliminary

1. Short title

This Act may be cited as the West Indies Associated States Supreme Court (Grenada) Act.

2. Interpretation

In this Act—

"action" means a civil proceeding commenced by writ or in such other manner as may be prescribed by rules of court, but does not include a criminal proceeding by the Crown;

"cause" includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding by the Crown;

"Chief Justice" means the Chief Justice of the West Indies Associated States Supreme Court, and includes any Justice of Appeal designated to act as Chief Justice under the provisions of section 6(1) of the Courts Order;

"Chief Registrar" means the Chief Registrar of the Supreme Court constituted under the Courts Order;

"Court" or "Supreme Court" means the West Indies Associated States Supreme Court established by the Courts Order;

"Court of Appeal" means the Court of Appeal constituted under the Courts Order;

"Courts Order" means the West Indies Associated States Supreme Court Order, 1967 (S.I. 223 of 1967);

"defendant" includes any person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings;

"former British Caribbean Court of Appeal" means the British Caribbean Court of Appeal in existence immediately before the prescribed date;

"former Court of Appeal" means the Court of Appeal of the Windward Islands and Leeward Islands in existence immediately before the prescribed date;

"former Supreme Court" means the Supreme Court of the Windward Islands and Leeward Islands in existence immediately before the prescribed date;

"High Court" means the High Court of Justice established by the Courts Order;

"judgement" includes decree;

"Justice of Appeal" means a Judge of the Court of Appeal other than the Chief Justice;

"Master" means a Master of the Supreme Court;

"matrimonial cause" means any action for divorce, nullity of marriage, judicial separation, jactitation of marriage or restitution of conjugal rights;

"matter" includes every proceeding in court not in a cause;

"order" includes decision and rule;

"party" includes every person served with notice of or attending any proceeding, although not named on the record;

"petitioner" includes every person making an application to the Court, either by petition, motion or summons, otherwise than as against any defendant;

"plaintiff" includes a claimant and every person asking relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the proceeding is by action, suit, petition, motion, summons, claim, fixed date claim or otherwise;

"pleading" includes any petition or summons, and also includes the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counterclaim of a defendant;

"prescribed date" means the date prescribed by the Chief Justice under section 1(2) of the Courts Order, namely, 24th April, 1967;

"proceeding" includes action, cause or matter;

"Puisne Judge" means a Judge of the High Court, other than the Chief Justice;

"Registrar" means the Registrar of the High Court;

"rules of court" includes forms;

"solicitor" means solicitor of the Supreme Court;

"suit" includes action;

"verdict" includes the findings of a jury and the decision of the Judge.

3. References to Supreme Court, former Court of Appeal and British Caribbean Court of Appeal

(1) Where in any Act, Ordinance or other law in force immediately before the prescribed date reference is made to the Supreme Court (thereby meaning the former Supreme Court) in the exercise of its jurisdiction and powers, or to a judge of the said Supreme Court, that reference shall be deemed to be a reference to the High Court or to a Judge of the High Court as the case may be.

(2) Where in any Act, Ordinance or other law in force immediately before the prescribed date reference is made to the Court of Appeal (thereby meaning the former Court of Appeal) that reference shall, unless the context otherwise requires, be deemed to be a reference to the Court of Appeal constituted under the Courts Order.

(3) Where in any Act, Ordinance or other law in force immediately before the prescribed date reference is made to the British Caribbean Court of Appeal that reference shall, unless the context otherwise requires, be deemed to be a reference to the Court of Appeal.

(4) Any act done or proceeding taken in respect of any cause or matter whatsoever in the former Supreme Court or before a Judge thereof prior to the prescribed date shall have effect after the prescribed date as if it had been done or taken in the High Court or before a Judge thereof.

4. How Supreme Court Judges are to be addressed

All Judges of the Supreme Court shall be addressed in the manner customary in addressing the Judges of the former Supreme Court immediately before the prescribed date.

5. Constitution of Court

Subject to the provisions of section 17(3) of the Courts Order and of rules of court the Court of Appeal and the High Court for the exercise of the jurisdiction conferred upon them respectively shall be constituted in such manner as the Chief Justice may direct.

PART I

The High Court

6. Jurisdiction of former Supreme Court vested in High Court

There shall be vested in the High Court all jurisdiction which was vested in the former Supreme Court by the Supreme Court Ordinance, Chapter 289 of 1958, or by any law of the Legislature of Grenada or any other law for the time being in force in Grenada and such jurisdiction shall include—

(*a*) the jurisdiction which was vested in, or capable of being exercised by, all or any one or more of the judges of the former Supreme Court sitting in Court or Chambers or elsewhere when acting as judges or a judge pursuant to any Order in Council, Act, Ordinance or any other law for the time being in force in Grenada;

(*b*) all the powers given to the former Supreme Court or to any judge or judges thereof by any Act, Ordinance or any other law for the time being in force in Grenada;

(*c*) all ministerial powers, duties and authorities incidental to any and every part of that jurisdiction.

7. Jurisdiction of High Court

(1) The High Court may have and exercise within Grenada all such jurisdiction (save and except the jurisdiction in Admiralty) and the same powers and authorities incidental to such jurisdiction as, from the commencement of this Act, are vested in the High Court of Justice in England.

(2) The High Court may have and may exercise in relation to the persons and property, in Grenada, of persons suffering from mental disorder the jurisdiction exercised, under the relevant provisions of the Mental Health Act, 1959, by the Court of Protection in England or any judge thereof.

8. Jurisdiction of High Court in Admiralty

The High Court shall have and exercise all such jurisdiction in Admiralty and the same powers and authorities incidental to such jurisdiction as immediately before the prescribed date were vested in the former Supreme Court, and reference to the former Supreme Court in the Admiralty Jurisdiction (Grenada) Order, 1661 of 1964, shall be deemed to be a reference to the High Court.

9. Practice in bankruptcy

The jurisdiction of the High Court in bankruptcy shall be exercised in accordance with the provisions of the Bankruptcy Act, Chapter 27, and rules made thereunder.

9A. Jurisdiction of Master

(1) A Master shall exercise the authority of a Judge of the High Court sitting in Chambers and such other authority and jurisdiction as may, from time to time, be assigned by rules of court made under section 10 of the Supreme Court Order.

(2) Where a Master has and exercises jurisdiction in relation to any matter, the Master shall have all the powers, rights, immunities and privileges of a Judge in relation to such matter.

10. Practice in criminal proceedings

(1) The jurisdiction of the High Court in all criminal proceedings shall be exercised in accordance with the Criminal Procedure Code, Chapter 72B, and any other law in force in Grenada.

(2) The High Court shall have cognisance of all offences committed in Grenada or within one marine league of the coasts thereof measured from low water mark, and of all offences authorised to be tried in Grenada under any Statute of the United Kingdom.

11. Practice in civil proceedings and in probate, divorce and matrimonial causes

(1) The jurisdiction vested in the High Court in civil proceedings, and in probate, divorce and matrimonial causes, shall be exercised in accordance with the provisions of this Act and any other law in operation in Grenada and rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice for the time being in force in the High Court of Justice in England.

(2) At any time during the progress of a suit for divorce or nullity of marriage, or before the decree is made absolute, any person may give information to the Attorney-General of any matter material to the due decision of the case, who may thereupon take such steps as he or she may deem necessary or expedient; and if from any such information or otherwise the Attorney-General shall be of opinion that any parties to the suit are, or have been, acting in collusion for the purpose of obtaining the divorce or decree of nullity of marriage, as the case may be, he or she may by leave of the High Court intervene in the suit, alleging such case or collusion, and retain counsel or subpoena witnesses to prove it, and it shall be lawful for the High Court to order the costs of such counsel and witnesses and otherwise arising from such intervention to be paid by the parties, or such of them as it shall see fit, including a wife if she has separate property; but it shall not be lawful for the High Court to order any costs arising from any intervention to be paid by the Attorney-General, and the Attorney-General shall be entitled to be paid from the Consolidated Fund all reasonable costs which he or she may have incurred arising from any such intervention after deducting any costs which may have been paid to him or her by the parties.

(3) The rules and regulations last in force in the former Probate, Divorce and Admiralty Division of the High Court of Justice in England with respect to the Queen's

Proctor under section 6 of the Matrimonial Causes Act, 1965, of the United Kingdom shall, subject to rules of court, apply to the Attorney-General.

(4) Notwithstanding anything contained in section 3 of the Matrimonial Causes Act, 1937, of the United Kingdom, in any divorce proceedings a person of unsound mind shall be deemed to have been under care and treatment for a period of at least five years if the High Court is satisfied upon hearing the evidence of at least two medical practitioners that the respondent has been continuously under medical and mental care and treatment for a period of not less than five years immediately preceding the presentation of the petition whether the respondent has or has not suffered detention in pursuance of any lunacy order or inquisition, or has or has not been receiving treatment as a voluntary patient, under any law for the time being in force.

12. Jurisdiction of single Judge

Any Judge of the High Court may in accordance with rules of court, or so far as such rules shall not provide, in accordance with the practice and procedure which shall for the time being be in force in the High Court of Justice in England exercise, in court or in chambers, all or any of the jurisdiction vested in the High Court.

13. Law and equity to be concurrently administered

Subject to the express provisions of any other law, in every civil cause or matter commenced in the High Court, law and equity shall be administered by the High Court and the Court of Appeal.

14. Equities of plaintiff

If a plaintiff or petitioner claims to be entitled to any equitable estate or right or to relief on any equitable ground against any deed, instrument or contract or against any right, title or claims whatsoever asserted by any defendant or respondent in the cause or matter, or to any relief founded upon a legal right which before 1st November, 1875 could in England only have been given by a court of equity, the Court or a Judge thereof shall give to the plaintiff or petitioner the same relief as would be given by the High Court of Justice in England in a suit or proceeding for the same or a like purpose.

15. Equitable defences

If a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract or against any right, title or claim asserted by any plaintiff or petitioner in the cause or matter or alleges any equitable defence to any such claim of the plaintiff or petitioner, the Court or a Judge thereof shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence such and the same effect by way of defence against the claim of the plaintiff or petitioner as the High Court of Justice in England would give if the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the like purpose.

16. Counterclaim and third parties

(1) The Court or a Judge thereof shall have power to grant to any defendant in respect of any equitable estate or right or other matter of equity and also in respect of any legal estate, right or title claimed or asserted by him or her—

(*a*) all such relief against any plaintiff or petitioner as the defendant has properly claimed by his or her pleading, and as the Court or a Judge thereof might have granted in any suit instituted for that purpose by that defendant against the same plaintiff or petitioner; and

(*b*) all such relief relating to or connected with the original subject of the cause or matter, claimed in like manner against any other person, whether already a party to the cause or matter or not, who has been duly served with notice in writing of the claim pursuant to rules of court or any order of the Court, as might properly have been granted against that person if he or she had been made a defendant to a cause duly instituted by the same defendant for the like purpose.

(2) Every person served with any such notice shall thenceforth be deemed a party to the cause or matter with the same rights in respect of his or her defence against the claim as if he or she had been duly sued in the ordinary way by the defendant.

17. Equities appearing incidentally

The Court or a Judge thereof shall take notice of all equitable estates, titles and rights and all equitable duties and liabilities appearing incidentally in the course of any cause or matter in the same manner in which the High Court of Justice in England would recognise and take notice of the same in any suit or proceeding duly instituted therein.

18. Defence or stay instead of injunction or prohibition

No cause or proceeding at any time pending in the High Court or in the Court of Appeal shall be restrained by prohibition or injunction but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might formerly have been obtained whether unconditionally or on any terms or conditions, may be relied on by way of defence thereto:

Provided that—

(*a*) nothing in this Act shall disable the High Court or the Court of Appeal, if it thinks fit to do so, from directing a stay of proceedings in any cause or matter pending before it; and

(*b*) any person, whether a party or not to any such cause or matter who would formerly have been entitled to apply to any court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgement, decree, rule or Order, in contravention of which all or any part of the proceedings in the cause or matter have been taken, may apply to the High Court or to the Court of Appeal, as the case may be, by motion in a summary way, for a stay of proceedings in the cause or matter, either generally, or so far as may be necessary for the purposes of justice, and the High Court or the Court of Appeal, as the case may be, shall thereupon make such order as shall be just.

19. Common law and statutory rights and duties

Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, the High Court and the Court of Appeal and each Judge thereof shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom, or created by any statute, in the same manner as these matters have hitherto been recognised and given effect to.

20. Determination of matters completely and finally

The High Court and the Court of Appeal respectively in the exercise of the jurisdiction vested in them by this Act shall in every cause or matter pending before the Court grant either absolutely or on such terms and conditions as the Court thinks just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any legal or equitable claim or matter so that, as far as possible, all matters in

controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided.

21. Rules of equity to prevail

In all matters in which there was formerly or is any conflict or variance between the rules of equity and the rules of common law with reference to the same matter the rules of equity shall prevail.

22. Declaratory order

No action shall be open to objection on the ground that a merely declaratory decree or order is sought.

23. Mode of trial

(1) Subject as hereinafter provided, any action to be tried before the High Court, may in the discretion of that Court or of a Judge thereof, be ordered to be tried with or without a jury:

Provided that the mode of trial shall be by a Judge without a jury unless, upon the application of any party to the action, a trial with a jury is ordered.

(2) Any party to the action may within ten days after the action has been set down for trial apply to have the action tried with a jury, and if the High Court or a Judge thereof is satisfied that—

(*a*) a charge of fraud against the party; or

(*b*) a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage,

is in issue, the action shall be ordered to be tried with a jury unless the High Court or a Judge thereof is of opinion that the trial requires any prolonged examination of documents or accounts or any specific or local investigation which cannot conveniently be made with a jury; but, save as aforesaid, the granting of a jury shall in every case be discretionary.

(3) The provisions of this section shall be without prejudice to the power of the High Court or a Judge thereof to order, in accordance with rules of court, that different questions of fact arising in any action be tried by different modes of trial, and where such order is made the provisions of this section requiring trial with a jury in certain cases shall have effect only as respects questions relating to any such charge or claim as aforesaid.

24. Granting of *mandamus* or injunction and appointment of receiver

(1) A *mandamus* or an injunction may be granted or a receiver appointed by an interlocutory order of the High Court or a Judge thereof in all cases in which it appears to the High Court or to a Judge thereof to be just or convenient that the order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the High Court or the Judge thinks just.

(2) If an injunction is prayed for, either before or at, or after the hearing of a cause or matter to prevent a threatened or apprehended waste or trespass the injunction may be granted if the High Court or a Judge thereof thinks fit—

(*a*) whether the person against whom the injunction is sought—

(i) is or is not in possession under a claim or title or otherwise, or

(ii) if out of possession, does or does not claim under any colour of title a right to do the act sought to be restrained; and

(*b*) whether the estates claimed by both or by either of the parties are legal or equitable.

25. Orders of *mandamus*, prohibition and *certiorari* to be substituted for prerogative writs

(1) The prerogative writs of *mandamus*, prohibition and *certiorari* shall no longer be issued by the High Court.

(2) In any case where the High Court would, but for the provisions of the last foregoing subsection, have had jurisdiction to order the issue of a writ of *mandamus* requiring any act to be done, or a writ of prohibition prohibiting any proceedings or matter, or a writ of *certiorari* removing any proceedings or matter into the High Court, the Court may make an order requiring the act to be done, or prohibiting or removing the proceedings or matter, as the case may be.

(3) The said orders shall be called respectively an order of *mandamus*, an order of prohibition and an order of *certiorari*.

(4) No return shall be made to any such order and no pleadings in prohibition shall be allowed, but the order shall be final, subject to any right of appeal therefrom.

(5) In any enactment references to a writ of *mandamus*, prohibition or *certiorari* shall be construed as references to the corresponding order and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.

26. Power to make order of *mandamus* in certain cases

The power of the High Court under any enactment to require magistrates to do any act relating to the duties of their office, or to require any court of summary jurisdiction to state a case for the opinion of the Court, in any case where immediately before the commencement of this Act the Court had by virtue of any enactment jurisdiction to make a rule absolute or to make an order, as the case may be, for any of those purposes, shall be exercisable by order of *mandamus*.

27. Power of courts to award interest on debts and damages

In any proceedings for the recovery of any debt or damages, in the High Court or the Court of Appeal, the Court may, if it thinks fit, order that there shall be included in the sum for which judgement is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgement, but nothing in this section—

(*a*) shall authorise the giving of interest upon interest; or

(*b*) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(*c*) shall affect the damages recoverable for the dishonour of a bill of exchange.

27A. Interest of judgement debts

(1) For the purposes of this section—

"judgement debt" means a debt under a relevant judgement;

"relevant judgement" means a judgement of the High Court for the payment of a sum of money and, in relation to a judgement debt, means the judgement or order which gives rise to the judgement debt.

(2) This section shall not apply where a relevant judgement was given before the date of commencement of the Act.

(3) Until it is satisfied, every judgement debt shall bear interest at such rates as the High Court may determine and in the absence of such determination, the rate of interest shall be six per cent per annum.

(4) Unless it is otherwise ordered by the Court, the rate of interest under subsection (3) shall be calculated from the time of the giving of the relevant judgement, as the case may be, notwithstanding that the giving of the relevant judgement has been suspended by any other proceedings either in the High Court or on appeal.

28. Execution of instruments by order of High Court

Where any person neglects or refuses to comply with a judgement or order directing him or her to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the High Court may on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the High Court may nominate for that purpose and any conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.

29. Restrictions on institution of vexatious actions

(1) If, on an application made by the Attorney-General under this section to the High Court, the High Court is satisfied that a person has habitually and persistently and without reasonable ground instituted vexatious legal proceedings, whether in the Court of Appeal, the High Court, or in a magistrate's court, and whether against the same person or against different persons, the High Court may, after hearing that person or after giving him or her an opportunity to be heard, order that no legal proceedings shall, without leave of the High Court or a Judge thereof, be instituted by him or her in any court; and that any legal proceedings instituted by him or her in any court before the making of the order shall not be continued by him or her without such leave and such leave shall not be given unless the High Court is satisfied that the proceedings are not an abuse of the process of the court and that there is *prima facie* ground for the proceedings.

(2) If the person against whom an order is sought under this section is unable on account of poverty to retain counsel, the High Court shall assign counsel to him or her.

(3) A copy of an order under this section shall be published in the *Gazette.*

PART II

Jurisdiction of the Court of Appeal in Civil and Criminal Matters from High Court

30. Jurisdiction vested in Court of Appeal

Subject to the provisions of this Act there shall be vested in the Court of Appeal—

(*a*) the jurisdiction and powers which immediately before the prescribed date were vested in the former Court of Appeal;

(*b*) the jurisdiction and powers which immediately before the prescribed date were vested in the former British Caribbean Court of Appeal;

(*c*) such other jurisdiction and powers as may be conferred upon it by this Act or any other enactment.

31. Practice and procedure in Court of Appeal

The jurisdiction of the Court of Appeal so far as it concerns practice and procedure in relation to appeals from the High Court shall be exercised in accordance with the

provisions of this Act and rules of court and, where no special provisions are contained in this Act or rules of court, such jurisdiction so far as concerns practice and procedure in relation to appeals from the High Court shall be exercised as nearly as may be in conformity with the law and practice for the time being in force in England—

(*a*) in relation to criminal matters, in the Court of Appeal (Criminal Division);

(*b*) in relation to civil matters, in the Court of Appeal (Civil Division).

32. Appeals from magistrates' courts

(1) Subject to the provisions of the Magistrates Judgements (Appeals) Act, Chapter 178, or any other enactment regulating the procedure on appeals from magistrates' courts and to rules of court, an appeal shall lie to the Court of Appeal from any judgement, decree, sentence or order of a magistrate in all proceedings.

(2) The time within which notice of appeal may be given or any bond or security entered into or grounds of appeal filed in relation to appeals under this section may be extended at any time by the Court of Appeal.

33. Appeals from High Court in civil matters

(1) Subject to the provisions of this Act or any other enactment—

(*a*) the Court of Appeal shall have jurisdiction to hear and determine any matter arising in any civil proceedings upon a case stated or upon a question of law reserved by the High Court or by a Judge thereof pursuant to any power conferred in that behalf by any written law;

(*b*) an appeal shall lie to the Court of Appeal, and the Court of Appeal shall have jurisdiction to hear and determine the appeal, from any judgement or order of the High Court; and for the purposes of, and incidental to, the hearing and determination of any appeal, and the amendment, execution and enforcement of any judgement or order made thereon, the Court of Appeal shall have all the powers, authority and jurisdiction of the High Court.

(2) No appeal shall lie under this section—

(*a*) from any order made in a criminal cause or matter;

(*b*) from an order allowing an extension of time for appealing from a judgement or order;

(*c*) from an order of a Judge giving unconditional leave to defend an action;

(*d*) from a decision of the High Court or of a Judge thereof where it is provided by any written law that such decision is to be final;

(*e*) from an order absolute for the dissolution or nullity of a marriage in favour of any party who, having had time and opportunity to appeal from the decree *nisi* on which the order was founded, has not appealed from that decree except upon some point which would not have been available to such party on such appeal;

(*f*) without the leave of the Judge making the order or of the Court of Appeal—

(i) from an order made with the consent of the parties, or

(ii) from an order as to costs where such costs by law are left to the discretion of the court;

(*g*) without the leave of the Judge or of the Court of Appeal from any interlocutory judgement or any interlocutory order given or made by a Judge except—

(i) where the liberty of the subject or the custody of infants is concerned,

(ii) where an injunction or the appointment of a receiver is granted or refused,

(iii) in the case of a decree *nisi* in a matrimonial cause or a judgement or order in an admiralty action determining liability,

(iv) in such other cases, to be prescribed, as are in the opinion of the authority having power to make rules of court of the nature of final decisions.

(3) For the purpose of subsection (2), "Judge" means a Judge of the High Court and where the context admits, includes a Master.

34. Powers of Judge of High Court where appeal pending in Court of Appeal

Where an appeal has been brought under the provisions of the foregoing section and is pending in the Court of Appeal a Judge of the High Court may hear and determine such applications incidental to the appeal and not involving the decision thereof as may be prescribed by rules of court; but an order made on any such application may be discharged or varied by the Court of Appeal.

35. Powers of Court of Appeal on hearing an appeal

(1) On the hearing of an appeal from any order of the High Court in any civil cause or matter, the Court of Appeal shall have power to—

(*a*) confirm, vary, amend or set aside the order or make such order as the High Court might have made, or to make any order which ought to have been made, and to make such further or other order as the nature of the case may require;

(*b*) draw inferences of fact;

(*c*) direct the High Court to enquire into and certify its findings on any question which the Court of Appeal thinks fit to be determined before final judgement in the appeal.

(2) The powers of the Court of Appeal under this section may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the High Court by any particular party to the proceedings or that any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in such notice; and the Court of Appeal may make any order in such terms as the Court of Appeal thinks just to ensure the termination on the merits of the real question in controversy between the parties.

(3) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

(4) The Court of Appeal may make such order as to the whole or any part of the costs of an appeal as may be just, and may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

36. Supplementary powers of Court of Appeal in civil appeals

For the purposes of an appeal in any civil cause or matter, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—

(*a*) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;

(*b*) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court of Appeal, whether they were or

were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any Judge of the Court of Appeal or before any officer of the Court of Appeal or other person appointed by the Court of Appeal for the purpose, and allow the admission of any deposition so taken as evidence before the Court of Appeal;

(*c*) receive the evidence, if tendered, of any witness including the appellant who is a competent but not a compellable witness and, if application is made for the purpose, of the husband or wife of the appellant in cases where the evidence of the husband or wife could not have been given at the trial except on such application;

(*d*) where any question arising in the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court of Appeal, conveniently be conducted before the Court of Appeal, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court of Appeal, and act upon the report of any such commissioner as far as it thinks fit to adopt it; and

(*e*) appoint any person with special expert knowledge to act as an assessor in an advisory capacity to the Court of Appeal in any case where it appears to the Court of Appeal that such special knowledge is required for the proper determination of the case.

37. Power of Court of Appeal as to new trials

(1) Subject to the provisions of this section, on the hearing of an appeal in any civil cause or matter the Court of Appeal shall, if it appears to the Court of Appeal that a new trial should be held, have power to set aside the order appealed against and order that a new trial be held.

(2) On the hearing of an appeal in any civil cause or matter, the following provisions shall apply—

(*a*) a new trial shall not be ordered on the ground of misdirection, or of the improper admission or rejection of evidence unless in the opinion of the Court of Appeal some substantial wrong or miscarriage of justice has been thereby occasioned;

(*b*) a new trial may be ordered on any question without interfering with the finding or decision upon any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage of justice as is mentioned in paragraph (*a*) of this subsection affects part only of the matter in controversy or one or some only of the parties, the Court of Appeal may order a new trial as to that part only, or as to that party or those parties only, and give final judgement as to the remainder.

(3) On the hearing of an appeal from an order made in any action tried with a jury the following provisions shall apply—

(*a*) the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgement of the court below;

(*b*) a new trial shall not be ordered because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them unless in the opinion of the Court of Appeal some substantial wrong or miscarriage of justice has been thereby occasioned;

(*c*) in any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court of Appeal may, in lieu of ordering a new trial—

(i) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the Court of Appeal to be proper,

(ii) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to the Court of Appeal to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded; but except as aforesaid the Court of Appeal shall not have power to reduce or increase damages awarded by a jury.

38. Wrong ruling as to sufficiency of stamps

The Court of Appeal shall not grant a new trial or reverse any judgement by reason of the ruling of any court that the stamp upon any document is sufficient or that the document does not require a stamp.

39. Interpretation of this Division

(1) In sections 40 to 61 of this Act unless the context otherwise requires—

"appeal" means an appeal by a person convicted upon indictment;

"appellant" includes a person who has been convicted and desires to appeal under this Part;

"sentence" includes any order of the court made on conviction or in relation to the person convicted or his or her wife or children and any recommendation of the convicting court as to the making of a deportation order in the case of a person convicted, and "the power of the Court of Appeal to pass a sentence" includes a power to make any such order or recommendation as the convicting court might have made and a recommendation so made by the Court of Appeal shall have the same effect for the purposes of any law under which such recommendation is permitted to be made, as the certificate and recommendation of the convicting court.

(2) In this section and in sections 40 to 61, references to a person being convicted shall include references to his or her being the subject of a special verdict under section 184 of the Criminal Procedure Code, Chapter 72B.

40. Right of appeal in criminal cases

A person convicted on indictment may appeal under this Act to the Court of Appeal—

(*a*) against his or her conviction on any ground of appeal which involves a question of law alone;

(*b*) with the leave of the Court of Appeal or upon the certificate of the Judge who tried him or her that it is a fit case for appeal against his or her conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court of Appeal to be a sufficient ground of appeal; and

(*c*) with the leave of the Court of Appeal against the sentence passed on his or her conviction, unless the sentence is one fixed by law.

41. Determination of appeals in certain cases

(1) The Court of Appeal on any such appeal against conviction shall, subject as hereinafter provided, allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unsafe or unsatisfactory or that the judgement of the court before whom the appellant was convicted should be set aside on the ground of a wrong

decision of any question of law or that there was a material irregularity in the course of the trial and in any other case shall dismiss the appeal:

Provided that the Court of Appeal may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(2) Subject to the provisions of this Act, the Court of Appeal shall, if it allows an appeal against conviction, quash the conviction, and direct a judgement and verdict of acquittal to be entered, or, if the interests of justice so require, order a new trial.

(3) On an appeal against sentence the Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict, whether more or less severe, in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.

(4) Where apart from this section—

(*a*) an appeal against a special verdict under section 184 of the Criminal Procedure Code, Chapter 72B, would fall to be allowed; and

(*b*) none of the grounds for allowing it relates to the question of the insanity of the accused,

the Court of Appeal may dismiss the appeal if of opinion that, but for insanity of the accused, the proper verdict would have been that he or she was guilty of an offence other than the offence charged.

(5) (*a*) An appellant who is to be retried for an offence in pursuance of an order under this section shall be tried upon a fresh indictment preferred by the direction of the Court of Appeal.

(*b*) The Court of Appeal may, upon ordering a retrial, make such orders as appear to the Court of Appeal to be necessary or expedient for the custody or admission to bail of the appellant pending the retrial, or for the retention pending the retrial of any property, or monies forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.

(*c*) On a retrial ordered under this section, section 201 of the Criminal Procedure Code, Chapter 72B, (relating to the admissibility of depositions as evidence in certain cases) shall not apply to the depositions of any person who gave evidence at the original trial; but a transcript of the shorthand notes or, where there are no shorthand notes, of the Judge's notes of the evidence given by any witness at the original trial may, with the leave of the Judge, be read as evidence—

(i) by agreement between the prosecution and the defence, or

(ii) if the Judge is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or is absent from Grenada or that all reasonable efforts to find him or her or to secure his or her attendance have been made without success,

and in either case may be so read without further proof if verified in accordance with rules of court.

42. Powers of Court of Appeal in special cases

(1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the Court of Appeal may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as it thinks proper as may be warranted in law by the verdict on the count or part of the

indictment on which the Court of Appeal considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him or her guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him or her guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for the other offence, not being a sentence of greater severity.

(3) Where on the conviction of the appellant the jury have found a special verdict, and the Court of Appeal considers that a wrong conclusion has been reached by the court before which the appellant has been convicted on the effect of that verdict, the Court of Appeal may, instead of allowing the appeal, order such conclusion to be recorded as appears to the Court of Appeal to be in law required by the verdict and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.

(4) Where on an appeal it appears to the Court of Appeal that the proper verdict would have been a special verdict under section 184 of the Criminal Procedure Code, Chapter 72B, the Court of Appeal may quash the sentence passed at the trial and order the appellant to be kept in custody as a prisoner of unsound mind under the provisions of the said section in the same manner as if a special verdict had been found by the jury under that section.

43. Supplementary provisions where appeal against special verdict allowed

(1) Where in accordance with section 41(1) an appeal against a special verdict under section 184 of the Criminal Procedure Code, Chapter 72B, is allowed—

(*a*) if the ground, or one of the grounds for allowing the appeal is that the finding of the jury as to the insanity of the accused ought not to stand and the Court of Appeal is of opinion that the proper verdict would have been that he or she was guilty of an offence (whether the offence charged or any other offence of which the jury could have found him or her guilty), the Court of Appeal shall substitute for the special verdict a verdict of guilty of that offence, and shall have the like powers of punishing or otherwise dealing with the accused and other powers as the court before which he or she was tried would have had if the jury had come to the substituted verdict;

(*b*) in any other case, the Court of Appeal shall substitute for the verdict of the jury a verdict of acquittal:

Provided that where the offence mentioned in paragraph (*a*) of this subsection is one for which the sentence is fixed by law, the sentence shall (whatever the circumstances) be one of imprisonment for life.

(2) The term of any sentence passed by the Court of Appeal in the exercise of the powers conferred by subsection (1)(*a*) of this section shall, unless the Court of Appeal otherwise directs, begin to run from the time it would have begun to run if passed in the proceedings in the court before which the accused was tried.

44. Restitution of property on conviction

(1) The operation of an order for the restitution of property to any person made on a conviction on indictment shall, unless the court before whom the conviction takes place directs to the contrary, in any case in which in its opinion the title to the property is not in dispute, be suspended—

(*a*) in any case until the expiration of fourteen days after the date of conviction; and

(*b*) in cases where notice of appeal or leave to appeal is given within fourteen days after the date of conviction, until the determination of the appeal,

and in any case where the operation of such an order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(2) Provision may be made by rules of court for securing the safe custody of property pending the suspension of the operation of such an order.

(3) The Court of Appeal may by order annul or vary any order made on a trial for the restitution of property to a person, although the conviction is not quashed; and the order if annulled shall not take effect, and, if varied, shall take effect as so varied.

45. Supplementary powers of Court of Appeal in criminal appeals

For the purposes of an appeal in any criminal cause or matter the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—

(*a*) exercise any or all the powers conferred by section 36 on the Court of Appeal;

(*b*) issue any warrant necessary for enforcing any order or sentence of the Court of Appeal:

Provided that—

(i) in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial, and

(ii) whenever the Court of Appeal receives further evidence it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

46. Duty to admit fresh evidence

Without prejudice to the generality of section 45, where evidence is tendered to the Court of Appeal under that section, the Court of Appeal shall, unless it is satisfied that the evidence if received would not afford any ground for allowing the appeal, exercise its power under that section of receiving it if—

(*a*) it appears to it that the evidence is likely to be credible and would have been admissible at the trial on an issue which is the subject of the appeal; and

(*b*) it is satisfied that it was not adduced at the trial, but that there is a reasonable explanation for the failure so to adduce it.

47. Admission of appellant to bail and custody when attending court

(1) An appellant who is not admitted to bail shall, pending the determination of his or her appeal, be treated in like manner as prisoners awaiting trial.

(2) The Court of Appeal may, if it seems fit, on the application of an appellant, admit him or her to bail pending the determination of his or her appeal.

48. Computation of sentence

(1) The time during which an appellant is in custody pending the determination of his or her appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which he or she is for the time being subject; but the Court of Appeal shall not give any such direction where leave to appeal has been granted or a certificate has been given under section 40 or where the case has been referred to it under section 60.

(2) Where the Court of Appeal gives a direction under this section, it shall state its reasons for giving the direction.

(3) Provision shall be made by prison rules for the manner in which an appellant, when in custody, is to be brought to any place at which he or she is entitled to be present for the purposes of this Act, or to any place to which the Court of Appeal or a Judge thereof may order him or her to be taken for the purposes of any proceedings of that Court, and for the manner in which he or she is to be kept in custody while absent from prison for such purpose; and an appellant whilst in custody in accordance with those rules shall be deemed to be in legal custody.

49. Time for appealing

(1) Where a person convicted desires to appeal under this Act to the Court of Appeal or to obtain leave of the Court of Appeal, he or she shall give notice of appeal or notice of his or her application for leave to appeal in such manner as may be directed by rules of court within fourteen days of the date of conviction.

(2) Except in the case of a conviction involving sentence of death, the time within which notice of an application for leave to appeal may be given may be extended at any time by the Court of Appeal.

(3) For the purposes of this section the date of conviction shall, where the High Court has adjourned the trial of an indictment after conviction, be the date on which that Court sentences or otherwise deals with the offender.

50. Stay of execution

In the case of a conviction involving sentence of death or corporal punishment—

(*a*) the sentence shall not in any case be executed until the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under the preceding section; and

(*b*) if notice is so given, the appeal or application for leave to appeal, as the case may be, shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in cases where an application for leave to appeal is finally refused, of the application.

51. Judge's notes and report to be furnished on appeal

The Judge before whom a person is convicted shall, in the case of an appeal under this Act against the conviction or against the sentence or in the case of an application for leave to appeal under this Act, furnish to the Registrar in accordance with rules of court his or her notes of the trial, and he or she shall also furnish to the Registrar in accordance with rules of court a report giving his or her opinion upon the case or upon any point arising in the case.

52. Legal assistance to appellant

The Court of Appeal may at any time assign to an appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary or incidental to an appeal where in the opinion of the Court of Appeal it appears desirable in the interests of justice that the appellant should have legal aid and he or she has not sufficient means to enable him or her to obtain that aid.

53. Right of appellant to be present

(1) An appellant notwithstanding that he or she is in custody shall be entitled to be present, if he or she desires it, on the hearing of his or her appeal except where the appeal is on some ground involving a question of law alone, but in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, he or she shall not be entitled to be present except where rules of court provide that he or she shall have the right to be present or where the Court of Appeal gives him or her leave to be present.

(2) An appellant who does not appear at the hearing of his or her appeal by counsel, may present his or her case and argument in writing, and any case or argument so presented shall be considered by the Court of Appeal.

(3) The power of the Court of Appeal to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

(4) The reference in subsection (1) to an appellant being in custody shall not include a reference to his or her being in custody in consequence of a special verdict under section 184 of the Criminal Procedure Code, Chapter 72B.

54. Costs of appeal

(1) On the hearing and determination of a criminal appeal from the High Court or any proceedings preliminary or incidental thereto under this Act no costs shall be allowed on either side.

(2) The expenses of a solicitor or counsel assigned to an appellant under this Act, and the expenses of witnesses attending on the order of the Court of Appeal or examined in any proceedings incidental to the appeal, and of the appearance of an appellant on the hearing of his or her appeal or on any proceedings preliminary or incidental to the appeal, and all expenses of and incidental to an examination of witnesses conducted by a person appointed by the Court of Appeal for the purpose, or a reference of a question to a special commission appointed by the Court of Appeal or of a person appointed to be an assessor to the Court of Appeal, shall be defrayed out of monies up to an amount allowed by the Court of Appeal but subject to rules of court as to rates and scales of payment.

55. Duties of Registrar with respect to appeals

(1) The Registrar shall take all necessary steps for obtaining hearing under this Act of appeals or applications notice of which is given to him or her under this Act, and shall obtain and lay before the Court of Appeal in proper form all documents, exhibits, and other things relating to the proceedings in the court before which the appellant or applicant was tried, which appear necessary for the proper determination of the appeal or application.

(2) If it appears to the Registrar that notice of an appeal against a conviction, purporting to be on a ground of appeal which involves a question of law alone, does not show any substantial ground of appeal, the Registrar may refer the appeal to the Court of Appeal for summary determination, and where the case is so referred, the Court of Appeal, if it considers that the appeal is frivolous or vexatious and can be determined without adjourning the same for a full hearing, may dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon.

(3) Any documents, exhibits, or other things connected with the proceedings on the trial of a person on indictment, who, if convicted, is entitled or may be authorised to appeal under this Act shall be kept in custody of the court of trial in accordance with rules of court made for the purpose for such time as may be provided by the rules, and subject to such powers as may be given by the rules for the conditional release of any such documents, exhibits, or things from that custody.

(4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application for leave to appeal under this Act to any person

who demands the same, and to such officers or persons as he or she thinks fit, and the Commissioner of Prisons shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application for leave to appeal under this Act, and shall cause any such notice given by a prisoner in his or her custody to be forwarded on behalf of the prisoner to the Registrar.

(5) The Registrar shall report to the Court of Appeal or a Judge thereof any case in which it appears to him or her that, although no application has been made for the purpose, a solicitor and counsel, or counsel only, ought to be assigned to an appellant under the powers given to that Court by this Act.

(6) In this section and in the next following section, the expression "Registrar" includes the Chief Registrar and the Deputy Registrar of the Court of Appeal.

56. Shorthand notes, etc.

(1) Such records in such manner, whether in writing by shorthand notes or otherwise, or by recordings or electromagnetic tape or by other means as may be prescribed by rules of court, shall be taken of the proceedings at the trial of a person on indictment who, if convicted, is entitled or may be authorised to appeal under this Act; and on any appeal or application for leave to appeal a transcript of the records or any part thereof shall be made, if the Registrar so directs, and furnished to the Chief Registrar for the use of the Court of Appeal or any Judge thereof.

(2) A transcript of the records taken under subsection (1) shall be furnished to any party interested upon payment of such charges as may be fixed by rules of court.

(3) Rules of court may also make such provision as is necessary for securing the accuracy of the records to be taken and for the verification of the transcript.

57. Powers which may be exercised by Judge of Court of Appeal

The powers of the Court of Appeal under this Act—

(*a*) to give leave to appeal;

(*b*) to extend the time within which notice of appeal or of an application for leave to appeal may be given;

(*c*) to assign legal aid to an appellant;

(*d*) to allow the appellant to be present at any proceedings in cases where he or she is not entitled to be present without leave; or

(*e*) to admit an appellant to bail,

may be exercised by any Judge of the Court of Appeal in the same manner as they may be exercised by the Court of Appeal, and subject to the same provisions; but, if the Judge refuses an application on the part of the appellant to exercise any such powers in his or her favour, the appellant shall be entitled to have the application determined by the Court of Appeal as duly constituted for the hearing and determination of appeals under this Act.

58. Case stated or questions of law reserved

(1) Where any person is convicted on indictment, the trial Judge may state a case or reserve a question of law for the consideration of the Court of Appeal and the Court of Appeal shall consider and determine such case stated or question of law reserved and may either—

(*a*) confirm the judgement given upon the indictment;

(*b*) order that such judgement be set aside and quash the conviction and direct a judgement and verdict of acquittal to be entered;

(*c*) order that such judgement be set aside, and give instead thereof the judgement which ought to have been given at the trial;

(*d*) require the Judge by whom such case has been stated or question has been reserved to amend such statement or question when specially entered on the record; or

(*e*) make such other order as justice requires.

(2) The Court of Appeal, when a case is stated or a question of law reserved for its opinion, shall have power, if it thinks fit, to cause the case or certificate to be sent back for amendment and thereupon the same shall be amended accordingly.

59. Provisions of this Act applicable to proceedings under section 58

Where a case is stated or a question of law is reserved for the consideration of the Court of Appeal the provisions of sections 45, 46, 48, 50, 51, 53(1), (3) and (5), 54 and 55 shall apply to such proceedings in like manner as they apply to an appeal.

60. Prerogative of mercy

(1) Nothing in this Act shall affect the prerogative of mercy.

(2) The Governor-General on the consideration of any petition for the exercise of Her Majesty's mercy having reference to the conviction of a person on indictment or to the sentence, other than sentence of death, passed on a person so convicted, may at any time—

(*a*) refer the whole case to the Court of Appeal, and the case shall then be heard and determined by the Court of Appeal as in the case of an appeal by a person convicted; or

(*b*) if the Governor-General desires the assistance of the Court of Appeal on any point arising in the case with a view to the determination of the petition, the Governor-General may refer that point to the Court of Appeal for its opinion thereon, and the Court of Appeal shall consider the point so referred and furnish the Governor-General with its opinion thereon accordingly.

61. Criminal information

This Act shall apply in the case of convictions on criminal information as it applies in the case of conviction on indictment.

62. Appeals from orders in contempt proceedings

(1) An appeal shall lie to the Court of Appeal from any order made by the High Court or by a Judge of the High Court or of the Court of Appeal or by a magistrate imposing imprisonment or a fine for contempt of court.

(2) Any person ordered by the High Court, or by any such Judge or magistrate to be imprisoned or to pay a fine for contempt of court, may at the time of such order or within two days thereafter give notice to the High Court or to the Judge or magistrate making the order of his or her intention to appeal to the Court of Appeal and may within two days after giving such notice enter into a recognisance with a surety to the satisfaction of the Registrar of the High Court or of the Court of Appeal or clerk of the magistrate's court, as the case may be, in a sum not exceeding three hundred dollars to prosecute such appeal, and the giving of such notice and entering into such recognisance shall operate as a stay of such order.

(3) On such person entering into a recognisance the High Court or the Judge or magistrate making the order shall within twenty-one days thereafter transmit to the Registrar a statement of the cause of such committal or fine and upon such statement

being received the Registrar shall within four days thereafter issue a summons, free of cost, calling on the appellant to appear before the Court of Appeal within a reasonable time thereafter and on a day to be named therein and the Court of Appeal shall hear and determine such appeal and either confirm the order or vary or quash such order; and the Court of Appeal may from time to time return the proceedings to the High Court or to the Judge or magistrate who made the order for further information.

(4) When the Court of Appeal confirms or varies the order, the High Court or the Judge or magistrate who made the order shall proceed to carry out and enforce the order as confirmed or varied in the same manner as if there had been no appeal against the same.

PART III

Officers of the Court

63. Office of Registrar

(1) There shall be a Registrar of the High Court who shall perform the duties of Provost Marshal and such duties as may be prescribed by rules of court or the Chief Justice or by any law or usage for the time being in force, and subject thereto he or she shall perform such duties as may be prescribed by rules of court.

(2) Subject to subsection (1), the Registrar shall have such power and authority and shall perform such duties as shall be necessary for the due conduct and discharge of the business of the High Court and the Court of Appeal as the Chief Justice or other Judge authorised by him or her in that behalf shall direct. He or she shall be subject to the general or special directions of the Chief Registrar and shall assist in the performance of his or her duties.

(3) The Registrar shall be *ex officio* a Deputy Registrar of the Court of Appeal.

(4) The Registrar shall be *ex officio* Admiralty Marshal.

64. Power of Registrar as Commissioner of Court

The Registrar shall be *ex officio* a Commissioner of the Court to administer oaths and take declarations and affirmations.

65. Registrar to be notary public

The Registrar shall be a notary public in Grenada, and as such shall be entitled to demand and receive the fees prescribed by law and to retain the same for his or her own use. Such fees shall not form part of his or her pensionable emoluments.

66. Appointment of Deputy Registrar and clerks

There shall be a Deputy Registrar and such clerks in the Registrar's Office as may appear to the Chief Justice to be necessary. The Deputy Registrar and the chief clerk to the Registrar shall be *ex officio* Commissioners of the Court to administer oaths and take declarations, affirmations and acknowledgments.

67. Duties and liabilities of Deputy Registrar

(1) In the absence of the Registrar from duty, the Deputy Registrar may, subject to the provisions of section 71, exercise all or any of the functions and authorities assigned to or conferred on the Registrar save and except the powers to make interlocutory orders and to issue process as are conferred on the Registrar by the Civil Procedure Act, Chapter 55, or

rules of court; and all such acts done by the Deputy Registrar shall have the same effect in all respects as if they had been done by the Registrar.

(2) In the exercise of such functions and authorities the Deputy Registrar shall have all the privileges and liabilities of the Registrar.

68. Bailiffs

There shall be one or more bailiffs of the Court who shall be under the control of the Registrar, and shall perform such duties as he or she shall direct. The senior bailiff shall perform the duties of the crier of the Court and shall, unless otherwise directed by the Court, attend at and during every sitting thereof.

69. Chief Registrar

(1) The Chief Registrar shall have and exercise in relation to Grenada such functions as may be conferred upon him or her by this Act or by any other written law or by rules of court.

(2) Without prejudice to the generality of the provisions of this section, the Chief Registrar shall take all necessary steps for obtaining a hearing under this Act of any appeals or applications, and shall obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things relating to the proceedings in the court before which the case, or the appellant or applicant, was tried which appear necessary for the proper determination of the appeal or application.

70. Present officers of Court

Except as in this Act otherwise expressly provided every person who at the commencement of this Act holds the office of Registrar, Deputy Registrar, or bailiff, shall continue to hold such office on the terms on which he or she now holds it, and nothing in this Act contained shall affect the validity and effect of any bond previously given by any of the said officers.

71. Taxation of costs

(1) The Chief Registrar, and in his or her absence the Registrar, shall be the Taxing Master for the Court. He or she shall tax all bills of costs in accordance with the scales for the time being in force.

(2) Every taxation of costs shall be subject to rules of court and be subject to review by a Judge in Chambers.

72. Acting Registrar

Whenever the Registrar is on leave, or ill or otherwise unable to perform the duties of his or her office the Governor-General, acting in accordance with the advice of the Judicial and Legal Services Commission, may appoint a fit and proper person to act, in the office of Registrar, and such person whilst so acting, shall have all the powers, and be charged with all the duties of the Registrar.

73. Hours of business

(1) The office of the Registrar shall be kept open for the transaction of business on every day of the year except Saturdays, Sundays, Christmas Day, Good Friday and Bank Holidays, during such hours of the day as the Governor-General may by Order appoint.

(2) Notwithstanding the provisions of any Order made under subsection (1), the Judge by whom any matter is being heard may direct any paid officer of the Court to transact at any time any business which, in the opinion of the Judge, is necessary or convenient to

facilitate the hearing and determination of the matter in question, or to carry into effect any order made in connection therewith.

74. Chief Registrar, Registrar, Deputy Registrar, clerks and bailiffs not to advise litigants, etc.

It shall not be lawful for the Chief Registrar, the Registrar, the Deputy Registrar or any clerk to the Registrar, or any bailiff of the Court, to act as attorney, agent or adviser of a plaintiff, defendant or other suitor, or party in or to any proceedings in any court in Grenada or to give advice on any legal matter, or act as conveyancer, or accept any gratuity for the performance of any duty in connection with his or her office.

75. Misconduct of officers of Court

(1) If any officer of the Court is charged with extortion, or with not duly paying or accounting for any monies received by him or her in the execution of his or her duty or by virtue of his or her position, or with any fraud, wrongful act, or neglect in the discharge of the duties of his or her office, a Judge of the High Court may—

(*a*) inquire into the matter in a summary way, on affidavit, or on such other evidence as shall appear reasonable to him or her, and for that purpose, summon and enforce the attendance of all necessary parties and witnesses in like manner as the attendance of witnesses may be enforced in any other proceedings; and

(*b*) thereupon dismiss the charge, or order the officer to pay any monies or damages which, in the opinion of the Judge, that officer ought in the circumstances to pay, and also impose such fine, if any, as he or she may think fit on that officer.

(2) The costs of every such inquiry shall be in the discretion of the Judge, and may be ordered to be paid by the officer or by the person laying the charge.

(3) Every order made under this section may be enforced as an order of the High Court.

(4) No proceedings taken, or order made, under this section shall prevent the officer from being prosecuted criminally for any offence committed by him or her, or affect any right of action which any person may have against him or her, or the power of the Governor-General or the appropriate service commission to suspend or dismiss the officer.

(5) In subsection (4), "appropriate service commission" means the Judicial and Legal Services Commission or the Public Service Commission, as the case may be.

PART IV

Barristers and Solicitors

76. Existing practitioners

(1) Every person entitled, at the commencement of this Act, to practise in Grenada as a barrister or as a solicitor, may continue to practise and shall be a barrister or solicitor, as the case may be, of the Court.

(2) Every person holding any of the offices to which this subsection applies shall, so long as he or she continues to hold such office, be *ex officio* a barrister of the Court, and shall be deemed to be enrolled as a barrister in accordance with the provisions of this Act.

(3) Subsection (2) applies to the offices of Attorney-General and Director of Public Prosecutions and to every public office in the Department of the Attorney-General and

the Department of the Director of Public Prosecutions for appointment to which persons are required to be qualified to practise as barristers in Grenada.

77. Admission of barrister and solicitor

(1) Subject to the provisions of subsection (2) a Judge of the High Court may admit—

(*a*) any member of the English, Scottish, Northern Ireland or Canadian Bar to practise as a barrister of the Court; and

(*b*) any person who has been admitted as a solicitor or writer in any of the Superior Courts in England, Scotland or Northern Ireland to practise as a solicitor of the Court:

Provided that, upon cause shown, any application to be so admitted may be refused notwithstanding that the applicant has complied with the provisions of the said subsection:

Provided further that no refusal by a Judge of any such application shall be final, but any application so refused by such Judge shall, if the applicant shall so require by notice in writing to the Registrar, be laid before and dealt with by the Court of Appeal.

(2) Every person applying to be admitted as a barrister or solicitor under the provisions of this Act shall—

(*a*) pay the appropriate fee prescribed under the provisions of the Stamp Act, Chapter 309, in respect of such admission;

(*b*) file in the office of the Registrar an affidavit of his or her identity, and that he or she has paid the fee aforesaid;

(*c*) deposit with the Registrar for inspection by the Court his or her certificate of call to the English, Scottish, Northern Ireland or Canadian Bar, or his or her certificate of admission as a solicitor or writer in any of the Supreme Courts in England, Northern Ireland or Scotland; and

(*d*) in respect only of a person applying to be admitted as a barrister and who was called to the English Bar after 1st January, 1966, have either—

(i) obtained a certificate issued by the Council of Legal Education of London, England, that he or she has satisfactorily completed a practical training course provided by the said Council and approved by the Chief Justice for the purposes of this section, or

(ii) obtained a certificate signed by his or her pupil master and countersigned on behalf of his or her Inn of Court that he or she has either before or after Call, or partly before and partly after Call, read as a pupil for an aggregate period of not less than six months in the chambers of one or more barristers of not less than five years standing practising in England or in Wales or in the chambers of one or more barristers of not less than ten years standing practising in Grenada:

Provided that in any special case the Judge may exempt any such person from depositing, or producing any of the said certificates, if otherwise satisfied that that person has the required qualifications.

(3) The provisions of subsection (2)(*d*) shall not apply to a person whose certificate under subsection (2)(*c*) was obtained before 1st January, 1966.

78. Enrolment of practitioners and right of audience in Supreme Court

(1) The Registrar shall enrol in a book kept for that purpose, and to be known as the Court Roll, the name of every person admitted to practise as a barrister or solicitor of the Court, with the date of his or her admission, and every such person shall be entitled to a certificate of enrolment under the seal of the Court.

(2) Every person whose name is so enrolled shall, if enrolled as a barrister, be entitled to practise as a barrister, and, if enrolled as a solicitor, be entitled to practise as a solicitor in every court in Grenada and no person shall be entitled to practise in any such court unless his or her name is enrolled in the said book.

(3) A solicitor shall be allowed audience in any cause or matter in the High Court or the Court of Appeal.

79. Barristers practising as solicitors

Subject to the provisions of section 80, every person enrolled as a barrister shall be entitled to practise also as a solicitor, and to sue for and recover his or her taxed costs as such, but if he or she practises as a solicitor he or she shall be subject to all the liabilities which attach by law to a solicitor.

80. Queen's Counsel

(1) Except as otherwise provided in subsection (2), no barrister who has the rank of Queen's Counsel shall perform any of the functions which in England are performed by a solicitor and are not performed by a barrister; but a barrister who has the rank of Queen's Counsel shall not be precluded from continuing or engaging in partnership with another barrister by reason only that such last mentioned barrister performs any functions as aforesaid.

(2) Every person holding the office of Attorney-General may, notwithstanding that he or she has the rank of Queen's Counsel, perform the functions mentioned in section 79 in relation to the duties of his or her office as Attorney-General.

81. Solicitors and commissioners for oaths to be officers of Court

(1) Every person practising as a solicitor and whose name shall be enrolled as aforesaid, either as a barrister or solicitor, shall be deemed to be an officer of the Court.

(2) Every person who, under the provisions of any written law is or shall be appointed a commissioner to administer oaths in the Court, shall be deemed to be an officer of the Court.

82. Barristers and solicitors may be suspended or struck-off the roll

Any two Judges of the High Court may, for reasonable cause, suspend any barrister or solicitor from practising in Grenada during any specified period, or may order his or her name to be struck-off the Court Roll.

83. Unauthorised persons drawing legal documents

Every person who not being enrolled as a barrister or solicitor or otherwise lawfully authorised shall, either directly or indirectly, for or in expectation of any fee, gain or reward, draw or prepare any legal document or shall receive any fee, gain or reward for drawing or preparing any such document, shall be guilty of an offence and liable, on summary conviction, to a fine of three hundred dollars.

84. Law relating to solicitors, taxation and recovery of costs

Subject to rules of court, the law and practice relating to solicitors and the taxation and recovery of costs in force in England shall extend to and be in force in Grenada, and shall apply to all persons lawfully practising therein as solicitors of the Court.

PART V

85. Admission of solicitors on examination

Subject to the provisions of this Part, a Judge of the High Court shall have power to admit and enrol as a solicitor of the Court any fit person who has served under articles of clerkship for a term of five years continuously in the office of a practising barrister or solicitor residing in Grenada and who has passed such examination touching the principles and the practice of the law as may be prescribed by rules made by the Chief Justice. Every such person shall before admission take and subscribe before the Court the oath or declaration following—

> "I, A. B. do swear (*or,* solemnly and sincerely declare) that I will truly and honestly demean myself in the practice of a solicitor according to the best of my knowledge and ability—(*and, in the case of an oath*) SO HELP ME GOD."

86. Person taking certain degree and passing prescribed examination may be admitted and enrolled as a solicitor after three years service

Notwithstanding section 85, a person having taken the degree of bachelor of arts or bachelor of laws in any of the universities of England, Wales, or Northern Ireland, or the degree of bachelor of arts, master of arts, bachelor of laws or doctor of laws in any of the universities of Scotland, such degree not being an honorary degree, and who either before or after the passing of this Act has been bound by and has duly served under articles of clerkship to a barrister or solicitor, practising in Grenada, for a term of three years and has been examined in manner directed by this Act, may be admitted and enrolled as a solicitor of the Court.

87. Length of articles of clerkship in case of a *bona fide* barrister's or solicitor's clerk of ten years service

Notwithstanding sections 85 and 86, in the case of any person who before entering into articles has been for ten years a *bona fide* clerk to a practising barrister or solicitor and has, during that time been *bona fide* engaged in the transaction and performance under the direction and superintendence of that barrister or solicitor of such matters of business as are usually transacted and performed by barristers or solicitors, and who produces to the Chief Justice satisfactory evidence that he or she has served faithfully, honestly and diligently as such, the length of the term of articled service shall be three years.

88. Preliminary and qualifying examinations

No person shall enter into articles of clerkship with a barrister or solicitor unless he or she has passed either a preliminary or a qualifying examination.

89. Definition of qualifying examination

Any person who has taken one of the degrees or has passed one of the examinations set forth in the Schedule shall be deemed to have passed a qualifying examination.

90. Time within which articles to be registered

All articles of clerkship executed after the commencement of this Act shall, within three months from the date thereof, be registered under this Act and upon registration the service of the clerk shall be reckoned to commence from the date of the articles of clerkship.

91. Effect of registration after prescribed time

If articles of clerkship are not registered within the period of three months hereinbefore mentioned they may be subsequently registered but, in that case, the service of the clerk shall be reckoned to commence from the date of the registration unless the Chief Justice shall otherwise direct.

92. Procedure on registration

(1) A person desiring to register articles of clerkship shall produce the same to the Registrar together with the document evidencing the fact that he or she has passed a preliminary or qualifying examination, and the Registrar on being satisfied that the applicant has passed the preliminary or a qualifying examination and that the articles have been duly executed shall enter in a book to be called the Articled Clerks Book the names and addresses of the parties to and the date of the articles and the date of entry, and shall also enter the examination passed or degree taken and the date of passing or of the taking of the degree as the case may be.

(2) The Registrar may before making any such entry as aforesaid require the execution of articles to be verified by affidavit.

93. Inspection of register

The Articled Clerks Book shall, during office hours, be open to inspection by any person without payment of a fee.

94. Cancellation or assignment of articles on bankruptcy of barrister or solicitor

If a barrister or solicitor to whom a person shall be bound under the articles of clerkship shall, before the end or determination of such articles, become bankrupt a Judge of the High Court may, upon his or her application, order the articles to be cancelled or assigned to such other barrister or solicitor upon such terms and in such manner as that Judge shall think fit.

95. Entry into fresh articles on death, etc., of barrister or solicitor

If a barrister or solicitor to whom a person shall be bound under articles of clerkship shall die before the expiration of the term for which such person shall be so bound, or shall discontinue or leave off his or her practice as a barrister or solicitor, or if such articles of clerkship shall by mutual consent of the parties be cancelled, or in case such clerk shall be legally discharged before the expiration of such term by any rule or order of the High Court, the clerk may enter into other articles of clerkship to serve as a clerk to any other barrister or solicitor during the residue of the said term, and service under such second or other contract in manner hereinbefore mentioned shall be deemed to be good and effectual.

96. Restriction as to number of clerks articled to barrister or solicitor

No barrister or solicitor shall have more than one articled clerk at any given time.

97. Continuous service by articled clerk

Every articled clerk shall, during the term of service specified in his or her articles, continue with, and be actually employed by, the barrister or solicitor to whom he or she is bound in the proper business, practice, or employment of a solicitor, except only in the cases hereinbefore mentioned.

98. Arrangement with Law Society to conduct examinations

(1) Notwithstanding anything in section 85 the Governor-General may, at any time at the request of the Chief Justice, enter into an arrangement with the Law Society of England to conduct the examination of articled clerks touching their fitness and capacity to act as solicitors and may do all things necessary to carry out such arrangement.

(2) Where such arrangement has been made, the examination or examinations conducted by the Law Society shall be substituted for the examination mentioned in section 85 as from such day as may be fixed by rules made under this Act.

99. Power to amend Schedule

The Governor-General may by Order add to or amend the Schedule.

PART VI

Witnesses

100. Disobedience to subpoena

It is a summary offence if any person served with a subpoena to attend as a witness in any proceeding before a Judge of the High Court sitting in Court or in Chambers or before the Court of Appeal shall refuse or neglect to attend pursuant to such subpoena, and the Judge or the Court of Appeal may punish such offence by a fine of one thousand five hundred dollars, or by commitment to prison for any term not exceeding six months:

Provided that nothing contained in this section shall affect or abridge any right of a party to the proceeding to proceed against such person for the recovery of any special damage such party may have sustained by reason of the disobedience of such person.

101. Witnesses' expenses in criminal proceedings

(1) A Judge of the High Court may, in or in respect of any criminal proceedings before him or her, order allowances not exceeding those prescribed by rules of court, to be paid to all persons examined or detained as witnesses for the Crown, whether examined before the magistrate or not, and also to all persons examined or detained as witnesses for the defence, who shall have been examined before the magistrate, and who shall have been bound over to appear before the High Court at the trial:

Provided that the Judge may, if he or she shall think fit, order a similar allowance to be paid to any person examined at the trial as a witness for the defence notwithstanding that such person was not examined before the magistrate.

(2) If any person (except a medical practitioner giving professional evidence, whose allowance shall, under this section, be ordered to be paid) shall reside at a greater distance than one mile from the Court at which such trial takes place, the Judge may order to be paid to such person for and in respect of his or her travelling expenses such further allowance as may be prescribed by rules of court:

Provided that in the case of medical practitioners whose whole time is given to the public service, and who are therefore under the provisions of subsection (3) disqualified from receiving an allowance for attendance, the Judge may notwithstanding order the payment of an allowance for travelling expenses in accordance with this subsection.

(3) When a person called or detained as aforesaid as a witness either for the Crown or the defence is in receipt of a salary as a public officer, such person shall not, unless his or her whole time is not at the disposal of the Government, by reason of his or her enjoying private practice or otherwise, be entitled to be paid any allowance under this Act for attendance as a witness beyond the travelling expenses provided for by subsection (2).

102. Persons present in Court may be ordered to give evidence

A Judge may, in any proceeding pending before him or her, order any person present to give evidence therein, notwithstanding that no *viaticum* or other payment to which he or she was entitled, shall have been paid or tendered to him or her.

PART VII

Miscellaneous

103. Sittings of the Courts

(1) Subject to the provisions of this and the next following section, the High Court and the Court of Appeal, for the purpose of exercising the jurisdiction and powers conferred on them respectively by this Act and any other written law, may sit either in Grenada or in any of the States to which the Courts Order applies.

(2) Sittings of the High Court for the trial of civil and criminal causes originating in Grenada shall be held at such times as may be prescribed by rules of court and shall be held in the town of Saint George except in cases where the Chief Justice gives special directions that the High Court shall sit at some other place.

(3) Sittings of the Court of Appeal shall be held at such times and at such place as the Chief Justice may by general or special directions appoint.

(4) Notice of the times appointed for the sittings of the High Court and of the Court of Appeal shall be published in the *Gazette.*

104. Interlocutory applications

(1) In the absence of a Judge or Master, any interlocutory or other application, which may be made to a Judge in Chambers or to a Master, may be reduced to writing and delivered, posted or sent by facsimile or other electronic means by the Registrar to the Judge or to the Master, together with such affidavits and other documents as are required by the rules of court.

(2) The written order of Judge or Master shall be transmitted to the Registrar and shall be deemed to be the order of the court.

(3) No such application shall be made unless the Registrar shall certify that to the best of his or her belief all parties liable to be affected by the order sought and entitled to be heard against the same have had due notice thereof and have had an opportunity of transmitting any counter-affidavits or other documents in opposition thereto.

105. Expenses in criminal proceedings

In every criminal proceeding all expenses consequent on or incidental to the transmission of progress, the conveyance of prisoners and the trial, determination of or dealing with such proceedings, including all allowances payable to jurors and all allowances ordered to be paid to witnesses under section 101, shall be paid out of monies provided by Parliament.

106. Remission or reduction of fines

Any fine or penalty imposed by a Judge may, at any time before it has been paid or satisfied, be reduced or remitted by him or her.

107. Registrar to have custody of records of Ordinances, Acts, etc.

All records and copies of Ordinances, Acts and laws of Grenada now in the custody of the Registrar shall remain in his or her custody. It shall be the duty of the Governor-General to furnish to the Registrar a true copy of every Act of the Parliament of Grenada hereafter passed, authenticated under the hand of the Governor-General and the Public Seal of Grenada as soon as may be after the passing thereof, and every such copy shall be deemed as valid as the original and shall be preserved in the office of the Registrar.

108. Power to make rules

(1) The power to make rules of court conferred by the Courts Order on the Chief Justice and any other two Judges of the Supreme Court selected by him or her shall be deemed to include the power to add to, vary, repeal or revoke any existing rules of court or sections of the Civil Procedure Act, Chapter 55, or of any other statute regulating procedure in the Supreme Court and to substitute other provisions in lieu thereof.

(2) The Chief Justice and any other two Judges of the Supreme Court selected by him or her may make rules for regulating proceedings in inferior courts, and may add to, vary, repeal or revoke any existing rules or any provisions of any statute regulating procedure in such courts.

(3) All rules of court in force immediately before the commencement of this Act shall continue in force until revoked.

(4) The Chief Justice and any other two Judges of the Supreme Court selected by him or her may make rules—

(*a*) with respect to the subjects for, and the mode of, conducting the preliminary or final examination of solicitors;

(*b*) with respect to the times and places of such examinations and the notices of examinations;

(*c*) with respect to the certificates to be given to persons of their having passed any such examination;

(*d*) with respect to the appointment or removal of examiners;

(*e*) with respect to the fees to be paid by candidates and the remuneration of examiners;

(*f*) for the purpose of carrying into effect any arrangement made with the Law Society of England under section 98;

(*g*) with respect to any other matter or thing as to which the Chief Justice thinks it expedient to make rules for the purpose of carrying this Act into effect.

109. Saving of procedure

Save as is otherwise provided by this Act or by rules of court, all forms and methods of procedure which under and by virtue of any law, custom or rule whatsoever were formerly in force in any of the courts the jurisdiction of which is vested in the High Court or the Court of Appeal respectively, and which are not inconsistent with this Act or with rules of court, may continue to be used in the High Court and the Court of Appeal respectively in the like cases and for the like purposes as those in and for which they have been applicable in the former respective courts.

Schedule

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

[Sections 89 and 99.]

Qualifying Examinations

A degree (other than an honorary degree) in arts or law at any of the Universities of England, Scotland, Wales or Northern Ireland.

The Matriculation or other corresponding examination of any of the Universities of England, Scotland, Wales or Northern Ireland.

The Responsions Examination at Oxford or the Previous Examination at Cambridge, or any examination accepted as exempting therefrom.

The School Certificate Examination or the Higher School Certificate Examination established by the Universities of Oxford and Cambridge.

The Preliminary Examination held by the Law Society of England.

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA)

Explanatory Note

Between 1979 and 1991 Grenada was out of the unified court structure established by the Courts Order (U.K. SRO 227 of 1967). During that period several amendments were made to the existing subsidiary laws and new ones were passed by, or on behalf of, the other territories which remained members of that court structure. Grenada also made amendments to those subsidiary laws and passed new ones, some of which are still in force. All amendments which were made to the existing subsidiary laws have been incorporated in this Revised Edition.

The Constitutional Judicature (Restoration) Act, 1991 (Act No. 19 of 1991), which paved the way for Grenada's return to the unified court system recognised that the designation of the court had changed. It is now styled the Eastern Caribbean Supreme Court, but the old name has been retained at the top of each page solely for the purpose of uniformity with the Revised Edition of the Main Laws which is being published simultaneously with this Revised Edition of the Subsidiary Laws.

CHAPTER 336
WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA)

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4. Court Sittings Direction
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6. Judges of the Supreme Court—Terms and Conditions of Service (Sick Leave) Regulations
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10. Judicial Committee (Dissenting Opinions) Order

11. Supreme Court (Constitutional Redress—Grenada) Rules
12. Supreme Court Offices (Salary and Allowances of Chief Registrar and Secretary to the Chief Justice) Order
13. Supreme Court (Queen's Counsel) Rules
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16. Rules of the Supreme Court (*Repealed*)
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18. Supreme Court (Trade Unions) Rules
19. Supreme Court (Witnesses Allowances) Rules
20. West Indies Associated States (Appeals to Privy Council) (Grenada) Order
21. West Indies Associated States Supreme Court Order
22. Supreme Court (Masters) Order
23. Eastern Caribbean Supreme Court Civil Procedure Rules
24. Eastern Caribbean Supreme Court Practice Direction
25. Eastern Caribbean Supreme Court (Sittings of Criminal Causes) Rules
26. Eastern Caribbean Supreme Court Practice Direction

Constitution Of The Court Of Appeal (Notice)

Whereas it is provided by section 5 of the West Indies Associated States Supreme Court (Grenada) Act, 1971 (No. 17 of 1971) that subject to the provisions of section 17(3) of the Courts Order and of rules of court, the Court of Appeal and the High Court for the exercise of the jurisdiction conferred upon them respectively shall be constituted in such manner as the Chief Justice may direct;

And whereas it is deemed expedient that a directive be given by the Chief Justice with regard to the constitution of the Court of Appeal;

Now therefore it is hereby directed that the Court of Appeal shall be properly constituted when a sitting of that Court is presided over by the Chief Justice or in his or her absence the Senior Sitting Justice of Appeal.

Court of Appeal Rules

SRO 58 of 1968

Amended by

SRO 2 of 1970
SRO 3 of 1973

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Appendix B Part I: Fees of Court in Civil Appeals from the High Court
Part II: Legal Practitioners' Fees in Civil Appeals
Appendix C Criminal Forms
Appendix D Fees of Court in Civil Appeals from Courts of Summary Jurisdiction
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COURT OF APPEAL RULES

The Chief Justice and two other judges of the West Indies Associated States Supreme Court selected by him or her, in exercise of the powers conferred upon them by section 17 of the West Indies Associated States Supreme Court Order, 1967, and all other powers hereunto enabling them, hereby make the following Rules.

[SRO 58 of 1968 amended by SRO 2 of 1970, SRO 3 of 1973.]

[1*st July*, 1968.]

PART I

Preliminary

1. Citation, commencement and revocation

(1) These Rules may be cited as the Court of Appeal Rules.

(2) Subject to the following provisions of this Rule these Rules shall come into operation on 1st July,1968.

(3) The provisions of Part V of these Rules shall come into operation in the States of Antigua, Dominica and St. Christopher-Nevis respectively on the date when in respect of each of the said States a law enacted by the Legislature of that State conferring jurisdiction upon the Court in relation to appeals from the Court of Summary Jurisdiction of that State comes into force as part of the law of that State.

(4) The provisions of Parts VI and VII of these Rules shall come into operation in respect of a State on the date when a law enacted by the Legislature of that State conferring jurisdiction upon the Court in relation to appeals from Magistrates' Courts comes into force as part of the law of that State.

(5) The Federal Supreme Court (Appeal) Rules, 1959, are hereby revoked.

2. Application

These Rules shall apply to the States as defined in rule 3.

Definition

3. Definitions

(1) In these Rules unless it is expressly provided to the contrary or the context otherwise requires—

"Act" means the Act, Ordinance or other enactment by which in any State jurisdiction is conferred upon the Court in respect of appeals from the High Court originating in that State, and until such enactment is passed by the Legislature of a

State includes the Federal Supreme Court Regulations in so far as they are in force in that State;

"appellant" means the party appealing from a judgement, conviction, sentence, or order and includes his or her legal representative;

"Central Registry" means the Central Registry of the Court situate in St. Lucia;

"Chief Justice" means the Chief Justice of the Supreme Court;

"Court" means the Court of Appeal;

"court below" means the court from which the appeal is brought;

"Courts Order" means the West Indies Associated States Supreme Court Order, 1967;

"Deputy Registrar" means any person appointed as such under the Courts Order in respect of the State in which an appeal is brought;

"Director of Public Prosecutions" means the Director of Public Prosecutions of the State in which the appeal is brought and, where the law of a State does not provide for the office of Director of Public Prosecutions, includes the Attorney-General of that State;

"file" means file in a Registry, and "filed" and "filing" have corresponding meanings;

"Government *Gazette*" means, in relation to a State, the *Gazette* published by the authority of the Government of the State and includes any supplement thereto and any *Gazette* Extraordinary so published;

"High Court" means the High Court established by section 4 of the Courts Order;

"Judge" includes the presiding officer of any court from which an appeal lies to the Court;

"legal representative" means any barrister, advocate, solicitor, attorney or legal practitioner admitted to practise as such in any of the States whether or not he or she has the right of audience in the Court;

"order" includes decree, judgement, sentence or decision of a court below or a Judge thereof;

"party" means any party to the appeal and includes his or her legal representative;

"Prison Authority" means the head or person in charge of Her Majesty's Prisons in the State in which the appeal is brought and includes his or her deputy or other officer discharging his or her duties;

"proper officer of the court below" means the Registrar of the High Court in the State in which the appeal is brought;

"record" means the aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence and judgements) and required by these Rules to be filed or laid before the Court on the hearing of the appeal;

"Registrar" means the Chief Registrar of the Supreme Court in his or her capacity of Registrar of the Court and includes a Deputy Registrar or other officer for the time being discharging the duties of the Registrar or Deputy Registrar;

"Regulations" means the Federal Supreme Court Regulations, 1958;

"respondent"—

(*a*) in a civil appeal, means any party (other than the appellant) directly affected by the appeal;

(*b*) in a criminal appeal where the Crown is not an appellant, means the person who under the provisions of any law of the State in which an appeal is

brought has the duty of appearing for the Crown or who undertakes the defence of the appeal;

"State" means any of the following with its dependencies, if any, that is to say—

Antigua,

Dominica,

Grenada,

Saint Christopher and Nevis,

Saint Lucia, and

Saint Vincent;

"sub-Registry" means a sub-Registry of the Court situate in a State;

"Supreme Court" means the West Indies Associated States Supreme Court established by section 4 of the Courts Order.

(2) Where in these Rules reference is made to a regulation of the Federal Supreme Court Regulations and the Regulations are not in force in a State such reference shall be construed as a reference to the section of the Act which corresponds to the said regulation.

PART II

Appeals Generally

4. Forms in Appendices A and C to be used

The forms set out in Appendices A and C to these Rules, or forms as near thereto as circumstances permit, shall be used in all cases to which such forms are applicable.

5. Times of sittings and vacation

(1) Sittings of the Court shall be held at such times between the fifteenth day of September and the twenty-second day of December and between the tenth day of January and the first day of August in each year as the Chief Justice may direct.

(2) The Court will be in vacation from 22nd December to the 10th January (both days inclusive) and from the first day of August to the fifteenth day of September (both days inclusive) and between the Wednesday before and the second Monday after Easter:

Provided that—

(i) in urgent cases applications may be heard and determined during the vacations by the Court or a single Judge thereof,

(ii) the Chief Justice may direct any sitting of the Court to be held during the vacations for the purpose of hearing criminal and civil appeals.

(3) The Court will not sit on Sundays and will not sit in any State on days that are public holidays in that State, and on such other days as the Chief Justice may direct.

(4) The Central Registry of the Court shall be open on every day of the year except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Corpus Christi, Whit Monday, Christmas Day and the next following working day, and all other days appointed to be observed as public holidays in the State of St. Lucia, from the hours of 9 a.m. to 4 p.m. except Saturdays when the offices of the Registry will be closed at 12 noon.

(5) Each sub-Registry of the Court shall be open on every day of the year except such days on which the Registry of the High Court in the State in which such sub-Registry is situated is closed.

6. Notice of sittings

(1) Notice of each sitting shall be published by the Registrar of the Court in the Government *Gazette* of the State in which each appeal arose at least one week before the date appointed for the commencement of the sitting.

(2) The Deputy Registrar shall on the publication of the said notice in the Government *Gazette* post up on the notice board of the Court the cause list of the sitting:

Provided that the Court may in its discretion hear any appeal and deal with any other matter whether or not the same has been included in such cause list so published.

(3) This Rule shall not apply to the hearing of any matter by a single Judge.

7. Right of audience

(1) In all proceedings before the Court, the parties may appear in person or be represented on appeal by any person who is entitled to practise as a barrister in the State in which the appeal arose or is being heard.

(2) In all proceedings before the Registrar or the Registrar of the court below, and in all preliminary and interlocutory proceedings and applications except such as are heard before the Court, the parties thereto may be represented and appear by a barrister or by a solicitor entitled to practise in the State in which the proceeding arose or is being heard.

8. Register of appeals brought

(1) The Registrar and the Deputy Registrar in each State shall keep separate registers of all civil and criminal appeals brought before the Court including in the criminal appeal register notices of applications for leave to appeal.

(2) Each register shall contain particulars of the date on which—

(*a*) the notice of appeal or of application for leave to appeal was lodged;

(*b*) any interlocutory order was made;

(*c*) the record of the appeal was received;

(*d*) the appeal was heard;

(*e*) judgement was delivered.

9. Enlargement of time and departure from Rules

Subject to the provisions of regulation 28(2) of the Federal Supreme Court Regulations (relating to the time within which an appeal may be brought in a capital case), and to Order 64, rule 6 of the Rules of the Supreme Court, the Court may enlarge or abridge the time appointed by these Rules, or fixed by an order enlarging time, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed, or the Court may direct a departure from these Rules in any other way where this is required in the interests of justice.

10. Service of documents

Subject to any provision contained in these Rules relating to the service of any particular document—

(1) Service of the documents mentioned in the first column hereunder shall be executed by leaving a true copy thereof in the manner specified in the second column—

Column 1	*Column 2*

(*a*) All documents required to be served— (i) on parties to an action who have not filed an address for service; and (ii) on a person not a party to the appeal.	by personal service on the party or his or her authorised agent, or on the person not a party.
(*b*) All documents required to be served on parties who have an address for service.	by leaving the document at the address for service with a person resident at or belonging to such place; or by registered post to such address, in which case, the time of service thereon shall be the time such document would be delivered in the ordinary course of post.

(2) If it be made to appear to a judge of the court below upon application supported by affidavit that prompt personal service of a document cannot be effected he or she may make such order for substituted service by advertisement or otherwise as may be just.

Waiver for non-compliance

11. Waiver for non-compliance with Rules

Non-compliance on the part of an appellant in any criminal cause or matter with these Rules or with any rule of practice for the time being in force shall not prevent the further prosecution of his or her appeal if the Court considers that such non-compliance was not wilful, and that it is in the interests of justice that non-compliance be waived. The Court may, in such manner as it thinks right, direct the appellant to remedy such non-compliance, and thereupon the appeal shall proceed. The Registrar shall forthwith notify the appellant of any direction given by the Court under this Rule where the appellant was not present at the time when such directions were given.

PART III

Civil Appeals from the High Court

Notices of appeal, cross-appeal and preliminary objection

12. *Repealed.*

13. *Repealed.*

14. *Repealed.*

15. *Repealed.*

16. *Repealed.*

17. *Repealed.*

18. *Repealed.*

19. *Repealed.*

The Record

20. Evidence

When any question of fact is involved in an appeal, the evidence taken in the court below bearing on such question shall, subject to any special order of the Court, be brought before the Court as follows—

(*a*) as to any evidence taken by affidavit, by the production of office copies of such affidavit;

(*b*) as to evidence taken orally, by the production of a copy of the Judge's notes certified by the Registrar of the court below, or a transcript of the evidence taken by a shorthand writer and certified by him or her, or such other materials as the Court may deem expedient.

21. Copies of proceedings in court below

(1) Where any notes of proceedings whether in shorthand or longhand have been taken by a person employed by any court or taken by the Judge of the court below, copies of such parts of these notes as are required for the record of appeal shall be supplied by the Registrar of the court below on payment of the fees prescribed in Appendix B.

(2) If no written decision is given by the Judge at the time of giving judgement such Judge shall communicate his or her reasons for the judgement in writing to the Registrar of the court below and such reasons shall be included in the record.

(3) On hearing of an appeal the Court shall have power, if the notes of the Judge of the court below or a transcript of the evidence are not produced, or if there are no such notes or transcript, to hear and determine such appeal upon any other evidence or statement of what occurred before such Judge which the Court may deem sufficient.

22. Printing or typing of record

(1) Every document or paper required by these Rules to be filed or left with the Registrar or the Registrar of the court below shall be legibly printed, cyclostyled or typewritten with black ink (excluding carbon copies) upon strong white foolscap paper of good quality with an inner margin of not less than two inches and an outer margin of about half-an-inch, and a space of not less than three-eighths of an inch shall be left between every two lines.

(2) There shall be an index to the record and every page thereof shall be numbered consecutively, and every tenth line on a page shall be numbered in the margin. Correspondence and exhibits shall be arranged together at the end of the record.

(3) The Registrar or the Registrar of the court below may refuse to file or receive any document not strictly conforming to the requirements of paragraph (1) of this Rule and the Court may disallow the costs of any such document which has been so filed or received.

23. Copy of list of exhibits

(1) Any party may apply for and, on payment of the prescribed fee, obtain an office copy of the exhibits for the purpose of an appeal to the Court or otherwise.

(2) All original documents tendered in evidence to the court below at the trial shall remain in the custody of the court below until the record of appeal has been prepared, and shall then be forwarded with the record to the Deputy Registrar in the State in which the appeal is to be heard and shall remain in the custody of the Court until the determination of the appeal:

Provided that the Deputy Registrar shall permit a party for the purposes of preparing his or her record to take copies of all such documents and that the Court or Registrar may allow the return of any document to any party pending the hearing of the appeal and subject to such conditions as it or he or she may impose.

24. *Repealed.*

25. *Repealed.*

26. *Repealed.*

27. Applications to single Judge

(1) In any cause or matter pending before the Court, a single Judge of the Court may upon application make orders for—

(*a*) giving security for costs to be occasioned by any appeal;

(*b*) leave to appeal *in forma pauperis*;

(*c*) a stay of execution on any judgement appealed from pending the determination of such appeal;

(*d*) an injunction restraining the defendant in the action from disposing or parting with the possession of the subject matter of the appeal pending the determination thereof;

(*e*) extension of time,

and may hear, determine and make orders on any other interlocutory application.

(2) Every order made by a single Judge of the Court in pursuance of this Rule may be discharged or varied by any Judges of the Court having power to hear and determine the appeal.

28. Applications to Judge of court below

(1) Applications referred to in the preceding rule shall ordinarily be made to a Judge of the Court, but, where this may cause undue inconvenience or delay, a Judge of the court below may exercise the powers of a single Judge of the Court under that rule.

(2) The Deputy Registrar or the Registrar of the court below shall send to the Registrar one copy of any application heard by a Judge of the court below and of the order made thereon.

(3) Every order made by a Judge of the court below in the pursuance of this Rule may be discharged or varied by the Court.

29. Mode of application

(1) An application for leave to appeal *in forma pauperis* may be made *ex parte* by affidavit containing the grounds of the application, the matters referred to in rule 32(1)(*a*), and the order asked for.

(2) Any other application under these Rules shall be made by way of summons or motion on notice. Such application shall be supported by affidavit, a copy of which shall be served with the summons or notice of motion.

(3) Where an application is made *ex parte* under paragraph (1) of this Rule, an order may be made requiring any party affected to be served with notice of the application.

(4) Where an application under these Rules is made by summons, an order may be made adjourning the hearing into open court.

(5) Where an application made by summons is heard by the Court, it shall be treated as if it were a motion, and it shall be heard in open court.

30. Appeal no stay except by order

(1) An appeal shall not operate as a stay of execution or of proceedings under the judgement appealed from, except so far as the court below or the Court may order, and no intermediate act or proceedings shall be invalidated, except so far as the Court may direct.

(2) On an appeal, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court otherwise orders, and the Registrar may compute such interest without any order for that purpose.

31. Application for security for costs

(1) Before an application for security for costs is made, a written demand shall be made by the respondent and if the demand is refused or if an offer of security be made by the appellant and not accepted by the respondent, the Court or the court below shall in dealing with the costs of the application consider which of the parties has made the application necessary.

(2) An application for security for costs may be made at any time after the appeal has been brought and must be made promptly thereafter.

(3) An order for security for costs shall direct that in default of the security being given within the time limited therein, or any extension thereof, the appeal shall stand dismissed with costs.

(4) A bond with sureties for securing the costs of an appeal shall be in Civil Form 10.

32. Application for leave to appeal *in forma pauperis*

(1) An application for leave to appeal *in forma pauperis* shall be accompanied by—

(*a*) an affidavit stating—

(i) that the appellant is not worth one hundred and twenty dollars excepting his or her wearing apparel and tools of trade and his or her interest in the subject matter of the intended appeal,

(ii) that his or her usual income from all sources does not exceed ten dollars a week;

(*b*) by a certificate of counsel that the appellant has reasonable grounds of appeal.

(2) Where an appellant obtains leave to appeal *in forma pauperis* he or she shall not be required to lodge security for the costs of the respondent or to pay any registry fees or any fees for copies of the Judge's notes of evidence or the documents required for compiling the record.

33. Dismissal of appeal in default of appearance

If the appellant fails to appear when his or her appeal is called on for hearing the appeal may be struck out or dismissed with or without costs.

34. Application to re-enter appeal dismissed under rule 33

When an appeal has been struck out owing to the non-appearance of the appellant the Court may, on application by the appellant by notice to the Court, if it thinks fit, and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing:

Provided that no application under this Rule shall be made after the expiration of twenty-one days from the date of the judgement or order sought to be set aside.

35. Non-appearance of respondent

If the respondent fails to appear when the appeal is called on for hearing the Court may proceed to hear the appeal *ex parte.*

36. Application to set aside *ex parte* judgement

(1) Where an appeal has been heard *ex parte* under rule 35 of these Rules and any judgement has been given therein adverse to the respondent he or she may apply by motion to the Court to set aside such judgement and re-hear the appeal and the Court may, if it thinks fit and on such terms as to costs or otherwise as it may deem just, direct the appeal to be re-entered for hearing.

(2) No application to set aside any judgement or order and re-hear the appeal under this Rule shall be made after the expiration of twenty-one days from the date of the judgement or order sought to be set aside.

(3) Any such application shall be by motion accompanied by an affidavit setting forth the reasons and grounds for the application and the Court may thereupon in its discretion set aside the judgement or order and order that the appeal be re-heard at such time and upon such conditions as to costs or otherwise as it may think fit.

37. Execution of judgement by court below

Civil Form 11.—A certificate under the seal of the Court and the hand of the Registrar setting forth the judgement of the Court shall be transmitted to the Registrar of the High Court who shall file the same in the Registry of that Court and the judgement shall be enforced by the High Court.

Fees and Costs

38. Court fees

(1) Save as hereinafter provided, the fees prescribed in Appendix B shall be charged in respect of the matters to which they are respectively assigned, and shall be paid in stamps.

(2) Where an appeal is brought by or against a State or any person who sued or was sued on behalf of a State no fees shall be payable by such State or person under Part I of Appendix D:

Provided that a judgement in favour of such State or person whether as appellant or respondent for costs to be paid by any other party to the appeal shall, unless the Court otherwise orders, include the amount of any fees which would have been payable if the appeal had been brought by or against a private person.

39. Legal practitioners' fees

(1) Subject to the provisions of this Rule, a Taxing Officer when taxing the fees for professional legal services shall—

(*a*) unless the Court when awarding costs orders otherwise, allow all such costs, charges and expenses as shall appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the Taxing Officer to have been incurred or increased through over-caution, negligence or mistake, or by payment of special fees to counsel or special charges or expenses to witnesses or other persons, or by other unusual expenses;

(*b*) adhere to the Schedule of Allowances in Part II of Appendix B.

(2) In taxing party and party costs, the Taxing Officer shall also, unless the Court when awarding costs orders otherwise, allow—

(*a*) the reasonable fees consequent upon the engagement of counsel:

Provided that he or she may disallow the fees of more than one counsel in unopposed matters and in matters in which counsel has not appeared on the other side;

(*b*) in any matter which does not conclude upon the first day, reasonable refreshers for each day subsequent to the first;

(*c*) junior counsel's fee on the basis of two-thirds of the fee allowed to leading counsel (excluding travelling expenses and any special fee allowed to leading counsel) where fees to leading and junior counsel are allowed.

(3) The Taxing Officer may in exceptional cases and for good and sufficient reason depart from any of the provisions of the Schedule of Allowances contained in Part II of Appendix B and in particular in the taxation of solicitor and client bills of costs, where strict adherence to such provisions would be inequitable.

40. Fees of interpreters, commissioners, etc.

The fees and allowances to be charged and allowed for interpreters, witnesses, special commissioners, assessors and examiners shall be those from time to time in force in the High Court in the State in which the appeal arises.

41. *Repealed.*

PART IV

Appeals against Conviction on Indictment

Institution of Appeals

42. Obligation on appellant to fill up forms of appeal notice and answer questions thereon

A person desiring to appeal to the Court against conviction or sentence shall commence his or her appeal by sending to the Registrar a notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, as the case may be, in the form of such notices set forth in Forms 1 or 2 in Appendix C, and, in the notice or notices so sent, shall answer the questions and comply with the requirements set forth thereon, subject to the provisions of rule 11 of these Rules. The answers to the questions which an appellant is by this Rule required to make in support of his or her request to be present at the hearing of his or her appeal shall be deemed to be applications to the Court in such matter.

43. Judge's certificate under regulation 21(*b*)

(1) The certificate of the Judge of the court below under regulation 21(*b*) of the Regulations may be in Form 3 in Appendix C.

(2) The Judge of the court below may, in any case in which he or she considers it desirable to do so, inform the person convicted before or sentenced by him or her that the case is in his or her opinion one fit for an appeal to the Court under regulation 21(*b*) of the Regulations and may give to such person a certificate to that effect in the Form 3 in Appendix C.

44. Notices to be signed by appellant

(1) Every notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given shall be signed by the appellant himself or herself, except under the provisions of paragraphs (4) and (5) of this Rule.

Any other notice required or authorised to be given by the Act or these Rules shall be in writing and signed by the person giving the same or by his or her legal representative. All notices required or authorised to be given shall be addressed to the Registrar of the Court.

(2) Where an appellant or applicant is a prisoner in prison it shall be sufficient service to deliver the document at the prison to the officer in charge or person appearing to be the officer in charge thereof, who shall cause the same to be served on such prisoner.

(3) Where an appellant or any other person authorised or required to give or send any notice of appeal or notice of any application is unable to write, he or she may affix his or her mark thereto in the presence of a witness who shall attest the same, and thereupon, such notice shall be deemed to be duly signed by such appellant.

(4) Where, on the trial of a person entitled to appeal, it has been contended that he or she was not responsible according to law for his or her actions on the ground that he or she was insane at the time the act was done or the omission made by him or her, any notice required, to be given and signed by the appellant himself or herself may be given and signed by his or her legal representative.

(5) In the case of a body corporate where any notice or other document is required to be signed by the appellant himself or herself, it shall be sufficient compliance therewith if such notice or other document is signed by the secretary, clerk, manager or legal representative of such body corporate.

45. Time for appealing against conviction or sentence to run from sentence

The time within which a person convicted shall give notice of appeal or notice of his or her application for leave to appeal to the Court against his or her conviction or his or her sentence, shall commence to run from the day on which the court of trial shall have passed sentence or pronounced final judgement upon him or her.

46. Notice of application for extension of time for appealing

An application to the Court for an extension of time within which notices may be given, shall be in Form 2 in Appendix C. Every person making an application for such extension of time, shall send to the Registrar together with the proper form of such application, a form, duly filled up of notice of appeal, or of notice of application for leave to appeal, appropriate to the ground or grounds upon which he or she desires to question his or her conviction or sentence, as the case may be.

47. Forwarding of proceedings in court below to Registrar

(1) The Registrar when he or she has received a notice of appeal or a notice of application for leave to appeal, or a notice of application for extension of the time within which under the Act such notice shall be given, or when the Governor, or the Governor-General (as the case may be) shall exercise his or her powers under the Act to refer a case to the Court of Appeal, shall require the Registrar of the court below to furnish him or her with four copies of the proceedings in the court below and if any record has been made of the summing up or direction of the Judge of the court below, four copies thereof or if no such record has been made, a statement giving to the best of such Judge's recollection the substance of the summing up or direction. The Registrar of the court below shall also forward the original exhibits in the case as far as practicable and any original depositions,

information, inquisition, plea, or other documents usually kept by him or her, or forming part of the record of the court below.

(2) One copy of the proceedings and one copy of the summing up shall be sent by the Registrar of the court below to the Director of Public Prosecutions at the same time he or she complies with subrule (1).

(3) For the purposes of this Rule, copies of proceedings shall contain—

(*a*) the indictment or inquisition and the plea;

(*b*) the verdict, any evidence given thereafter, and the sentence;

(*c*) notes of any particular part of the evidence or cross-examination relied on as a ground of appeal; and

(*d*) such other notes of evidence as the Registrar may direct to be included in the copies of proceedings:

Provided—

(i) in capital cases copies of the notes of all the evidence shall be supplied, and

(ii) upon application by either party to an appeal a single Judge of the Court or the Court itself may direct that copies of any particular part, or the whole, of the evidence be supplied to the Court and to the Director of Public Prosecutions.

48. Records of summing-up

(1) Where under any law in force or by direction of the Judge of the court below, notes in longhand or shorthand or typewritten or by any other means have been taken of the summing up or direction of the Judge and of such parts of the proceedings as the Judge of the court below may consider expedient, such record shall be accepted by the Court as accurate unless the Court has reason to doubt its accuracy.

(2) Where no record exists of the summing-up or direction given by the Judge of the court below, his or her statement giving his or her recollection of the summing up or direction shall be accepted as accurate unless the Court sees reason to the contrary.

(3) The shorthand writer shall sign the shorthand notes taken by him or her of any trial or proceedings, or of any part of such trial or proceedings, and certify the same to be a complete and correct shorthand note thereof; and such shorthand note shall be kept in such custody as the Registrar of the court below shall, either specially or generally, direct.

(4) The shorthand writer shall, on being directed by the Registrar of the court below, furnish to him or her for the use of the Court a transcript of the whole, or of any part, of the shorthand note taken by him or her of any trial or proceedings in reference to which an appellant has appealed under the Act.

(5) A transcript of the whole or any part of the shorthand note relating to the case of any appellant which may be required for the use of the Court shall be typewritten and verified by the person making the same by a statutory declaration in the Form 4 in Appendix C to these Rules that the same is a correct and complete transcript of the whole, or of such part, as the case may be, of the shorthand note purporting to have been taken, signed and certified by the shorthand writer who took the same.

(6) Where no notes in longhand or in shorthand have been taken by direction of the Judge of the court below of any other parts of the proceedings required for the purpose of an appeal, the Judge of the court below shall furnish to the Registrar of the court below his or her notes of the trial or such part thereof as may be required for such purpose.

(7) On the application of a party interested in a trial or other proceedings in relation to which a person may appeal under the Act, the Registrar of the court below shall direct the

shorthand writer to furnish to such party, and to no other person, a transcript of the whole, or of any part of the shorthand notes of any such trial or other proceedings, on payment to the proper officer of the court below of such fees as may be prescribed by rules of court in the State in which the trial or other proceedings have taken place for copies of proceedings required on appeal in any criminal cause or matter.

(8) A party interested in an appeal under the Act may obtain from the Registrar of the court below a copy of the transcript of the whole or of any part of such shorthand note as relates to the appeal on payment to the proper officer of the court below of such fees as may be prescribed by rules of court in the State in which the appeal is brought for copies of proceedings required on appeal in any criminal cause or matter.

(9) For the purposes of this Rule, "a party interested" shall mean the prosecutor or the person convicted, or any other person named in, or immediately affected by, any order made by the Judge of the court below, or other person authorised to act on behalf of a party interested, as herein defined, but shall not include the Director of Public Prosecutions, to whom a copy of such transcript shall be furnished free of charge.

(10) A transcript of the shorthand notes taken of the proceedings at the trial (or a copy of the Judge's notes of the trial) of any appellant shall not be supplied free of charge except by an order of the Court or a Judge thereof, upon an application made by an appellant or by his or her counsel or solicitor assigned to him or her under the Act.

Judge's Report

49. Report of Judge of court below

(1) The Registrar shall, if in relation to any appeal the Court directs him or her to do so, request the Judge of the court below to furnish him or her with a report in writing, giving his or her opinion upon the case generally or upon any point arising upon the case of the appellant, and such Judge shall furnish the same to the Registrar.

(2) The report of the Judge shall be made to the Court, and, the Registrar shall, on request, furnish a copy thereof to the appellant and to the respondent.

50. Furnishing Judge of court below with materials for report

When the Registrar requests the Judge of the court below to furnish a report under these Rules, he or she shall send to such Judge a copy of the notice of appeal or notice of application for leave to appeal or any other document or information which he or she shall consider material, or which the Court at any time shall direct him or her to send or with which such Judge may request to be furnished by the said Registrar, to enable such Judge to deal in his or her report with the appellant's case generally or with any point arising thereon.

51. How appellant or respondent may obtain from Registrar of court below copies of documents or exhibits

(1) At any time after notice of appeal or notice of application for leave to appeal has been given under the Act or these Rules, an appellant or respondent, or the solicitor or other person representing either of them, may obtain from the Registrar of the court below copies of any documents (other than notes of proceedings) or exhibits in his or her possession under the said Act or these Rules for the purposes of such appeals. Such copies shall be supplied by the said Registrar on payment to the proper officer of the court below of such fee as may be prescribed by rules of court in the State in which the appeal is brought for copies of proceedings required on appeal in any criminal cause or matter.

(2) Where solicitor and counsel, or counsel only, are assigned to an appellant under the Act, copies of any such documents or exhibits which they or he or she may request

the said Registrar to supply shall without charge be supplied unless the said Registrar thinks that they are not necessary for the purpose of the appeal.

(3) Where an appellant who is not legally represented requires from the said Registrar a copy of any such document or exhibit in his or her custody for the purposes of his or her appeal, he or she may obtain it free of charge, if the said Registrar thinks, under all the circumstances, it is desirable or necessary to supply the same to him or her.

52. Registrar to notify Director of Public Prosecutions or prosecutor, if a private person, of receipt of notice of appeal

(1) When the Registrar has received a notice of appeal or where leave to appeal is granted to any appellant, he or she shall—

(*a*) notify the Director of Public Prosecutions; or

(*b*) if the prosecutor is a private person, enquire if he or she intends to defend the appeal and, if the answer is in the negative, so inform the Director of Public Prosecutions.

(2) It shall be the duty of a prosecutor, who declines to defend an appeal, and of his or her counsel or solicitor, to furnish to the Registrar and the Director of Public Prosecutions, or either of them, any information, documents, matters and things in his or her possession or under his or her control connected with the proceedings against the appellant, which the Registrar or Director of Public Prosecutions may require for the purposes of their duties under the Act.

53. Lists of counsel and solicitors for purposes of the Act

(1) The Registrar shall cause to be prepared in such form as he or she thinks most convenient for each State a separate list of counsel who are willing to act as counsel for appellants if and when nominated under the Act.

(2) The Registrar shall also cause to be prepared in such form as he or she thinks most convenient a list of solicitors who are willing to act as solicitors on behalf of appellants if and when nominated to do so under the Act.

(3) When legal aid is assigned to an appellant, the Court may give such directions as to the stage of the appeal at which such legal aid shall commence and whether counsel only, or counsel and solicitor, shall be assigned or otherwise as it may think right.

(4) The Registrar shall thereupon, subject to any special order of the Court, select from such lists or otherwise a counsel and a solicitor or a counsel only for the purpose of affording legal aid to an appellant under the directions of the Court, having regard in so doing to the place at which the appellant was tried and the counsel and solicitor, if any, who represented the appellant at his or her trial and the nature of the appeal.

54. Procedure on decision of application to single Judge

(1) Where any application has been dealt with by a single Judge, the Registrar shall notify the appellant of the decision in Form 5 in Appendix C. In the event of such Judge refusing all or any of such applications the Registrar on notifying such refusal to the appellant shall forward to him or her Form 6 in Appendix C. If the appellant does not desire to have the said application or applications determined by the Court as duly constituted for the hearing of appeals under the Act or does not return within five days to the Registrar Form 6 duly filled up by him or her the refusal of his or her application or applications by such Judge shall be final. If the appellant desires that his or her said application or applications shall be determined by the Court duly constituted as aforesaid and is not legally represented he or she may, if the Court give him or her leave, be present at the hearing and determination by the Court of his or her said application or applications:

Provided that an appellant who is legally represented shall not be entitled to be present without special leave of the Court.

(2) When an appellant duly fills up Form 6 and returns it within the prescribed time to the Registrar expressing a desire to be present at the hearing and determination by the Court of the applications mentioned in this Rule, such form shall be deemed to be an application by the appellant for leave to be so present. The Registrar, on receiving the said form, shall take the necessary steps for placing the said application before the Court. If the said application to be presented is refused by the Court, the Registrar shall notify the appellant; and if the said application is granted, the Registrar shall notify the appellant and the officer in charge of the prison wherein the appellant is in custody, as provided by these Rules. For the purpose of constituting a Court, the Judge who has refused any such application may sit as a member of such Court, and take part in determining such application.

(3) Except where otherwise provided in these Rules, any application to the Court may be made by the appellant or respondent, or by counsel on their behalf, orally or in writing; but in regard to such applications, if the appellant is unrepresented and is in custody and is not entitled or has not obtained leave to be present before the Court, he or she shall make any such application by forwarding the same in writing to the Registrar who shall take the proper steps to obtain the decision of the Court thereon.

(4) Save as is otherwise provided in subparagraph (*b*) of this paragraph the parties to the following matters may be represented and appear by a solicitor alone—

(*a*) in all proceedings before a Judge of the Court in the exercise of his or her jurisdiction—

(i) to give leave to appeal,

(ii) to extend the time within which notice of appeal or of an application for leave to appeal may be given,

(iii) to assign legal aid to an appellant,

(iv) to allow the appellant to be present at any proceedings where he or she is not entitled to be present without leave, or

(v) to admit an appellant to bail;

(*b*) in all preliminary and interlocutory proceedings and applications except such as are heard before the Court.

55. Notice of application for leave to appeal deemed to be notice of appeal if application granted

Where the Court has, on a notice of application for leave to appeal duly served and in Form 1 in Appendix C, given an appellant leave to appeal, it shall not be necessary for such appellant to give any notice of appeal but the notice of application for leave to appeal shall in such case be deemed to be a notice of appeal.

56. When fine imposed on conviction to be retained pending appeal

(1) Where a person has, on his or her conviction, been sentenced to payment of a fine, and in default of payment to imprisonment, the person lawfully authorised to receive such fine shall, on receiving the same, retain it until the determination of any appeal in relation thereto.

(2) If such person remains in custody in default of payment of the fine, he or she shall be deemed, for all purposes of the Act or these Rules, to be a person sentenced to imprisonment.

(3) Where any person has been convicted and is thereupon sentenced to the payment of a fine, and, in default of such payment, to imprisonment, and he or she intimates to the Judge of the court below that he or she is desirous of appealing to the Court against his

orher conviction such Judge may, if he or she thinks right to do so, order such person forthwith to enter into recognisances in such amount, and with or without sureties in such amount, as such Judge may think right, to prosecute his or her appeal, and, subject thereto, may order that payment of the said fine shall be made at the final determination of his or her said appeal, if the same be dismissed, to the Registrar of the court below, or as the Court may then order. The recognisances under this Rule shall be in Forms 7 and 8 in Appendix C.

The Registrar of the court below shall forward the recognisances of the appellant and his or her surety or sureties to the Registrar of the Court.

(4) If an appellant to whom paragraph (3) of this Rule applies does not serve in accordance with these Rules, a notice of appeal or of abandonment of his or her appeal within fourteen days from the date of his or her conviction or sentence, the Registrar of the court below shall report such omission to the Court, who may, after notice in Forms 9 and 10 in Appendix C has been given to the appellant and his or her sureties, if any, order an estreat of the recognisances of the appellant and his or her sureties, and the manner of such estreat shall be that provided for estreating recognisances under the law of the State in which the appeal is brought, and may issue a warrant for the apprehension of the appellant and may commit him or her to prison in default of payment of his or her fine, or may make such other order as it may think fit.

(5) An appellant who has been sentenced to the payment of a fine, and has paid the said or part thereof in accordance with such sentence, shall, in the event of his or her appeal being successful, be entitled, subject to any order of the Court, to the return of the sum or any part thereof so paid by him or her.

57. Temporary suspension of orders made on conviction as to monies, awards, costs, etc.

(1) Where, on the conviction of a person, the Judge of the court below makes an order condemning such person to the payment of the whole or of any part of the costs and expenses of the prosecution for the offence of which he or she shall be convicted out of any monies taken from such person on his or her apprehension or otherwise, or where such Judge lawfully makes on the conviction of any person before him or her any order for the payment of money by such convicted person or by any other person or any order affecting the rights of property of such convicted person, the operation of such orders shall in any of such cases be suspended until the expiration of fourteen days after the day on which any of such orders were made. In cases where notice of appeal or notice of application for leave to appeal is given within fourteen days from and after the date of the pronouncement of sentence against such person, such orders shall be further suspended until the determination of the appeal against the conviction in relation to which they were made. The Court may, by order, annul any order to which this Rule refers on the determination of any appeal or may vary such order, and such order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

The proper officer of the court below shall keep a record of any orders to which this Rule refers.

(2) Where upon the conviction of any person of any offence, the trial court orders that any disqualification, forfeiture or disability attach to such person, and notice of appeal or notice of application for leave to appeal is given in respect of such conviction, sentence or order, the Court may upon application suspend such disqualification, forfeiture or disability until the determination of the proceedings upon appeal.

(3) Where the Judge of the court below makes any such order on a person convicted before him or her as in this Rule mentioned, he or she shall give such directions as he or she thinks right as to the retention, by any person, of any money or valuable securities belonging to the person so convicted and taken from such person on his or her apprehension or of any money or valuable securities at the date of his or her conviction in

the possession of the prosecution for the period of fourteen days, or in the event of an appeal, until the determination thereof by the Court. The proper officer of the court below shall keep a record of any directions given under this Rule.

(4) When the Judge of the court below on the conviction of a person before him or her makes any order for the payment of money by such person or by any other person upon such conviction, and, by reason of this Rule, such order would otherwise be suspended, such Judge may, if he or she thinks right to do so, direct that the operation of such order shall not be suspended unless the person on whom such order has been made shall, in such manner and within such time as the said Judge shall direct give security by way of undertaking or otherwise for the payment to the person in whose favour such order shall have been made of the amount therein named. Such security may be to the satisfaction of the person in whose favour the order for payment shall have been made or of any other person as such Judge shall direct.

(5) Where on a conviction any property, matters or things, the subject of the prosecution or connected therewith, are to be or may be ordered to be destroyed or forfeited under the provisions of any rule, regulation, statute, Act or other law, the destruction or forfeiture or order for destruction or forfeiture thereof shall be suspended for the period of fourteen days from and after the date on which the verdict on the indictment was returned, and in the event of an appeal shall be further suspended until the determination thereof by the Court.

(6) Where, upon conviction of any person of any offence, any claim may be made or any proceedings may be taken under any rule, regulation, statute or other law against such person or any other person in consequence of such conviction, such proceedings shall not be taken until after the period of fourteen days from the date on which the verdict against such person was returned or in the event of an appeal to the Court until the determination thereof.

(7) Any person affected by any orders which are suspended under this Rule may, with the leave of the Court, be heard on the final determination of any appeal, before any such orders are varied or annulled by the Court.

58. Appellant and surety's recognisances before whom to be taken

(1) Where the Court admits an appellant to bail pending the determination of his or her appeal on an application by him or her duly made, the Court shall specify the amounts in which the appellant and his or her surety or sureties (unless the Court directs that no surety is required) shall be bound by recognisance, and shall direct, if it thinks right to do so, before whom the recognisances of the appellant and his or her surety or sureties, if any, may be taken.

(2) The Registrar shall notify the appellant and the officer in charge of the prison within which he or she is confined, of the terms and conditions on which the Court shall admit the appellant to bail under the Act.

(3) In the event of the Court not making any special order or giving any special directions under this Rule, the recognisances of the appellant and of his or her surety or sureties, if any, may be taken before a Magistrate or Justice of the Peace and shall be sent to the Deputy Registrar of the Court.

(4) The recognisances provided for in this Rule shall be in Forms 11 and 12 in Appendix C.

(5) The Deputy Registrar, on being satisfied that the recognisances of the appellant and his or her surety or sureties, if any, are in due form and in compliance with the order of the Court admitting the appellant to bail shall forward the recognisances of the appellant and his or her surety or sureties to the Registrar and shall send in Form 13 in Appendix C a notice to the officer of the prison in which the appellant shall then be

confined. This notice, when received by the said officer, shall be a sufficient authority to him or her to release the appellant from custody.

(6) An appellant who has been admitted to bail shall be personally present at each and every hearing of his or her appeal and at the final determination thereof. The Court may, in the event of such appellant not being present at any hearing of his or her appeal, if it thinks right to do so, decline to consider the appeal, and may proceed summarily to dismiss the same, and may issue a warrant for the apprehension of the appellant in Form 14 in Appendix C:

Provided that the Court may consider the appeal in his or her absence, or make such order as it may think fit.

(7) When an appellant is present before the Court, the Court may, on an application made by any person or, if it thinks right to do so, without any application, make an order admitting the appellant to bail, or revoke or vary any such order previously made, or enlarge from time to time the recognisances of the appellant or of his or her sureties or substitute any other surety for a surety previously bound as it thinks right.

(8) At any time after an appellant has been released on bail, the Court may, if satisfied that it is in the interests of justice to do so, revoke the order admitting to bail, and issue a warrant in Form 14 in Appendix C for his or her apprehension, and order him or her to be committed to prison.

(9) The Court may on any breach of the recognisances of the appellant, if it thinks right to do so, order such recognisances and those of his or her surety or sureties to be estreated, and the manner of such estreat shall be similar to that provided under the law of the State in which the appeal is brought.

(10) Where the surety or sureties for an appellant upon whose recognisances such appellant has been released on bail by the Court suspects or suspect that the said appellant is about to depart out of the State, or in any manner to fail to observe the conditions of his or her recognisances on which he or she was so released, such surety or sureties may lay an information before a magistrate acting in and for the judicial district in which the said appellant is, or is by such surety or sureties believed to be, or in which such surety or sureties may then be and such magistrate shall thereupon issue a warrant for the apprehension of the said appellant.

(11) The said appellant shall, on being apprehended under the said warrant, be brought before the court in and for which the said magistrate acts, before whom the said information was laid or some other magistrate's court specified in the said warrant. The said court shall, on verification of the said information by oath of the informant, by warrant of commitment, commit him or her to the prison to which persons charged with indictable offences before such court are ordinarily committed. The officer in charge of such prison shall, unless such prison was the prison from which the appellant was released on bail under these Rules, notify the Prison Authority of such commitment, as in this Rule mentioned.

Where the appellant is by such court committed to a prison which was not the prison from which he or she was released on bail after his or her conviction the Prison Authority, subject to any order of the Court, may transfer him or her to the prison from which he or she was so released.

(12) The clerk of the said court on the commitment of any such appellant, shall forthwith notify the Registrar to that effect, and forward to him or her the said information and the deposition in verification thereof taken before such court together with a copy of the said warrant of commitment.

(13) When an appellant has been released on bail and has, under a warrant under these Rules or by surety or sureties, been apprehended and is in prison, the officer in charge thereof shall forthwith notify the Registrar who shall take steps to inform the Court thereof, and the Court may give to the Registrar such directions as to the appeal or otherwise as it shall think right.

59. Abandonment of appeal

(1) An appellant at any time after he or she has duly served notice of appeal or of application for leave to appeal, or of application for extension of time within which such notice shall be given, may abandon his or her appeal by giving notice of abandonment thereof in Form 15 in Appendix C to the Registrar, and upon such notice being given the appeal shall be deemed to have been dismissed by the Court.

(2) Upon receipt of a notice of abandonment duly completed and signed or marked by the appellant or the party authorised to sign notices under rule 44, the Registrar shall give notices thereof in Form 16 in Appendix C to the respondent, the Prison Authority and the Registrar of the court below, and in the case of an appeal against a conviction involving a sentence of death, shall in like manner give notice to the Governor, or the Governor-General as the case may be, and the Registrar shall also return to the Registrar of the court below any original documents and exhibits received from him or her.

60. Varying order of restitution of property

Where, upon the trial of a person entitled to appeal against his or her conviction, an order of restitution of any property to any person has been made by the Judge of the court below, the person in whose favour or against whom the order of restitution has been made, and, with the leave of the Court, any other person, shall, on the final hearing by the Court of an appeal against the conviction on which such order of restitution was made, be entitled to be heard by the Court before any order annulling or varying such order of restitution is made.

61. Judgements of the Court

Unless the Court direct to the contrary in cases where, in the opinion of the Court, the question for decision is a question of law on which it would be convenient that separate judgements should be pronounced by the Judges of the Court, the judgement of the Court shall be pronounced by the presiding Judge or such other Judge of the Court hearing the appeal as he or she may direct, and no judgement with respect to the determination of any question shall be separately pronounced by any other member of the Court.

62. Notification on final determination of appeals

(1) In the final determination of any appeal or of any application to the Court, the Registrar shall give to the appellant, if he or she be in custody and has not been present at such final determination, and to the respondent and the Prison Authority notice of such determination in Forms 17 to 20 in Appendix C.

(2) In any case of an appeal in relation to a conviction involving a sentence of death, the Registrar shall on receiving the notice of appeal or of any application for leave to appeal, send copies thereof to the Governor or the Governor-General, as the case may be, and to the Prison Authority, and on the final determination of any such appeal by the Court shall forthwith notify the appellant, the Governor or the Governor-General, as the case may be, the respondent and the Prison Authority.

63. Notification of result of appeal

(1) The Registrar at the final determination of an appeal shall notify in such manner as he or she thinks most convenient to the Registrar of the court below the decision of the Court in relation thereto and also any orders or directions made or given by the Court in relation to such appeal or any matter connected therewith.

(2) The Registrar of the court below shall on receiving the notification referred to in this Rule enter the particulars thereof on the records of such Court.

64. Restrictions on issue of certificate of conviction

The Registrar of the court below shall not issue, under any law authorising him or her to do so, a certificate of conviction of any person convicted in the court below if notice of appeal or notice of application for leave to appeal is given, until the determination or abandonment thereof.

65. Return of original depositions, etc.

Upon the final determination of an appeal for the purposes of which the Registrar has obtained from the Registrar of the court below any original depositions, exhibits, information, inquisition, plea, or other documents usually kept by such Registrar, or forming part of the record of the court below, the Registrar shall, where practicable, cause the same to be returned to the Registrar of the court below.

66. Attendance of witness before the Court

(1) Where the Court has ordered any witness to attend and be examined before the Court an order in Form 21 in Appendix C shall be served upon such witness specifying the time and place at which to attend for such purpose.

(2) Such order may be made on the application, at any time, of the appellant or respondent, but if the appellant is in custody and not legally represented the application shall be made in Form 22 in Appendix C.

(3) Where the Court orders the examination of any witness to be conducted otherwise than before the Court itself, such order shall specify the person appointed as examiner to take, and the place of taking, such examination and the witness or witnesses to be examined thereat.

(4) The Registrar shall furnish to the person appointed to take such examination any documents or exhibits and any other material relating to the said appeal as and when requested to do so. Such documents and exhibits and other material shall after the examination has been concluded be returned by the examiner, together with any depositions taken by him or her under this Rule, to the Registrar.

(5) When the examiner has appointed the day and time for the examination he or she shall request the Registrar to notify the appellant or respondent and their legal representatives, if any, and when the appellant is in prison, the Prison Authority thereof. The Registrar shall cause to be served on every witness to be examined a notice in Form 23 in Appendix C.

(6) Every witness examined before an examiner under this Rule shall give his or her evidence upon oath or on affirmation to be administered or taken by such examiner, except where any such witness if giving evidence as a witness on a trial on indictment need not be sworn.

(7) The examination of every such witness shall be taken in the form of a deposition and unless otherwise ordered shall be taken in private. The caption in Form 24 in Appendix C shall be attached to any such deposition.

(8) Where any witness shall receive an order or notice to attend before the Court or an examiner, the Registrar may, if it appears to him or her necessary to do so, pay to such witness a reasonable sum for his or her expenses.

(9) The appellant and his or her legal representative, if any, and the respondent shall be entitled to be present at and take part in any examination of any witness to which this Rule relates.

67. Proceedings on reference

When an order of reference is made by the Court to a special commissioner, the question to be referred, and the person to whom as special commissioner the same shall be referred, shall be specified in such order. The Court may in such order, or by giving directions as and when it from time to time shall think right, specify whether the appellant or respondent or any person on their behalf may be present at any examination or investigation or at any stage thereof as may be ordered, and specify any and what powers of the Court may be delegated to such special commissioner, and may require him or her from time to time to make interim reports to the Court upon the question referred to him or her, and may, if the appellant is in custody, give leave to him or her to be present at any stage of such examination or investigation and give the necessary directions to the Prison Authority accordingly, and may give directions to the Registrar that copies of any report made by such special commissioner shall be furnished to the appellant and respondent.

68. Judge to forward special case to Registrar and copies to be supplied to appellant and respondent

(1) Where in pursuance of regulation 37 of the Regulations a Judge of the High Court states a case or reserves a question of law for the consideration of the Court in respect of a person convicted on indictment before him or her, he or she shall forward such case to the Registrar who shall on receiving the same send a copy thereof to the appellant and respondent respectively.

(2) Where under the provisions of regulation 37 of the Regulations a Judge of the court below states a case for the consideration of the Court the person convicted shall for the purposes of these Rules be deemed to be an appellant who has appealed under the Regulations:

Provided however, that in these circumstances the Registrar shall not be empowered to refer the case stated to the Court for summary determination.

(3) Where a case is stated or a question of law reserved for consideration of the Court under regulation 37 of the Regulations, rule 69(1) of these Rules shall apply.

69. Duties of Registrar with respect to notices of appeal, etc.

Subject to the provisions of rule 68—

(1) The Registrar shall take all necessary steps for obtaining a hearing under Part III of the Regulations of any appeal or application, notice of which is given to him or her under that Part and shall obtain and lay before the Court in proper form all documents, exhibits, and other things relating to the proceedings in the Court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under Part III of the Regulations to any person who demands the same, and to officers of courts, the Prison Authority and such other officers or persons as he or she thinks fit, and the Prison Authority shall cause these forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under Part III of the Regulations and shall cause any such notices given by a prisoner in his or her custody to be forwarded on behalf of the prisoner to the Registrar.

(3) Other duties of the Registrar are set out in regulation 35 of the Regulations.

70. Expenses payable to solicitor or counsel

The expenses of any solicitor or counsel assigned to an appellant by the Court in criminal appeals shall be allowed as follows—

In respect of—

(*a*) a notice of appeal or application for leave to appeal; or

(*b*) a notice of application for extension of time within which to appeal,

a fee not exceeding $15.12 for a solicitor and $25.20 for counsel.

In respect of any appeal—

a fee not exceeding $50.40 for a solicitor and a fee for counsel not exceeding $75.60:

Provided that the Court, after the conclusion of the appeal, may, if it thinks fit, certify that the case was one of exceptional length or difficulty and thereupon the fee may be increased to such sum as the Court, having regard to the length and difficulty of the case, may direct, but not exceeding $100.80 for a solicitor and $151.20 for counsel.

In addition to such fee as aforesaid, counsel and solicitor may be allowed, subject to taxation, such travelling expenses as have been actually and reasonably incurred.

71. Expenses of witnesses

The expenses of any witnesses attending on the order of the Court or examined in any proceedings incidental to the appeal shall be allowed at the same rate as those of a witness in a case of felony tried at the Criminal Sessions of the State where the Court is sitting.

72. Expenses of appearance of appellant

The expenses of the appearance of an appellant not in custody on the hearing of his or her appeal or on any proceeding preliminary or incidental to the appeal may be allowed at the same rate as those of an ordinary witness in a case of felony tried at the Criminal Sessions of the State where the Court is sitting.

73. Expenses of examiner

Where any examination of witnesses is conducted by a person appointed by the Court for the purpose, the person so appointed shall be allowed if he or she be a Magistrate or other person in the service of a State, the actual expenses of travelling, the actual cost of hiring a room for the examination, if no court or public room is available, and such other incidental expenses as in the opinion of the Court are necessarily and reasonably incurred. If the person appointed is not a Magistrate or other such person he or she shall be allowed such expenses as aforesaid, and in addition such fee, not exceeding $50.40 a day, as the Court may allow.

74. Expenses of special commissioner or assessor

Where any question is referred to a special commissioner appointed by the Court, or where any person is appointed as assessor to the Court, he or she shall be allowed such fee as the Court, having regard to his or her qualifications and ordinary professional remuneration, may think reasonable, not exceeding $50.40 a day.

PART V

Appeals from Decisions of Court of Summary Jurisdiction

75. Appeals from Summary Courts

Modification of Rules.—(1) The provisions of Parts I, II and III of these Rules shall apply, *mutatis mutandis* to appeals from decisions of the Court of Summary Jurisdiction established by the laws of the States of Antigua, Dominica and St. Christopher-Nevis respectively subject to the following modifications.

(2) References to the Registrar of the High Court shall include the Registrar of the High Court in his or her capacity of clerk of the Court of Summary Jurisdiction.

(3) In Order 64, rule 5 of the Rules of the Supreme Court (time limits for appealing), the words "four weeks" shall be substituted for the words "six weeks".

(4) Order 64, rule 11 of the Rules of the Supreme Court (settling the record), shall not apply.

(5) For Order 64, rule 12 of the Rules of the Supreme Court (entering appeal), the following shall be substituted—

"(1) The appellant shall within six weeks from the date when the appeal is brought or within such extended time as may be granted by the Court or by a Judge thereof, or by a Judge of the court below under rule 28 of these Rules—

(A) file with the Deputy Registrar—

(*a*) an affidavit of service of the notice of appeal;

(*b*) the record, consisting of copies of the following documents and papers—

(i) the notice of appeal,

(ii) the judgement or order appealed from,

(iii) the pleadings,

(iv) all necessary affidavits,

(v) the Judge's notes at the trial,

(vi) the judgement or reasons for judgement delivered by the trial Judge,

(vii) all other documents including the correspondence and exhibits required for the hearing of the appeal; and

(B) leave four copies of the record for the use of the Judges and the Registrar of the Court."

(6) In taxing party and party costs the Taxing Officer shall not, unless the Court when awarding costs orders otherwise, allow more than one hundred and twenty dollars in respect of counsel.

(7) In rule 38(1) (Court fees) the words "Appendix D" shall be substituted for the words "Appendix B"; and in subrule (2) thereof the words "Appendix D" shall be substituted for the words "Part I of Appendix B".

(8) The provisions of this Part shall not apply to a State where it is provided by the law of that State that the Court of Summary Jurisdiction shall be presided over by a Magistrate.

PART VI

Criminal Appeals from Magistrates' Decisions

76. Copies of notices and grounds of appeal to be filed

(1) Where the appellant under any law regulating appeals from magistrates gives a written notice of his or her intention to appeal, five copies thereof shall also be filed by him or her for the use of the Judges of the Court and the Director of Public Prosecutions or other respondent.

(2) Together with the grounds of appeal required to be filed by such law, four copies thereof shall also be filed by the appellant for the use of the Judges of the Court and the Director of Public Prosecutions or other respondent.

77. Copies of proceedings, etc.

Five copies of the proceedings and of the notes of evidence for the use of the Judges of the Court and the Director of Public Prosecutions or other respondent, shall be provided by the clerk of the Magistrate's Court from which the appeal is taken, and shall be forwarded by him or her together with the copies of the notice of appeal, if any, and of the grounds of appeal, to the Registrar with the record.

PART VII

Appeals (other than Criminal Appeals) from Magistrates' Decisions

78. Preliminary objection by respondent

Upon receiving the documents directed to be transmitted by law regulating appeals from magistrates, the Registrar shall forthwith, by notice in writing, require the respondent to draw up and lodge with him or her for the information of the Court and the appellant, a written statement of any preliminary objections he or she may propose to take to the hearing of the appeal. A copy of the said statement shall be sent by the respondent to the appellant not later than three clear days before the day of hearing of the appeal. Any failure on the part of the respondent to comply with this Rule may render him or her liable to be deprived of his or her costs or part thereof.

79. Evidence relating to preliminary objection

Evidence relating to a preliminary objection shall ordinarily be by affidavit, but the Court may in its discretion hear oral evidence in lieu of or in addition to written evidence.

80. Amendment of grounds of appeal

Grounds of appeal may be amended at any time upon such terms as the Court shall think just.

81. Copies of notice and grounds of appeal

(1) Where the appellant under any law regulating appeals from magistrates gives a written notice of appeal, four copies thereof shall also be filed by him or her for the use of the Judges of the Court.

(2) Together with the grounds of appeal required to be filed by such law four copies thereof shall also be filed by the appellant for the use of the Judges of the Court.

Appendix A

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

Civil Forms

Index for Forms

Form No.	*Appeal Rules No.*	*Description of Form*
1	Rule 12(1)	Notice of Appeal.

2	" 13(1)	Notice of Motion for special leave to appeal.
3	" 13(4)	Application by Respondent for leave to appeal.
4	" 16(1)	Notice by Respondent of intention to contend that decision of Court below be varied.
5	" 18(1)	Notice by Respondent of intention to rely upon preliminary objection.
6	" 19(1)	Summons to Parties by Registrar to settle Record.
7	" 24(l)(i)(*b*)	Affidavit of Service of Notice of Appeal.
8	" 24(3)	Notice to the parties of filing of Record and of setting down of Appeal for hearing.
9	" 25	Notice of Withdrawal of Appeal.
10	" 31(4)	Bond for Costs on Appeal.
11	" 37	Certificate of the Order of the Court.
12	" 41(3)	Notice of Taxation.

CIVIL FORM 1

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice of Appeal

Civil Appeal No. ..... of 20 .....

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

Take Notice that the (Plaintiff/Defendant) Appellant being dissatisfied with the decision/that part of the decision* more particularly stated in paragraph 2 hereof of the ..... (Court) contained in the judgement/order* of .....

dated the ..... day of ..... , 20.....

doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses including his or her own of the persons directly affected by the appeal are those set out in paragraph 5.

2. (Insert here whole or part of decision complained of)
3. Grounds of Appeal.
   (1) .....
   (2) .....
   (3) ..... etc.
4. (Insert here the relief sought from the Court of Appeal)
5. Persons directly affected by the appeal—
   Name *Address*
   (1) .....
   (2) .....
   (3) ..... etc.

4. (Insert here the relief sought from the Court of Appeal)
5. Persons directly affected by the appeal—
   Name *Address*
   (1) .....

(2) .....

(3) ..... etc.

Dated this ..... day of ..... , 20.....

.....

Appellant(s) or Solicitor for the Appellant(s)

* Strike out words inapplicable.

If appealing against the whole decision insert "Whole decision".

CIVIL FORM 2

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice of Motion for Special Leave to Appeal

Civil Appeal No. ..... of 20 .....

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

Take notice that the Court of Appeal at .....
will be moved on the ..... day of ....., 20 .....
at ..... o'clock in the forenoon or as soon thereafter as counsel can be heard on the hearing
of an application for special leave to appeal against the decision of the .....
(Court) given on the ..... day of ..... , 20.....

And further take notice that the grounds of this application are—

Dated this ..... day of ..... , 20.....

.....

Applicant or his or her Solicitor

To

The Registrar,

Court of Appeal

And† .....

* Strike out words inapplicable.

† Insert name of respondent.

CIVIL FORM 3

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Application by Respondent for Leave to Appeal

Civil Appeal No. ..... of 20 .....

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

Take notice that upon the hearing of the application for leave to appeal the Respondent intends to apply for leave to appeal and to contend that the decision of the (Court below) dated the ..... day of ..... , 20....., should be varied as follows†—

.....

And take notice that the grounds on which the Respondent intends to rely are as follows—

1. .....
2. .....
3. ..... etc.

Dated this ..... day of ..... , 20.....

.....

Respondent(s)

To ..... (Appellant)

and to the Registrar.

* Strike out words inapplicable.

† State the variation which will be asked for.

CIVIL FORM 4

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice by Respondent of Intention to Contend that Decision of Court Below be Varied

Civil Appeal No. ..... of 20 .....

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

Take notice that upon the hearing of the above appeal the Respondent herein intends to contend that the decision of the (Court below) dated the ..... day of ..... 20..... should be varied as follows†—

.....

And take notice that the grounds on which the Respondent intends to rely are as follows—

1. .....
2. .....
3. ..... etc.

Dated this ..... day of ..... , 20.....

.....

Respondent(s)

To ..... (Appellant)

and to the Registrar.

* Strike out words inapplicable.

† State the variation which will be asked for.

CIVIL FORM 5

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice by Respondent of Intention to Rely upon Preliminary Objection

Civil Appeal No. ..... of 20 .....

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

Take notice that the Respondent herein named intends, at the hearing of this appeal, to rely upon the following preliminary objection notice whereof is hereby given to you, viz.—

And take notice that the grounds of the said objection are as follows—

1. .....
2. .....
3. ..... etc.

Dated this ..... day of ..... , 20.....

.....

(Plaintiff/Defendant) Respondent(s)*

To the above-named (Plaintiff/Defendant)* Appellant(s).

* Strike out words inapplicable.

CIVIL FORM 6

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Summons to Parties by Registrar to Settle Record

Civil Appeal No. ..... of 20 .....

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

Take notice that all parties concerned are required to attend before me at the Registry of the Supreme Court ..... on ..... the ..... day of ..... , 20..... at the hour of ..... in the ..... noon to settle the record of appeal herein.

Dated this ..... day of ..... , 20.....

.....

Registrar

To: .....

* Strike out words inapplicable.

CIVIL FORM 7

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Affidavit of Service of Notice of Appeal

Civil Appeal No. ..... of 20 .....

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

I, ... of .....

..... (occupation) do make oath and say—

That notice of appeal in the above appeal filed herein on the .....
day of ..... , 20..... was duly served upon .....
the Respondent herein (here state mode of service) .....
on the ..... day of ....., 20..... in accordance
with the Court of Appeal Rules.

Sworn to at the .....
(address)
on the ..... day of
..... , 20.....

Before me .....

Commissioner of Affidavits

This affidavit is filed on behalf of .....

* Strike out words inapplicable.

CIVIL FORM 8

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice to the Respondent of Filing of Record and of Setting down of Appeal for Hearing

Civil Appeal No. ..... of 20 .....

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

Take notice that the above named Appellant has duly filed the record and documents required to be filed pursuant to rule 24(1) of the Court of Appeal Rules, and that I have set down the appeal for hearing before the Court of Appeal.

Dated this ..... day of ..... , 20.....

.....

Registrar

To the Appellant, Respondent, etc.

* Strike out words inapplicable.

CIVIL FORM 9

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice of Withdrawal of Appeal

[Rule 25.]

Civil Appeal No. ..... of 20 .....

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

Take notice that the Appellant(s) herein intend(s) and doth hereby wholly withdraw his/their appeal against (all) the Respondent(s) in the above-mentioned appeal.

Dated this ..... day of ..... , 20.....

.....

Appellant(s)

.....

Registrar of the Court of Appeal

And to ..... Respondent(s) and the Registrar of the Court below.

* Strike out words inapplicable.

CIVIL FORM 10

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Bond for Costs on Appeal

[Rule 31(4).]

Civil Appeal No. ..... of 20 .....

Know all men, by these presents, that we .....
..... of .....
and ..... of .....
and ..... of .....
are jointly and severally held and bound to .....
..... of ..... in the sum
of ..... dollars of lawful money to be paid
to the said ..... his or her executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself or herself, in the whole our and every of our heirs, executors and administrators, firmly by these presents.

(Signed) ..... (Appellant)

..... (Surety)

..... (Surety)

Dated the ..... day of ..... , 20.....

Whereas a suit is now pending in the Court at ..... wherein the above-bounden
..... is ..... and the said .....
..... is .....

And whereas a judgement was given by the Court below therein, on the .....
day of ..... for the said .....
and the said ..... has filed Notice of Appeal from the said judgement.

And whereas it is by law provided that the party appealing shall give security to the satisfaction of the Registrar of the Court below for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant.

And whereas the above-named ..... and .....
at the request of the said ..... have agreed to enter into this obligation for the purposes aforesaid.

Now the condition of this obligation is such, that if the said .....
shall duly prosecute the appeal and if the above-bounden .....
and ..... any or either of them shall pay any costs which may be ordered to be paid by the appellant this obligation shall be void, otherwise remain in full force.

Signed, sealed and delivered in the presence of— ..... (L.S.)

..... (L.S.)

..... (L.S.)

CIVIL FORM 11

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Certificate of the Order of the Court

[Rule 37.]

Civil Appeal No. ..... of 20 .....

Appeal from the ..... in the
State of ..... dated the .....
day of ....., 20 .....

..... Motion

..... Appeal No.

..... (Plaintiff/Defendant)* Appellant(s)

v

..... (Plaintiff/Defendant)* Respondent(s)

.....

This appeal coming on for hearing on the ..... day of ....., 20 ..... before ..... in the presence of ..... for the Appellant(s) and ..... for the Respondent(s).

I hereby certify that an Order was made as follows—

Given under my hand and the Seal of the Court this ..... day of ....., 20 .....

.....

Registrar

* Strike out words inapplicable.

CIVIL FORM 12

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice of Taxation

Civil Appeal No. ..... of 20 .....

Between

..... (Plaintiff/Defendant)* Appellant(s)

and

..... (Plaintiff/Defendant)* Respondent(s)

Take notice that the Bill of Costs of the ..... herein, will be taxed on ..... the ..... day of ..... , 20..... , at the hour of ..... o'clock in the ..... noon.

Your absence notwithstanding.

Dated at ..... this ..... day of ..... , 20.....

.....

Solicitor

To the above-named Appellant/Respondent of .....

* Strike out words inapplicable.

Appendix B

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

PART I

Fees of Court in Civil Appeals from the High Court

	$ c.
1. On filing notice of appeal against a final judgement or decision, entering the appeal for hearing and on judgement thereunder an inclusive fee of	12.00
2. On filing respondent's notice of intention to contend that decision of court below be varied	5.00
3. For entering a special case, case stated, point of law or demurrer for argument, entering same for hearing and on judgement thereunder an inclusive fee of	7.00
4. On filing notice of appeal against an interlocutory order or decision, entering the appeal for hearing and on judgement thereunder an inclusive fee of	7.00
5. On making any application not otherwise specifically provided for, and for filing judgement or order thereunder an inclusive fee of	5.00
6. On filing bond to secure costs of appeal	2.50
7. On filing motion for leave to appeal to the Judicial Committee of the Privy Council	2.50
8. On filing every bond where the appeal is to the Judicial Committee of the Privy Council	2.50
9. On filing order for leave to appeal to the Judicial Committee of the Privy Council ..	2.50
10. On appointment to settle record on appeal to the Judicial Committee of the Privy Council	1.25
11. On sealing record on appeal to the Judicial Committee of the Privy Council	2.50
12. On filing every document or exhibit for which no special fee is provided	.60
13. On taxation of bill of costs including certificate	2.50
14. On certifying any document as an office copy	1.25
15. If in a foreign language, the actual cost of making and examining the copy, and, in addition, for marking and sealing the copy as an office copy	1.25
16. For an office copy of a plan, map, section, drawing, photograph or diagram the actual cost of making and examining the copy, and, in addition, for marking and sealing the copy as an office copy	1.25
17. For a copy of reasons for judgement per folio of 100 words	.15
But with a minimum fee, for one set of reasons, of	1.25
And with a maximum fee, for one set of reasons, of	25.00
18. For a copy of a report of the Registrar per folio of 100 words	.15
19. On perusing and allowing by a Judge or Registrar of any bond	1.25
20. On sealing a writ of subpoena not exceeding three persons	1.25
21. For a certificate of the Registrar for which no special fee is provided	1.25
22. On obtaining appointment for examination of a witness before an officer of the Court or other person	1.25
23. In respect of every witness examined by an officer or other person in his or her office, for each hour or part of an hour	1.25
24. For an examination of witnesses away from the office of the examiner, the reasonable travelling and other expenses in addition to the fee chargeable under Item 23	
25. For making every search	1.00
26. For an office copy of any document filed in the Registry, per folio of 100 words, for the first folio	.25
For every other folio or part thereof	.15
27. On office copies of any document to be included in record—including judges'	.25

	notes of evidence, for the first folio to consist of 100 words	
	For every other folio or part thereof	.15
28.	On certifying any document as an office copy	1.25
	The fees to be taken in the offices of the Sheriff or Bailiff are the same as those which are required to be taken by the Sheriff or Bailiff of the State in which the appeal arises in respect of a like proceeding or act in a cause pending in the High Court.	

PART II

Legal Practitioners' Fees in Civil Appeals

Schedule of Allowances

(Save in respect of item 19, a folio shall consist of one hundred words (or figures) or part thereof; four figures to count as a word.)

Instructions

		$ c.
1.	Instructions to file notice of appeal (including grounds of appeal)	12.00
2.	Instructions to file notice of cross appeal (including grounds of appeal)	12.00
3.	Instructions to file any application relative to an appeal	7.00
4.	Instructions to appear for the respondent to any application to an appeal	7.00
5.	Instructions to file case stated or special case having regard to the amount involved in the appeal, its nature, importance and difficulty, the interest of the parties, the other costs to be allowed, the general conduct of the proceedings and all other relevant circumstances	12.00
6.	Instructions for affidavit and for any other interlocutory matter, the charge for which is not specified in these scales	3.00
7.	Instructions for brief to counsel to advise or to settle pleadings. This will be allowed where justifiable under the circumstances of the particular case	7.00
8.	Drawing notice of appeal including grounds of appeal	per folio for the first 10 folios, $1; per folio for the next 10 folios 75c, and thereafter per folio 36c.
9.	Drawing notice of motion	
10.	Drawing a case stated	
11.	Drawing notice of cross appeal, including grounds of appeal	
12.	Drawing any order	(The minimum charge under these items shall be $7.00 save that the minimum shall not apply in the case of verifying affidavits of service and other formal affidavits.)
13.	Drawing any petition, affidavit, any notice except a formal notice, summons, further particulars or request for further particulars	
14.	Drawing any writs of execution, arrest or attachment and any other important document not otherwise provided for	
15.	Drawing index of record or any index to brief	.75
16.	Drafting instructions to Counsel with brief on any matter	per folio
17.	Drawing any subpoena or any formal notice each document	1.50
18.	Drafting a letter or telegram	2.00
	If more than one folio, for each additional folio	.40
	Copy to keep, where necessary, per folio	.15
19.	Drawing Bill of Costs per folio	.75

Note.—A folio is to comprise 72 words, every figure comprised in a column or authorised to be used being counted as one word.	
Copying	
20. Copies of the record on appeal, if prepared by the appellant's attorney or solicitor, such fee for the first copy and such fee for additional copies as the Registrar may consider reasonable.	
(If not prepared by the appellant's attorney or solicitor the reasonable cost of the record as a disbursement).	
21. Copies of any matter required for the Court, for counsel, for the attorney or for service or for any other necessary purpose for the first copy per folio	.25
For each additional copy per folio	.15
Attendances	
22. At the Registry (clerk's attendance)	2.00
23. On the Registrar in chambers at the rate per hour or part thereof (to be increased at the discretion of the Taxing Officer)	5.50
24. On an opposite party, if necessary and proper, the like as under the preceding items	
25. On a Judge in chambers—at the rate per hour or part thereof (to be increased at the discretion of the Taxing Officer)	8.50
26. In Court where matter listed but not reached, on any day for each hour or part thereof necessarily and justifiably spent	5.50
27. Attendance on receipt of letter or telegram	1.50
28. Attendance on receipt of formal acknowledgement	1.00
29. Other merely formal attendances including attendances to file, to swear affidavits or to bespeak copies	2.00
30. Attendances not purely formal and including attendances on witnesses and others to obtain statements and other materials for brief on trial or for use at trial but not including attendances to represent parties at hearing in Court or chambers; such fee as may be reasonable according to circumstances with a minimum fee of in respect of each hour or part thereof	7.00
31. Attendance to inspect or produce pursuant to notice per hour or part thereof	5.50
32. Attendance before a Registrar in chambers on taxation matters for each hour or part thereof	5.50
33. Attending at hearing as solicitor of an appeal or any other matter in Court for each day as may be necessary such sum as may, in the opinion of the Taxing Officer be reasonable not being less than	17.00
34. Attending Court to hear reserved judgement per hour	5.50
35. Attendance upon a shorthand writer to obtain copy of transcript for appellate purposes	3.00
36. Attending to issue writ of execution	3.00
37. Any attendance not specifically provided for	2.00
38. Journeys necessarily undertaken. An allowance for the time necessarily occupied on the journey and, in the case of a journey to attend the trial, to include an allowance for the time which, in the opinion of the Taxing Officer, a legal representative is necessarily detained at the place of trial. Such sum per day, ncluding Sundays as the Taxing Officer may think reasonable, not to exceed	28.00
Disbursements for fares, hotel and transport expenses are also to be allowed, but not for normal out of pocket expenses other than board and lodging. The disbursement allowed for travelling by motor car shall be at the rate of 25c. per mile provided the total distance travelled exceeds three miles. For journeys under three miles no allowance shall be made for travelling by motor car.	
39. Agency correspondence if shown to the satisfaction of the Taxing Officer that	

such correspondence has been necessary and reasonable. Such sums as would be allowed under items 18 or 40	
40. Letters, messages, etc. Such fee including letters not otherwise allowed between party and party as the Taxing Officer may consider reasonable not exceeding	3.00
Perusals	
41. Perusals of any necessary documents for the first 10 folios—per folio	.50
For each subsequent folio	.15
Disbursements	
42. All Court fees, counsel's fees and other fees and payments which, in the opinion of the Taxing Officer have been properly paid, shall be allowed.	
Maps, Plans and Models	
43. The Taxing Officer may allow such fees for maps, plans and models for use at the trial or hearing as he or she considers reasonable.	
Marshal, Sheriff and Bailiff's Fees	
44. There shall be paid to Sheriffs, Marshals and Bailiffs, such fees and travelling and subsistence allowances as are by rules of court or other law prescribed for the service or execution of any summons, warrant, writ, or other process of the High Court in the State in which the execution or service is sought to be levied or effected.	

Appendix C

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

Criminal Forms

Index to Forms

Form No.	*Appeal Rules No.*	*Description of Form*
1	Rule 42	Notice of appeal or application for leave to appeal against conviction or sentence.
2	" 42	Notice of application for extension of time within which to appeal.
3	" 43	Judge's certificate.
4	" 48(5)	Declaration verifying transcript of shorthand notes.
5	" 54	Notification to appellant of a single Judge's decision.
6	" 54	Notice of appeal by appellant from refusal of a single Judge.
7	" 56(3)	Recognisance of appellant sentenced to payment of a fine.
8	" 56(3)	Recognisance of sureties for appellant sentenced to a fine.
9	" 56(4)	Notice of breach of his or her recognisances to appellant sentenced to a fine.
10	" 56(4)	Notice to surety for appellant of estreat of recognisances.
11	" 58(3)	Recognisance of bail of appellant convicted on indictment.
12	" 58(3)	Recognisance of appellant's sureties.
13	" 58(5)	Notice to Officer in Charge of Prisons to release

			appellant on bail.
14	"	58(6) and (8)	Warrant for arrest of appellant on bail.
15	"	59(1)	Notice of abandonment.
16	"	59(2)	Notification of abandonment of appeal.
17	"	62(1)	Notification to appellant of result of application.
18	"	62(1)	Notice to authorities of result of application.
19	"	62(1)	Notification to appellant of the result of his or her appeal.
20	"	62(1) and 63(1)	Notice to authorities of result of appeal.
21	"	66(1)	Order to witness to attend court for examination.
22	"	66(2)	Appellant's application for further witness.
23	"	66(5)	Notice to witness to attend before an examiner.
24	"	66(7)	Caption for deposition of witness examined before examiner.

CRIMINAL FORM 1

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice of Appeal or Application for Leave to Appeal against Conviction or Sentence

[Rule 42.]

GRENADA

Criminal Appeal No. ..... of 20.....

To the Registrar of the Court of Appeal.

Name of Appellant .....

Convicted at the Assizes held at .....

.....

Offence of which convicted .....

Sentence .....

Date when convicted .....

Date when sentence passed .....

Name of Prison .....

I, the above-named appellant, hereby give you notice that I desire to appeal to the Court of Appeal against my (4) .....

..... on the grounds hereinafter set forth on page 2 of this notice.

(5) .....

Appellant

Dated this (6) ..... day of ..... , 20.....

Questions (7)

1. Did the judge before whom you were tried grant you a certificate that it was a fit case for appeal? .....
2. Do you desire the Court of Appeal to assign you legal aid? .....

   If your answer to this question is "Yes" then answer the following questions—

(*a*) What was your occupation and what wages, salary or income were you receiving before your conviction? .....

(*b*) Have you any means to enable you to obtain legal aid for yourself? .....

3. Is any solicitor now acting for you? .....

   If so, give his or her name and address .....

   .....

   .....

4. Do you desire to be present when the Court considers your appeal? (8) .....

5. Do you desire to apply for leave to call any witnesses on your appeal? .....

   If your answer to this question is "Yes", you must also fill in Form 22 and send it with this notice.

Grounds of Appeal or Application (*9*)

Note.—If one of the grounds set out is "misdirection" by the judge, particulars of such alleged misdirection must be set out in this notice.

The appellant can also, if he or she wishes, set out, in addition to his or her above reasons, his or her case and argument fully—

(1) e.g. Larceny Forgery.

(2) Set out the actual date upon which the appellant was convicted and sentenced.

(3) If not in custody here set out appellant's address in full.

(4) If the appellant wishes to appeal against conviction he or she must write the word "conviction". If he or she wishes to appeal against sentence he or she must write the word "sentence". If he or she wishes to appeal against both conviction and sentence he or she must write the words "conviction" and sentence".

(5) This notice must be signed by the appellant. If he or she cannot write he or she must affix his or her mark in the presence of a witness. The name and address of such attesting witness must be given.

(6) If this notice is signed more than fourteen days after sentence the appellant must also fill in Form 2 and send it with this notice.

(7) The appellant must answer each of these questions.

(8) An appellant is not entitled to be present on the hearing of an application for leave to appeal.

(9) These must be filled in before the notice is sent to the Registrar. The appellant must here set out the grounds or reasons he or she alleges why his or her conviction should be quashed or his or her sentence reduced.

CRIMINAL FORM 2

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice of Application for Extension of the time within which to Appeal

[Rule 42.]

GRENADA

Criminal Appeal No. ..... of 20.....

To the Registrar of the Court of Appeal

I, ... having been convicted of the offence of .....[1] in the High Court of Justice, Criminal Assizes, held at ..... on the .... day of ....., 20....., and being now a prisoner in Her Majesty's Prison at ..... *(or now living at .....), give you notice that I hereby apply to the Court for an extension of time within which I may give Notice of Appeal (or Notice of Application for leave to Appeal) on the following grounds—

.....[2]

(Signed) (or mark) .....

Applicant

Signature and address of witness attesting mark

Dated this ..... day of ..... , 20.....

Notes.—

You are required to send to the Registrar of the Court, duly filled up Form 1, together with this Notice.

(1) Here state the offence e.g., larceny, murder, forgery, etc.

* When applicant for any reason not in custody.

(2) Here set out clearly and concisely the reasons for the delay in giving such notice and the grounds on which you submit the Court should extend the time.

CRIMINAL FORM 3

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Judge's Certificate

[Rule 43.]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

In the High Court of Justice, Criminal Assizes, holden at .....

.....

Whereas the said ..... was tried and convicted before me, the undersigned, in the said Court on the ..... day of ..... on a charge of .....

I do hereby certify that the case is a fit case for an appeal by the said .....

.....

to the Court upon the following grounds—

.....

.....

Judge

Dated this ..... day of ..... , 20.....

State shortly the offence, e.g., larceny, murder, forgery, etc.

Here specify in general terms the grounds on which certificate granted

---

CRIMINAL FORM 4

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Declaration Verifying Transcript of Shorthand Notes

[Rule 48(5).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

I, ... of .....

do solemnly and sincerely declare that, having been required by the Registrar of the High Court to furnish him or her a transcript of the shorthand note relating to the trial (or other proceeding) in relation of .....

..... which shorthand note is now produced and shown to me marked ..... and purporting to have been signed and certified by me, I have made a correct and complete transcript thereof to the best of my skill and ability in pursuance of the said requirement, which said transcript is now shown to me marked "B". And I make this declaration conscientiously believing the same to be true and I am aware that if there is any statement in this declaration which is false in fact, which I know or believe to be false or do not believe to be true, I am liable to fine and imprisonment.

Dated this ..... date of ..... , 20.....

.....

Signature

CRIMINAL FORM 5

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notification to Appellant of a Single Judge's Decision

[Rule 54.]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

I hereby give you notice that a Judge of the Court of Appeal having considered your application(s) for—

(*a*) Leave to appeal;

(*b*) Extension of time within which notice of appeal or of application for leave to appeal may be given;

(*c*) Permission to be present during the hearing of any proceedings in your appeal;

(*d*) Admission to bail;

has refused the application(s) marked ..... (and has granted your application(s) marked .....).

If you desire to have the above-mentioned application(s), which have been refused, determined by the Court, you are required to fill up the enclosed form and return it to me forthwith.

Dated this ..... day of ..... , 20.....

.....

Registrar of the Court of Appeal

To the above-named.

CRIMINAL FORM 6

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice of Appeal by Appellant from Refusal of a Single Judge

[Rule 54.]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To the Registrar of the Court of Appeal

I, ... having received your notification that my application(s) for—

(*a*) Leave to appeal;

(*b*) Extension of the time within which notice of appeal or application for leave to appeal may be given;

(*c*) Permission to me to be present during the hearing of any proceedings in my appeal;

(*d*) Admission to bail;

has/have been refused;

Do Hereby Give You Notice that I desire that the said application(s) shall be considered and determined by the Court (and that as I am not legally represented I desire to be present at the determination of my said application(s)*.

(Signed)
(or mark) .....

Appellant

Signature and address of witness attesting mark.

.....

Dated this ..... day of ..... , 20.....

If you desire to state any reasons in addition to those set out by you in your original notice upon which you submit that the Court shall grant your said application(s) you may do so in the space below.

* Strike out if you do not desire to be present.

CRIMINAL FORM 7

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Recognisance of Appellant Sentenced to Payment of a Fine

[Rule 56(3).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To wit: Be it remembered that whereas ..... of .....
was on the ..... day of ..... , 20.....
convicted of ..... and was thereupon sentenced to pay the sum of $ ..... as a fine for his or her said offence by the High Court (Criminal Jurisdiction) at ..... and has intimated to the said Court that he or she desires to appeal against his or her said conviction on a question of law alone (or upon a certificate of the Judge of the said Court that his or her is a fit case for appeal).

And whereas the said Court considers that the said Appellant may, in lieu of payment at and upon his or her said conviction of the said sum, be ordered to enter into recognisance of bail himself or herself in the sum of $ ..... and with ..... sureties, each in the sum of $ ..... to prosecute his or her said appeal before the Court of Appeal.

This said ..... doth hereby acknowledge himself or herself to owe to Our Lady the Queen the said sum of $ ..... of good and lawful money, to be made and levied of his or her goods and chattels, land and tenements, to the use of Our said Lady the Queen, her heirs and successors, if he or she the said ..... fail in the condition endorsed.

Taken and acknowledged this ..... day of ..... , 20.....,
at the said Court.

Before me

.....

Registrar of the High Court

Condition

The condition of the within written recognisance is such that if the said .....
..... of .....
..... shall personally appear and be present at and before the Court of Appeal at each and every hearing of his or her appeal to such Court and at the final determination thereof and then and there prosecute his or her said appeal and abide by the judgement of such Court, and not depart or be absent from such Court at any such hearing without leave of such Court, and pay the said sum of $ .....
or such sum as such Court may order to the
Registrar thereof, then this recognisance shall be void, otherwise of full force and effect.

.....

Appellant

CRIMINAL FORM 8

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Recognisance of Sureties for Appellant Sentenced to a Fine

[Rule 56(3).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To Wit: Be it remembered that on the ..... day of .... , 20..... of ..... and ..... personally came before the High Court (Criminal Jurisdiction) at ..... and severally acknowledged themselves to owe to Our Lady the Queen the several sums following that is to say: the said ..... the sum of $ ..... and the said ..... the sum of $ ..... of good and lawful the said Court fail in the condition hereon endorsed.

Taken and acknowledged before the said Court on the day and year first above-mentioned.

.....

Registrar of the High Court

Condition

The condition of the within written recognisance is such that whereas the said ..... having been convicted of ..... and having been sentenced to pay a fine of $ ..... for his or her said offence, and having now intimated his desire to appeal on a question of law alone (or with the certificate of the Judge of this Court) to the Court of Appeal against the said conviction, and having, in lieu of payment at and upon his or her said conviction of the said sum of $ ..... been ordered to enter into recognisance of bail himself or herself in the sum of $ ..... and with ..... sureties in the sum of $ ..... if the said ..... shall personally appear and be present at and before the Court of Appeal at each and every hearing of his or her appeal to such Court and at the final determination thereof, and then and there prosecute his or her said appeal and abide by the judgement of such Court, and not depart or be absent from such Court at any such hearing without the leave of such Court, then this recognisance shall be void, otherwise of full force and effect.

.....

Surety

.....

Surety

CRIMINAL FORM 9

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice of Breach of his or her Recognisances to Appellant Sentenced to a Fine

[Rule 56(4).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To the above-named ..... Appellant

Whereas you were convicted on the ..... day of .....

20....., of the offence of ..... and were sentenced to the payment of $..... and in default of such payment with ..... sureties in the sum of ..... each, to prosecute your appeal, and whereas fourteen days have elapsed since your said conviction, and no notice of appeal has been served by you, now I hereby give you notice that unless you attend at the sitting of the Court to be holden on the ..... day of ....., 20 ....., and then show good cause to the contrary, the Court may order an estreat of your recognisances and those of your sureties, or may otherwise deal with you according to law.

.....

Registrar of the Court of Appeal

CRIMINAL FORM 10

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice to Surety for Appellant of Estreat of Recognisances

[Rule 56(4).]

GRENADA

Criminal Appeal No. ..... of 20.....

To .....

of .....

Whereas you the above-named, became duly bound in recognisances as surety, for that the said .....having been convicted of ..... and for his or her said offence fined the sum of $..... should duly prosecute an appeal in relation to the said conviction before the Court, and whereas the said .... has not so prosecuted his or her appeal, now I hereby give you notice that at the sitting of the Court on ..... next your recognisances may be ordered to be estreated, unless you then show good cause to the contrary.

.....

Registrar of the Court of Appeal

CRIMINAL FORM 11

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Recognisance of Bail of Appellant Convicted on Indictment

[Rule 58(3).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

Be it remembered that whereas ..... was convicted of ..... on the ..... day of .....

20..... (and was thereupon sentenced to .....)
and now is in lawful custody in Her Majesty's Prison at .....
and has duly appealed against his or her conviction (and sentence) to the Court, and has applied for bail pending the determination of his or her appeal, and has been granted bail on entering into his or her own recognisances in the sum of .....
with .....
sureties, each in the sum of ..... the said .....
personally cometh before me the undersigned, being the .....
and acknowledges himself or herself to owe to Our Lady the Queen the said sum of .....
of good and lawful money, to be made and levied of his or her goods and chattels, lands and tenements to the use of Our said Lady the Queen, her heirs and successors, if he or she the said .... fail in the condition endorsed.

Taken and acknowledged this ..... day of .....
20..... at .....

Before me .....
Office: *Magistrate, etc.*

Condition

The condition of the within written recognisance is such that if the said .....
shall personally appear and surrender himself or herself at and before the Court of Appeal at each and every hearing of his or her appeal to such Court and at the final determination thereof and then and there abide by the judgement of such Court and not depart or be absent from such Court at any such hearing without the leave of such Court, and in the meantime not depart from his or her usual place of abode without the leave of such Court, then this recognisance shall be void, otherwise of full force and effect.

The following to be filled up by the Appellant and signed by him or her—.....
.....

When released on bail my residence, to which any Notices, etc. are to be addressed, will be as follows—

.....

.....
Appellant

CRIMINAL FORM 12

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Recognisance of Appellant's Sureties

[Rule 58(3).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

Be it remembered that on this ..... day of .....
20..... and ..... of .....
personally came before me the undersigned being the ..... of ..... and severally acknowledged themselves to owe to Our Lady the Queen the several sums following, that is to say, the said .....
..... the sum of $ ..... and the said .....
the sum of $ ..... of good and lawful money, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of Our said Lady the Queen, her heirs and successors, if .....

now in lawful custody in Her Majesty's Prison at ..... fail in the condition hereon endorsed.

Taken and acknowledged before me the undersigned, the day and year first above-mentioned.

.....

Magistrate, etc

Condition

The condition of the within written recognisance is such that whereas the said .... having been convicted of ..... and now in such lawful custody as before mentioned (under a sentence of .... for such offence), has duly appealed to the Court of Appeal against his said conviction (and sentence) and having applied to such Court for bail, pending the determination of his or her said appeal, has been granted bail on his or her entering into recognisances in the sum of $ .... if the said ..... shall personally appear and surrender himself or herself at and before such Court at each and every hearing of his or her said appeal to such Court and at the final determination thereof, and then and there abide by the judgement of such Court, and not depart or be absent from such Court at any such hearing without the leave of such Court, and in the meantime not depart from his or her usual place of abode without the leave of such Court, then this recognisance shall be void, otherwise of full force and effect.

.....

Surety

.....

Surety

CRIMINAL FORM 13

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice to Officer in Charge of Prisons to Release Appellant on Bail

[Rule 58(3).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To the Officer in Charge of Prisons

Whereas ..... was convicted of ..... on the ..... day of ....., 20 ..... (and was thereupon sentenced to .....) and now is in lawful custody in Her Majesty's Prison at .....

And whereas ..... having duly appealed to the Court of Appeal sureties each in the sum of $ .....), in the forms provided under these Rules.

And whereas I, the Deputy Registrar of the said Court of Appeal, have been given to understand that the said ..... is now in your lawful custody in the said prison under the said conviction and sentence.

And whereas I have received a recognisance of the said .... and recognisances from ..... sureties for the said ..... and the said recognisances are in due form and in compliance with the order of the said Court of Appeal admitting the said .....

..... to bail.

Now I do give you notice that if the said ..... do remain in your custody under the said conviction (and sentence) and for no other cause you shall on receipt of this notice suffer him or her to go at large. And this notice shall be your authority in that behalf.

Dated this ..... day of ..... , 20.....

.....

Deputy Registrar of the Court of Appeal

CRIMINAL FORM 14

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Warrant for Arrest of Appellant on Bail

[Rule 58(6) and (8).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To the Constables of the Police Force, and to the (*a*) .....
of Her Majesty's Prison at .....

Whereas ..... an Appellant in the Court has been released on bail, and it has now been ordered by the said Court that a Warrant be issued for the apprehension of the said .....

These are therefore to command you the said Constables forthwith to apprehend the said .... and to bring him or her to the (*a*) ..... of the said prison and there deliver him or her with this warrant into the custody of the said (*a*) ..... and you the said (*a*) ..... are hereby required to receive the said ..... into your custody in the said prison and there safely to keep him or her until further order of the said Court.

.....

Presiding Judge

Dated this ..... day of ..... , 20.....

(*a*) State Office Head of Prisons

(*a*) State Office
Head of Prisons

[Editorial Note: Numbering of references as per *Gazette*.]

CRIMINAL FORM 15

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice of Abandonment

[Rule 59(1).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To the Registrar of the Court of Appeal.

I, ... having been convicted of .....
in the High Court (Criminal Jurisdiction) at .....
and having been desirous of appealing to the Court against my said conviction (or the sentence of ..... passed upon me on my said conviction) do hereby give you notice that I do not intend further to prosecute my appeal, but that I hereby abandon all further proceedings in regard thereto as from the date hereof.

(Signed) .....
(or mark)

Signature and address of witness attesting mark.

.....

Dated this ..... day of ..... , 20.....

CRIMINAL FORM 16

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notification of Abandonment of Appeal

[Rule 59(2).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To the Director of Public Prosecutions.

*This is to give you notice that I have this day received from the above-named .....
..... a notice of abandonment of all proceedings in regard to his or her appeal to the Court.

The said notice is dated the ..... day of ..... , 20.....

By rule 59(1) of the Court of Appeal Rules, upon the notice of abandonment being given the appeal shall be deemed to have been dismissed by the Court.

Dated this ..... day of ..... , 20.....

.....

Registrar of the Court of Appeal

* Send copies addressed to—

(*a*) The Governor or the Governor-General, if the conviction involved a sentence of death,

(*b*) Any other respondent,

(*c*) The Prison Authority, and

(*d*) The Registrar of the court below.

CRIMINAL FORM 17

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notification to Appellant of Result of Application

[Rule 62(1).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To the above-named Appellant.

This is to give you notice that the Court has considered the matter of your application for—

(*a*) leave to appeal to the said Court;

(*b*) leave to extend the time within which you may give notice of appeal or of application for leave to appeal;

(*c*) permission to be present during the proceedings in your appeal;

(*d*) admission to bail;

(*e*) insert here nature of any other application that may have been made;

and has finally determined the same and has this day given judgement to the effect following—

.....

.....

Registrar of the Court of Appeal

Dated this ..... day of ..... , 20.....

CRIMINAL FORM 18

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice to Authorities of Result of Application

[Rule 62(1).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To the Registrar of the High Court*

To .....

This is to give you notice that the above-mentioned having applied for—

(*a*) leave to appeal to the said Court;

(*b*) leave to extend the time within which he or she may give notice of appeal or of application for leave to appeal;

(*c*) permission to be present during the proceedings in his or her appeal;

(*d*) admission to bail;

(*e*) insert here nature of any other application that may have been made,

the Court has this day finally determined his or her said applications and has given judgement to the effect following—

.....

.....

Registrar of the Court of Appeal

* Send copies address to—

(*a*) The Governor or the Governor-General, if sentence of death has been passed,

(*b*) The Director of Public Prosecutions or other respondent, and

(*c*) The Prison Authority.

Here set out the decision of the Court

CRIMINAL FORM 19

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notification to Appellant of the Result of his or her Appeal

[Rule 62(1).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To the above-named Appellant.

This is to give you notice that the Court, having considered the matter of your appeal, has finally determined the same and has this day given judgement to the effect following:

.....

Registrar of the Court of Appeal

Dated this ..... day of ..... , 20.....

CRIMINAL FORM 20

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice to Authorities of Result of Appeal

[Rules 62(1) and 63(1).]

GRENADA

Criminal Appeal No. ..... of ..... , 20.....

The Queen v.

To the Registrar of the High Court*

To .....

This is to give you notice that the above-named having appealed against his or her conviction of the offence of .....
before the Court, and/or the sentence of .....
..... passed upon him or her for the offence of .....

by the High Court (Criminal Jurisdiction) at ..... the Court has finally determined the said appeal, and has this day given judgement therein to the effect following—

.....

.....

Registrar of the Court of Appeal

Dated this ..... day of ..... , 20.....

* Send copies addressed to—

(*a*) The Governor or the Governor-General, if sentence of death is involved.

(*b*) The Director of Public Prosecutions or other respondent.

(*c*) The Prison Authority.

CRIMINAL FORM 21

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Order to Witness to Attend Court for Examination

[Rule 66(1).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To .....

of .....

Whereas on good cause shown to the Court you have been ordered to attend and be examined as a witness before such Court upon the appeal of the above-named.

This is to give you notice to attend before the said Court at .....

on ..... the ..... day of .....

20..... at ..... o'clock in the ..... noon.

You are also required to have with you at the said time and place any books, papers or other things relating to the said appeal of which you may have had notice so to produce.

.....

Registrar of the Court of Appeal

Dated this ..... day of ..... , 20.....

CRIMINAL FORM 22

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Appellant's Application for further Witness

[Rule 66(2).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

I, ... having appealed to the Court, hereby request you to take notice that I desire that the said Court shall order the witnesses hereinafter specified to attend the Court and be examined on my behalf.

Signed.....
(or mark) *Appellant*

Signature and address of witness attesting mark.
.....

Dated this ..... day of ..... , 20.....

You are required to fill up the following and sign the same—

1. Names and addresses of witnesses.
2. Whether such witnesses have been examined at trial.
3. If not, state the reason why they were not so examined.
4. On what matters do you wish them to be examined on the appeal.

State shortly the evidence you think they can give.

CRIMINAL FORM 23

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Notice to Witness to Attend Before an Examiner

[Rules 66(5).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

To .....

of .....

Whereas on good cause shown to the Court you have been ordered to be examined as witness upon the appeal of the above-named, and your deposition to be taken for the use of the said Court.

This is to give you notice to attend at (*a*) .....

on the ..... day of ..... , 20.....

before (*b*) ..... at .....

o'clock in the ..... noon.

You are also required to have with you at the said time and place any books, papers or other things under your control or in your possession in any manner relating to the said appeal of which you may have had notice so to produce.

.....
Registrar of the Court of Appeal

Dated this ..... day of ..... , 20.....

(*a*) Specify place of examination.

(*b*) Fill in examiner's name.

CRIMINAL FORM 24

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

IN THE COURT OF APPEAL

Caption for Deposition of Witness Examined before Examiner

[Rules 66(7).]

GRENADA

Criminal Appeal No. ..... of 20.....

The Queen v.

The deposition (on oath) taken before me the undersigned, being an examiner duly appointed by the Court in that behalf of ..... of ..... and ..... of ..... witnesses, examined before me under an order of the said Court dated the ..... day of ..... , 20..... in the presence of the said ..... Appellant (or of his or her professional representative) and the Respondent at ..... on the ..... day of ..... 20..... which said Appellant (or his or her professional representative) and Respondent had full opportunity of asking questions of the said witnesses, to whom the depositions following were read by me before being signed by them the said witnesses respectively.

The deposition of ..... of ..... who (upon oath duly administered by me) said as follows—

.....

Appendix D

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

COURT OF APPEAL RULES

Fees of Court in Civil Appeals from Courts of Summary Jurisdiction

	$ c.
On entering an appeal	5.00
On filing every document or exhibit	0.25
On every judgement	5.00
On amending or adding to grounds of appeal by leave or direction of Court at the hearing	1.00
Provided that the Court shall have power to reduce or waive the fee	
On inspection of any document or judgement	0.25
On filing motion for re-entering appeal struck out	10.00
On office copies of any documents for the first folio of 100 words	0.25
For every other folio or part of a folio	0.15
Every taxation of bill of costs including certificate	2.50

Addendum

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

Text of Federal Supreme Court Regulations 21, 28, 35, 37

(*Note.—This Addendum does not form part of the Rules.*)

Reg. 21. Right of appeal in criminal cases

A person convicted on indictment in a superior court of a Territory on a date after this Part of these Regulations have effect in that Territory may appeal under this Part of these Regulations to the Federal Supreme Court—

(*a*) against his or her conviction on any ground of appeal which involves a question of law alone;

(*b*) with the leave of the Federal Supreme Court or upon the certificate of the judge who tried him or her that it is a fit case for appeal against his or her conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the Court or judge to be a sufficient ground of appeal; and

(*c*) with the leave of the Federal Supreme Court against the sentence passed on his or her conviction, unless the sentence is one fixed by law.

Reg. 28. Time for appealing

(1) Where a person convicted desires to appeal under this Part of these Regulations to the Federal Supreme Court, or to obtain the leave of that court to appeal, he or she shall give notice of appeal or notice of his or her application for leave to appeal in such manner as may be directed by rules of court within fourteen days of the date of conviction.

(2) Except in the case of a conviction involving sentence of death, the time, within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Federal Supreme Court.

Reg. 35. Duties of Registrar with respect to notices of appeal, etc.

(1) The Registrar shall take all necessary steps for obtaining a hearing under this Part of these Regulations of any appeal or application, notice of which is given to him or her under this Part, and shall obtain and lay before the Federal Supreme Court in proper form all documents, exhibits, and other things relating to the proceedings in the court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) If it appears to the Registrar that any notice of an appeal against a conviction, purporting to be on a ground of appeal which involves a question of law alone, does not show substantial ground of appeal, the Registrar may refer the appeal to the Court for summary determination, and, where the case is so referred, the Court may, if they consider that the appeal is frivolous and vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any persons to attend the hearing or to appear for the Crown thereon.

(3) Any documents, exhibits, or other things connected with the proceedings on the trial of any person on indictment, who, if convicted, is entitled or may be authorised to appeal under this Part of these Regulations, shall be kept in the custody of the court of trial in accordance with rules of court made for the purpose for such time as may be provided by the rules, and subject to such power as may be given by the rules for the conditional release of any such documents, exhibits, or other things from that custody.

(4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part of these Regulations to any person who demands the same, and to officers of courts, the Superintendents of Prisons or other officers in charge of prisons in each Territory and such other officers or persons as

he or she thinks fit, and the Superintendent or other officer in charge of prisons in each Territory shall cause those forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part and shall cause any such notice given by a prisoner in his or her custody to be forwarded on behalf of the prisoner to the Registrar.

(5) The Registrar shall report to the Federal Supreme Court or some judge thereof any case in which it appears to him or her that, although no application has been made for the purpose, a solicitor and counsel, or counsel only, ought to be assigned to an appellant under the powers given to the Court by this Part of these Regulations.

Reg. 37. Case stated or question of law reserved

(1) Where any person is convicted in a superior court of a Territory on indictment, the judge may state a case or reserve a question of law for the consideration of the Federal Supreme Court and the Federal Supreme Court shall consider and determine such case stated or question of law reserved and may either—

(*a*) confirm the judgement given upon the indictment;

(*b*) order that such judgement be set aside and quash the conviction and direct a judgement and verdict of acquittal to be entered;

(*c*) order that such judgement be set aside, and give instead thereof the judgement which ought to have been given at the trial;

(*d*) require the judge by whom such case has been stated or question has been reserved to amend such statement or question when specially entered on the record; or

(*e*) make such other order as justice requires.

(2) The Federal Supreme Court, when a case is stated or a question of law reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment and thereupon the same shall be amended accordingly.

Practice Direction

Court of Appeal (Skeleton Arguments)

With a view to speeding up the judicial process in the Court of Appeal, the President of the Court of Appeal with the concurrence of the other judges of the Court of Appeal issues the following Practice Direction effective from the 30th day of January, 1989.

[*Gazette* Vol. 107 No. 5.]

[30*th January*, 1989.]

(1) In Criminal Appeals—Counsel is required to reduce to typewritten form the submission to be made before the Court by way of skeleton arguments.

(2) These skeleton arguments must consist of points which should be numbered consecutively and should be as concise as possible.

(3) Each point should be followed by full reference to the material to which Counsel will refer in support of it, i.e. the relevant pages or passages in authorities, exhibits and transcripts.

(4) Counsel for the Appellant(s) shall not less than fourteen (14) days before the date fixed for the hearing of the Appeal—

(*a*) file four (4) legible copies of the skeleton arguments in the Registry of the Court of Appeal; and

(*b*) serve one copy thereof upon Counsel for the Respondent(s).

(5) Counsel for the Respondent(s) shall also reduce to typewritten form the submissions to be made in reply and shall not less than seven (7) days before the date fixed for the hearing of the Appeal—

(*a*) file four (4) legible copies of the skeleton arguments in the Registry of the Court of Appeal; and

(*b*) serve one copy thereof upon Counsel for the Appellant(s).

(6) This Direction may, in the discretion of the Court hearing the matter, be dispensed with at the time of such hearing.

Court Sittings Direction

[GN 52 of 1984.]

NOTICE

His Lordship the Chief Justice in accordance with the provisions of section 103(2) of the West Indies Associated States Supreme Court (Grenada) Act, 1971 (No. 17 of 1971), has given special directions that the High Court shall sit in the building at Richmond Hill in the parish of Saint George and State of Grenada which was formerly known as the Lions' Community Centre for the trial of criminal causes originating in Grenada.

Dated the 4th day of October, 1984.

DENIS R. M. LAMBERT

AG. Registrar, Supreme Court

Registrar's Office

St. George's

GRENADA

Eastern Caribbean Supreme Court (Prescribed Offices) Order

SRO 38 of 1967

ARRANGEMENT OF ORDERS

1. Citation.
2. Offices of Court of Appeal.
3. Commencement.

EASTERN CARIBBEAN SUPREME COURT (PRESCRIBED OFFICES) ORDER

By virtue and in exercise of the powers conferred upon him or her by section 12 of the West Indies Associated States Supreme Court Order, 1967 the Chief Justice,

with the concurrence of the Premiers of all the States, orders, and it is hereby ordered, as follows.

[SRO 38 of 1967.]

[24*th April*, 1967.]

1. Citation

This Order may be cited as the Eastern Caribbean Supreme Court (Prescribed Offices) Order.

2. Offices of Court of Appeal

The offices of the Court of Appeal shall be—

(*a*) Registrar, which shall be deemed to be included in the office of Chief Registrar;

(*b*) a sufficient number of Deputy Registrars;

(*c*) a sufficient number of clerks;

(*d*) a sufficient number of criers.

3. Commencement

This Order shall be deemed to have come into operation on the 24th day of April, 1967.

Judges of The Supreme Court – Terms and Conditions of Service (Sick Leave) Regulations

SRO 28 of 1969

[16*th August*, 1969.]

(1) A Judge may be allowed sick leave on full pay for an aggregate of not more than twenty-eight days in any calendar year, subject to the submission of a medical certificate for any period of continuous absence exceeding two days.

(2) If there is a reasonable prospect of eventual recovery and subject to the submission of medical evidence, sick leave may be granted on full pay up to a maximum of one hundred and eighty days during any period of twelve months; sick leave in excess of one hundred and eighty days may be granted on half pay, but more than an overall maximum of three hundred and sixty-five days sick leave shall not be granted in any period of four years:

Provided that in special cases the Judicial and Legal Services Commission may in its discretion grant additional sick leave without pay.

(3) Where prolonged sick leave is necessary the Judge may be required to attend before a Medical Board.

(4) Any period of illness occurring during vacation leave shall be counted against vacation leave and in such circumstances sick leave shall not be granted to a Judge until he or she has exhausted the vacation leave for which he or she is eligible.

(5) Sundays and Public Holidays occurring within a period of sick leave are reckoned as part of that leave but a Sunday or Public Holiday occurring at the beginning or the end of the period of sick leave is not reckoned as leave.

(6) Sick leave up to twenty-eight days may be granted by the Chief Justice and in excess of twenty-eight days by the Judicial and Legal Services Commission.

(7) Absence on sick leave, but not exceeding one hundred and eighty days in any period of twelve months, shall for the purposes of calculating eligibility for vacation leave be deemed to be resident service.

Judges' Rules

GN 129 of 1989

JUDGES' RULES

IN THE HIGH COURT (CRIMINAL JURISDICTION)

JUDGES' RULES AND OTHER ADMINISTRATIVE DIRECTIONS (GRENADA)

[GN 129 of 1989.]

[20*th December*, 1989.]

1. When a police officer is trying to discover whether, or by whom, an offence has been committed he or she is entitled to question any person, whether suspected or not, from whom he or she thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he or she has not been charged with the offence or informed that he or she may be prosecuted for it.

2. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he or she shall caution that person or cause him or her to be cautioned before putting to him or her any questions, or further questions, relating to that offence.

The caution shall be in the following terms—

> "You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence."

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

3. (*a*) Where a person is charged with or informed that he or she may be prosecuted for an offence he or she shall be cautioned in the following terms—

> "Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence."

(*b*) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he or she has been charged or informed that he or she may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement. Before any such questions are put the accused should be cautioned in these terms—

> "I wish to put some questions to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence."

Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he or she refuses by the interrogating officer.

(*c*) When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.

4. All written statements made after caution shall be taken in the following manner—

(*a*) If a person says that he or she wants to make a statement he or she shall be told that it is intended to make a written record of what he or she says. He or she shall always be asked whether he or she wishes to write down himself or herself what he or she wants to say; if he or she says that he or she cannot write or that he or she would like someone to write it for him or her, a police officer may offer to write the statement for him or her. If he or she accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his or her mark to, the following—

> "I ....., wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say, may be given in evidence."

(*b*) Any person writing his or her own statement shall be allowed to do so without any prompting as distinct from indicating to him or her what matters are material.

(*c*) The person making the statement, if he or she is going to write it himself or herself, shall be asked to write out and sign before writing what he or she wants to say, the following—

> "I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(*d*) Whenever a police officer writes the statement, he or she shall take down the exact words spoken by the person making the statement, without putting any questions other than such as be needed to make the statement coherent, intelligible and relevant to the material matters; he or she shall not prompt him or her.

(*e*) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he or she wishes. When he or she has finished reading it he or she shall be asked to write and sign or make his or her mark on the following certificate at the end of the statement—

> "I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

(*f*) If the person who has made a statement refuses to read it or to write the above-mentioned certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him or her and ask him or her whether he or she would like to correct, alter or add anything and then put his or her signature or make his or her mark at the end. The police officer shall then certify on the statement itself what he or she has done.

5. If at any time after a person has been charged with, or has been informed that he or she may be prosecuted for an offence a police officer wishes to bring to the notice of that person any written statement made by another person who in respect of the same offence has also been charged or informed that he or she may be prosecuted, he or she shall hand to that person a true copy of such written statement, but nothing shall be said or done to invite any reply, or comments. If that person says that he or she would like to make a statement in reply, or starts to say something, he or she shall at once be cautioned or further cautioned as prescribed by rule 3.

6. Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these Rules.

Attached hereto are two appendices which are separate and distinct from the rules—

(*a*) Appendix A, which sets out certain principles underlying the rules; and

(*b*) Appendix B, which clarifies how compliance with the rules may be facilitated.

APPENDIX A

These Rules do not affect the principles—

(*a*) that citizens have a duty to help a police officer to discover and apprehend offenders;

(*b*) that (in the absence of valid legislative provision to the contrary) police officers, otherwise than by arrest, cannot compel any person against his or her will to come to or remain in any police station;

(*c*) that every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he or she is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his or her doing so;

(*d*) that when a police officer who is making inquiries of any person about an offence has enough evidence to prefer a charge against that person for the offence**,** he or she should without delay cause that person to be charged or informed that he or she may be prosecuted for the offence;

(*e*) that it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person that it shall have been voluntary, in the sense that it has not been obtained from him or her by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

The principle set out in paragraph (*e*) above is overriding and applicable in all cases. With that principle the Judges Rules are put forward as a guide to police officers conducting investigations. Non-conformity with these Rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

APPENDIX B

Administrative Directions

1. Procedure generally

(*a*) When possible, statements of persons under caution, should be written on such forms as may be provided for the purpose. Police officers' notebooks should be used for taking statements only when no forms are available.

(*b*) When a person is being questioned or elects to make a statement, a record should be kept of the time or times at which during the questioning or making of a statement there were intervals or refreshments taken. The nature of the refreshments should be noted. In no circumstances should alcoholic drinks be given.

(*c*) In writing down a statement, the words used should not be translated into "official" vocabulary; this may give a misleading impression of the genuineness of the statement.

(*d*) Care should be taken to avoid any suggestion that the person's answers can only be used in evidence against him or her, as this may prevent an innocent person making a statement which might help to clear him or her of the charge.

2. Record of interrogation

Rules 2 and 3(*c*) demand that a record should be kept of the following matters—

(*a*) when, after being cautioned in accordance with rule 2, the person is being questioned or elects to make a statement — of the time and place at which any such questioning began and ended and of the persons present;

(*b*) when, after being cautioned in accordance with rule 3(*a*) or (*b*) a person is being questioned or elects to make a statement — of the time and place at which any questioning and statement began and ended and of the persons present.

In addition to the records required by these Rules full records of the following matters should additionally be kept—

(*a*) of the time or times at which cautions were taken; and

(*b*) of the time when a charge was made and/or the person was arrested; and

(*c*) of the matters referred to in paragraph 1(*b*) above.

If two or more police officers are present when the questions are being put or the statement made, the records made should be countersigned by the other officers present.

3. Comfort and refreshment

Reasonable arrangements should be made for the comfort and refreshment of persons being questioned. Whenever practicable both the person being questioned or making a statement and the officers asking the questions or taking the statement should be seated.

4. Interrogation of children and young persons

As far as practicable children (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested, nor even interviewed, at school if such action can possibly be avoided. Where it is found essential to conduct the interview at school, this should be done only with the consent, and in the presence, of the head teacher, or his or her nominee.

5. Interrogation of foreigners

In the case of a foreigner making a statement in his or her native language—

(*a*) the interpreter should take down the statement in the language in which it is made;

(*b*) an official English translation should be made in due course and be proved as an exhibit with the original statement;

(*c*) the foreigner should sign the statement referred to in paragraph (*a*).

Apart from the question of apparent unfairness, to obtain the signature of a suspect to an English translation of what he or she said in a foreign language can have little or no value as evidence if the suspect disputes the accuracy of this record of his or her statement.

6. Supply to accused persons of written statement of charges

(*a*) The following procedure should be adopted whenever a charge is preferred against a person arrested without warrant for any offence: As soon as a charge has been accepted by the appropriate police officer the accused person should be given a written notice containing a copy of the entry in the charge sheet or book giving particulars of the offence with which he or she is charged. So far as possible the particulars of the charge should be stated in simple language so that the accused person may understand it, but they should also show clearly the precise offence in law with which he or she is charged. Where the offence charged is a statutory one, it should be sufficient for the latter purpose to quote the section of the statute which created the offence. The written notice should include some statement on the lines of the caution given orally to the accused person in accordance with the Judges' Rules after a charge has been preferred. It is suggested that the form of notice should begin with the following words—

> "You are charged with the offence(s) shown below. You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

(*b*) Once the accused person has appeared before the court it is not necessary to serve him or her with a written notice of any further charges which may be preferred. If, however, the police decide, before he or she has appeared before a court, to modify the charge or to prefer further charges, it is desirable that the person concerned should be formally charged with the further offence and given a written copy of the charge as soon as it is possible to do so having regard to the particular circumstances of the case. If the accused person has then been released on bail, it may not always be practicable or reasonable to prefer the new charge at once, and in cases where he or she is due to surrender to his or her bail within forty-eight hours or in other cases of difficulty it will be sufficient for him or her to be formally charged with the further offence and served with a written notice of the charge after he or she has surrendered to his or her bail and before he or she appears before the court.

7. Facilities for defence

(*a*) A person in custody should be allowed to speak on the telephone to his or her solicitor or to his or her friends provided that no hindrance is reasonably likely to be caused to the processes of investigation, or the administration of justice by him or her doing so.

He or she should be supplied on request with writing materials and his or her letters should be sent by post or otherwise with the least possible delay. Additionally, telegrams should be sent at once, at his or her own expense.

(*b*) Persons in custody should not only be informed orally of the rights and facilities available to them, but in addition, notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices.

Judicial and Legal Services Commission Regulations

SRO 47 of 1967

ARRANGEMENT OF REGULATIONS

1. Citation.
2. Definitions.
3. Oath of office.
4. Procedure and meetings.
5. Decisions other than at a meeting.
6. Record of meetings and decisions.
7. Consultation with other persons.
8. Principles of selection.

Schedule Oath *(*or Affirmation*)* of Office

JUDICIAL AND LEGAL SERVICES COMMISSION REGULATIONS

[SRO 47 of 1967.]

[25*th November*, 1967.]

1. Citation

These Regulations may be cited as the Judicial and Legal Services Commission Regulations.

2. Definitions

In these Regulations, unless the context otherwise requires—

"Commission" means the Judicial and Legal Services Commission established by section 18 of the Courts Order;

"Court of Appeal" means the Court of Appeal established by the Courts Order;

"Courts Order" means the West Indies Associated States Supreme Court Order, 1967;

"High Court" means the High Court of Justice established under the Courts Order;

"member" means member of the Commission;

"public office" means any office of emolument in the public service;

"public officer" means the holder of any public office and includes any person appointed to act in any such office;

"public service" means the service of the Crown in a civil capacity in respect of the Government of any of the States to which the Courts Order applies;

"regulation" means one of these Regulations;

"State" has the meaning ascribed to it by section 2 of the Courts Order.

3. Oath of office

The members of the Commission other than the Chairperson shall upon appointment take an oath or make an affirmation before the Chief Justice in the form in the Schedule to these Regulations. The Secretary to the Commission shall take an oath or make an affirmation before the Chief Justice in a form approved by the Chief Justice.

4. Procedure and meetings

(1) The headquarters of the Commission shall be situate in St. Lucia.

(2) The Commission shall meet as often as may be necessary for the purpose of performing its functions and such meetings shall be held at such places and at such times as the Chairperson shall determine.

(3) The Chairperson if present shall preside at meetings of the Commission and in the absence of the Chairperson from any meeting the members present shall elect one of their number to preside at that meeting.

(4) All decisions at a meeting of the Commission shall be by a majority of the votes of the members present and voting.

(5) The Chairperson shall have an original vote, and in the event of an equality of votes he or she shall have as well a casting vote.

5. Decisions other than at a meeting

(1) Notwithstanding the provisions of regulation 4 decisions may also be made by the Commission without a meeting upon circulation of the relevant papers among the members. Members may notify their opinion on the matter or question in writing or by cable or by telephone. If in any such case a difference of opinion arises among the members or any member so requires, the matter or question shall be reserved for discussion at a meeting.

(2) Decisions made under this Regulation shall be brought up for noting at the next meeting of the Commission.

6. Record of meetings and decisions

(1) Minutes shall be taken of all decisions arrived at a meeting or noted under regulation 5 and after circulation thereof shall be duly confirmed at the subsequent meeting.

(2) Any member who dissents from a decision may require that his or her dissent and reasons for dissenting be recorded in the minutes.

7. Consultation with other persons

The Commission in considering any matter or question may consult with any such public officer or other person as the Commission may consider it proper and desirable to do so and may request any public officer to attend and give evidence on oath before it and to produce any official documents relating to such matter or question.

8. Principles of selection

For the purpose of exercising its functions in relation to appointments, whether substantive or acting, to any office, the Commission shall (without prejudice to its right to consider the application of any person whether or not already in the public service) consider the claims of all public officers eligible for appointment or promotion, may interview candidates for such appointments, and shall in respect of each candidate consider, amongst others, the following matters—

(*a*) his or her qualifications;

(*b*) his or her general fitness;

(*c*) any previous employment of the candidate in the public service or in private practice;

(*d*) previous public service or private practice in territories other than those to which the Courts Order applies.

Schedule

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

JUDICIAL AND LEGAL SERVICES COMMISSION REGULATIONS

Oath (or Affirmation) of Office

[Regulation 3.]

I, ... do swear/solemnly and sincerely declare and affirm that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of Member of the Judicial and Legal Services Commission established under the West Indies Associated States Supreme Court Order, 1967.

.....

Signature

Sworn/Declared before me this ..... day of ..... , 20.....

.....

Chief Justice

Judicial and Legal Services Commission (Remuneration) Order

SRO 53 of 1967

Amended by

SRO 4 of 1977

ARRANGEMENT OF ORDERS

1. Citation.
2. Definitions.
3. Remuneration of certain members of Commission.

JUDICIAL AND LEGAL SERVICES COMMISSION (REMUNERATION) ORDER

[SRO 53 of 1967 amended by SRO 4 of 1977.]

[5*th May*, 1967.]

1. Citation

This Order may be cited as the Judicial and Legal Services Commission (Remuneration) Order.

2. Definitions

In this Order—

"Commission" means the Judicial and Legal Services Commission established by section 18 of the Courts Order;

"The Courts Order" means the West Indies Associated States Supreme Court Order, 1967.

3. Remuneration of certain members of Commission

The members of the Commission other than the Chief Justice and the Justice of Appeal or Puisne Judge shall be paid the following remuneration, namely—

(*a*) the person appointed under section 18(1)(*c*) of the Courts Order (that is to say, a retired judge), salary at the rate of three hundred dollars per month;

(*b*) each of the persons selected in accordance with subsection (1)(*d*) and section 2 of the Courts Order (that is to say, Chairmen of Public Service Commissions of two States), salary at the rate of two hundred dollars per month;

(*c*) the following expenses when incurred for the purpose of attending meetings, namely—

(i) the actual cost of passages not exceeding the cost of first class passages by air,

(ii) the cost of inland travelling,

(iii) hotel expenses,

(iv) the cost of flight insurance for a sum not exceeding fifty thousand dollars;

(*d*) subsistence allowance of twenty-five dollars a day.

Judicial Committee (Dissenting Opinions) Order

SRO 13 of 1966

AT THE COURT OF ST. JAMES

Present,

The 4th day of March, 1996

Her Majesty Queen Elizabeth The Queen Mother

His Royal Highness Prince Richard of Gloucester

Lord President Mr. Gunter

Lord Shepherd Miss Herbison

Whereas Her Majesty, in pursuance of the Regency Acts, 1937 to 1953, was pleased, by Letters Patent dated the twenty-fifth day of January, 1966, to delegate to the following Councillors of State (subject to the exceptions hereinafter mentioned) or any two or more of them, that is to say, His Royal Highness The Prince Philip, Duke of Edinburgh, Her Majesty Queen Elizabeth The Queen Mother, Her Royal Highness The Princess Margaret, Countess of Snowdon, His Royal Highness The Duke of Gloucester, His Royal Highness Prince William of Gloucester and His Royal Highness Prince Richard of Gloucester, full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify

thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas Her Majesty was further pleased to except from the number of the said Councillors of State His Royal Highness The Prince Philip, Duke of Edinburgh, Her Royal Highness The Princess Margaret, Countess of Snowdon, His Royal Highness The Duke of Gloucester and His Royal Highness Prince William of Gloucester while absent from the United Kingdom:

And whereas an Order of Her late Majesty Queen Victoria in Council dated the fourth day of February 1878 (hereinafter called "the Order of 1878") declared and ordered that the ancient rule and practice of the Privy Council be strictly adhered to, respected and observed in all appeals, causes or matters referred by Her Majesty to the Judicial Committee of the Privy Council, or to any other committee or assembly of the Privy Council, and that no disclosure be made touching the matters treated of in Council, and no publication made by any man how the particular voices and opinions went:

And whereas it is desirable to alter the said rule and practice of the Privy Council in the manner hereinafter provided:

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and His Royal Highness Prince Richard of Gloucester, being authorised thereto by the said Letters Patent, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf declare and order, and it is hereby declared and ordered, as follows.

[4*th March*, 1966.]

1. This Order may be cited as the Judicial Committee (Dissenting Opinions) Order, 1966.

2. Without prejudice to its application to other committees or assemblies of the Privy Council, the Order of 1878 shall no longer apply to the Judicial Committee of the Privy Council.

3. Any member of the Judicial Committee of the Privy Council present at the hearing of any appeal, cause or matter who shall dissent from the opinion of the majority of the members present as to the nature of the report or recommendation to be made to Her Majesty thereon shall be at liberty to publish his or her dissent in open Court together with the reasons.

Supreme Court (Constitutional Redress—Grenada) Rules

SRO 418 of 1968

ARRANGEMENT OF RULES

1. Citation.
2. Single judge to exercise jurisdiction.
3. Procedure for enforcement of protection provisions.
4. Notice of motion.
5. Copy of application to Attorney-General.
6. Constitutional question may be determined by High Court.
7. Reference under section 16(3) of Constitution.
8. Applications under section 101 of Constitution.
9. Practice and procedure.

SUPREME COURT (CONSTITUTIONAL REDRESS—GRENADA) RULES

[SRO 418 of 1968.]

[1*st October*, 1968.]

1. Citation

These Rules may be cited as the Supreme Court (Constitutional Redress—Grenada) Rules.

2. Single judge to exercise jurisdiction

The jurisdiction of the High Court—

(*a*) to hear and determine any application made by any person in pursuance of section 16(1) or 101(1) of the Constitution; and

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of section 16(3) of the Constitution,

shall be exercisable by a single judge.

3. Procedure for enforcement of protection provisions

(1) An application to the High Court pursuant to section 16 of the Constitution for redress by any person who alleges that any of the provisions of sections 2 to 15 (inclusive) of the Constitution has been or is being contravened in relation to him or her (or, in the case of a person who is detained, by any other person who alleges such a contravention in relation to the detained person), may be made by motion to the High Court supported by an affidavit.

(2) An application to the High Court pursuant to section 16 of the Constitution for redress by any person who alleges that any of the provisions of sections 2 to 15 (inclusive) of the Constitution has been, is being or is likely to be contravened in relation to him or her (or, in the case of a person who is detained, by any other person who alleges such a contravention in relation to the detained person), may be made by filing a writ of summons claiming a declaration of right and/or praying for an injunction or other appropriate order.

4. Notice of motion

(1) No motion shall be made without previous notice to the parties affected thereby, but the High 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 High Court within seven days of the making of the order to set it aside.

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

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

5. Copy of application to Attorney-General

Where any application is made to the High Court pursuant to section 16 of the Constitution by motion or by filing a writ of summons and the Attorney-General is not a party to the proceedings the applicant or plaintiff shall file an extra copy of the motion and affidavit or affidavits in support thereof or of the writ of summons, as the case may

be, and the Registrar shall within three (3) days thereafter forward such extra copy or copies to the Attorney-General for his or her information.

6. Constitutional question may be determined by High Court

Where in the course of any action or proceeding (civil or criminal) before the High Court any question arises under the provisions of sections 2 to 15 (inclusive) of the Constitution the High Court may determine such question and give effect to such determination, so far as applicable, in its judgement or decision in such action or proceeding.

7. Reference under section 16(3) of Constitution

(1) Any question referred to the High Court in pursuance of section 16(3) of the Constitution by a person presiding in any court shall be referred by way of case stated.

(2) The case must be stated within six weeks of the decision of the person presiding in that court to refer the question, or of the request by a party that the question be referred.

(3) The case shall be signed by the person who presided in the court in which the question arose and transmitted by him or her to the Registrar of the High Court. It shall set forth the facts which have been proved or admitted and the question which is referred to the High Court for its decision. The person presiding shall cause copies thereof to be served upon the party, if any, at whose request the case was stated and upon such other parties to the proceedings as are affected by the question, and, where the Attorney-General, or in a criminal matter, the Director of Public Prosecutions, is not a party, upon the Attorney-General or the Director of Public Prosecutions respectively.

(4) Within fourteen days of the service upon him or her of a copy of the case stated, each party affected shall file with the Registrar a notice stating his or her contentions upon the question which has been referred to the High Court.

(5) The Registrar shall duly set down the case for hearing and notify the parties of the date fixed for the hearing.

(6) The High Court hearing a case stated in respect of a question referred to it may amend the case or order it to be returned to the court by which it was stated for amendment, and may draw inferences of fact from the facts stated in the case.

(7) The Attorney-General, and in the case of a criminal matter, the Director of Public Prosecutions, shall be entitled to appear and be heard in proceedings for the determination of a question referred to the High Court.

(8) The Registrar shall notify the court by which the question was referred of the decision of the High Court upon the question.

8. Applications under section 101 of Constitution

(1) An application to the High Court pursuant to section 101 of the Constitution by any person who alleges that any provision of the Constitution (other than a provision of Chapter I) has been or is being contravened may be made either by motion to the High Court supported by affidavit or by filing a writ of summons claiming a declaration and praying for such relief as he or she may deem appropriate.

(2) The provisions of rules 4 and 5 of these Rules shall apply to applications made pursuant to section 101 of the Constitution as they apply to applications made pursuant to section 16 thereof.

(3) No application pursuant to section 103 of the Constitution shall be brought after the expiration of six months from the date of the contravention complained of, or, in the case of an alleged continuing contravention, from the date when it ceased.

9. Practice and procedure

Save as otherwise provided in these Rules the jurisdiction and powers conferred on the High Court in respect of applications made by any person in pursuance of section 16(1) or 101(1) of the Constitution shall be exercised in accordance with the practice and procedure (including any rules of court) for the time being in force in relation to civil proceedings in the High Court, with such variations as circumstances may require.

Supreme Court Offices (Salary and Allowances of Chief Registrar and Secretary to The Chief Justice) Order

ARRANGEMENT OF ORDERS

1. Citation.
2. Definitions.
3. Salary and allowances of Chief Registrar.
4. Salary and allowances free of income tax.
5. Commencement.

SUPREME COURT OFFICES (SALARY AND ALLOWANCES OF CHIEF REGISTRAR AND SECRETARY TO THE CHIEF JUSTICE) ORDER

[1*st January*, 1983.]

1. Citation

This Order may be cited as the Supreme Court Offices (Salary and Allowances of Chief Registrar and Secretary to the Chief Justice) Order.

2. Definitions

In this Order—

"Chief Registrar" means the person holding the office of Chief Registrar of the Supreme Court established by section 12 of the Supreme Court Order and includes any person performing the functions thereof under subsection (3) of the said section;

"Secretary to the Chief Justice" means the person holding the office of Secretary to the Chief Justice of the Supreme Court established by section 12 of the Supreme Court Order and includes any person performing the functions thereof under subsection (3) of the said section.

3. Salary and allowances of Chief Registrar

So long as the Office of the Chief Registrar is held by a person who also holds the Office of a Registrar of the High Court the holder shall be entitled to be paid an allowance as additional salary in respect of his or her services as Chief Registrar at the rate of four thousand eight hundred dollars per annum over and above his or her salary as Registrar of the High Court.

4. Salary and allowances free of income tax

The allowance paid to the Chief Registrar under section 3 of this Order and the salary paid to the Secretary to the Chief Justice in respect of his or her services in that office shall be free of income tax or any other charge.

5. Commencement

This Order shall be deemed to have come into operation on the 1st day of January, 1983.

Supreme Court (Queen's Counsel) Rules

SRO 43 of 1968

ARRANGEMENT OF RULES

1. Citation.
2. Application.
3. Definitions.
4. Right of audience of Queen's Counsel.

SUPREME COURT (QUEEN'S COUNSEL) RULES

[SRO 43 of 1968.]

[1*st October*, 1968.]

1. Citation

These Rules may be cited as the Supreme Court (Queen's Counsel) Rules.

2. Application

These Rules shall apply to the States as defined in rule 3.

3. Definitions

In these Rules unless it is expressly provided to the contrary or the context otherwise requires—

"Courts Order" means the West Indies Associated States Supreme Court Order, 1967;

"State" means any of the following with its dependencies, if any, that is to say—

Antigua;

Dominica;

Grenada;

Saint Christopher and Nevis;

Saint Lucia; and

Saint Vincent and the Grenadines;

"Supreme Court" means the West Indies Associated States Supreme Court established by section 4 of the Courts Order.

4. Right of audience of Queen's Counsel

Queen's Counsel appointed in any of the States in Montserrat or in the Virgin Islands, by letters patent issued on or after the twenty-fourth day of April One thousand nine hundred and sixty-seven shall have the right to practice as such and the customary right of pre-audience before the Supreme Court in all the States.

Supreme Court (Queen's Counsel) Rules (Application to Montserrat) Order

SRO 44 of 1968

ARRANGEMENT OF ORDERS

1. Citation.
2. Application of Rules to Montserrat.

SUPREME COURT (QUEEN'S COUNSEL) RULES (APPLICATION TO MONTSERRAT) ORDER

[SRO 44 of 1968.]

[1*st October*, 1968.]

1. Citation

This Order may be cited as the Supreme Court (Queen's Counsel) Rules (Application to Montserrat) Order.

2. Application of Rules to Montserrat

The Supreme Court (Queen's Counsel) Rules made under section 17 of the West Indies Associated States Supreme Court Order, 1967 and dated the twenty-seventh day of May, 1968, shall have effect as part of the law of Montserrat subject to the following modification, to wit—

> for the words "all the States" appearing at the end of rule 4 thereof the word "Montserrat" shall be substituted.

Supreme Court (Queen's Counsel) Rules (Application to the Virgin Islands) Order

SRO 45 of 1968

ARRANGEMENT OF ORDERS

1. Citation.
2. Application of Rules to the Virgin Islands.

SUPREME COURT (QUEEN'S COUNSEL) RULES (APPLICATION TO THE VIRGIN ISLANDS) ORDER

[SRO 45 of 1968.]

[1*st October*, 1968.]

1. Citation

This Order may be cited as the Supreme Court (Queen's Counsel) Rules (Application to the Virgin Islands) Order.

2. Application of Rules to the Virgin Islands

The Supreme Court (Queen's Counsel) Rules made under section 17 of the West Indies Associated States Supreme Court Order, 1967 and dated the twenty-seventh day of May, 1968, shall have effect as part of the law of the Virgin Islands subject to the following modification, to wit—

for the words "all the States" appearing at the end of rule 4 thereof the words "the Virgin Islands" shall be substituted.

Rules of the Supreme Court (Repealed)

SRO 2 of 1970

Repealed by

SRO 3 of 2001

Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order

SRO 1 of 1976

Amended by

SRO 2 of 1976
SRO 3 of 1976
SRO 4 of 1976
SRO 1 of 1977
SRO 1 of 1978
SRO 1 of 2001
SRO 10 of 2001

ARRANGEMENT OF ORDERS

1. Citation.
2. Definitions.
3. Amendment of Third Schedule to Courts Order.
4. Residence.
5. Travelling and duty allowance.
6. Board and lodging.
7. Subsistence allowance.
8. Entertainment allowance.
9. Allowances free of income tax.
10. Leave and leave passages.

11. Levy.
12. Pensions.
13. Revocation.
14. Commencement.
First Schedule
Second Schedule

SUPREME COURT (SALARIES, ALLOWANCES AND CONDITIONS OF SERVICE OF JUDGES) ORDER*

[SRO 1 of 1976 amended by SRO 2 of 1976, SRO 3 of 1976, SRO 4 of 1976, SRO 1 of 1977, SRO 1 of 1978, SRO 1 of 2001, SRO 10 of 2001.]

[1*st January*, 1974.]

1. Citation

This Order may be cited as the Supreme Court (Salaries, Allowances and Conditions of Service of Judges) Order.

2. Definitions

(1) In this Order—

"Courts Order" means the West Indies Associated States Supreme Court Order;

"Judge" means any Puisne Judge appointed under the Courts Order and includes a Justice of Appeal and the Chief Justice.

(2) References in this Order to the Chief Justice, a Justice of Appeal, a Puisne Judge or a Judge shall be references to the Chief Justice, a Justice of Appeal, a Puisne Judge or a Judge, respectively of the Eastern Caribbean Court, and shall include references to a person acting in the office of Chief Justice, a Justice of Appeal, a Puisne Judge or a Judge, respectively, of that Court.

(3) References in this Order to a State shall include references to Grenada.

3. Amendment of Third Schedule to Courts Order

The Third Schedule to the Courts Order is hereby revoked and replaced as follows—

SCHEDULE

[Section 11.]

Salaries of Judges of Supreme Court

Chief Justice	$184,140 per year
Justice of Appeal	$153,450 per year
High Court Judge	$135,036 per year

4. Residence

(1) Each Judge is entitled to be provided with a fully furnished residence free of rent.

(2) The scale of furniture allotted to the Judge's furnished residence shall be subject to the approval of the Chief Justice.

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* All amendments made to the original Order have been incorporated.

5. Travelling and duty allowance

(1) A Judge is entitled to reimbursement by Government in respect of the actual cost of travelling on duty between the State in which he or she resides and any place outside that State (including the cost of travelling, within any State, between his or her place of residence and the place of embarkation and disembarkation, as the case may be) by such means as may be approved by the Chief Justice.

(2) A Judge shall be paid a travelling allowance at the rate of seven hundred dollars a month.

6. Board and lodging

A Judge shall be reimbursed in respect of the actual cost of board and lodging (including meals) while out of the State in which he or she resides on duty.

7. Subsistence allowance

(1) A Judge resident in St. Kitts shall be entitled to a subsistence allowance of five dollars for each day or part of a day spent on duty in Nevis.

(2) The Chief Justice shall be entitled to a subsistence allowance of sixty dollars and a Justice of Appeal fifty dollars for each day or part of a day spent outside the headquarters State.

(3) Subject to the provisions of subsections (4) and (5) of this section a Puisne Judge shall be entitled to a subsistence allowance of fifty dollars for each day or part of a day spent on duty outside the State in which he or she resides.

(4) Where a Judge is assigned for duty to a State other than the State in which he or she resides for a period exceeding three (3) months he or she shall not be entitled to the subsistence allowance under the last foregoing subsection unless he or she is maintaining a home for himself or herself or his or her family in the State in which he or she resides.

(5) Where a Judge is assigned for duty to a State other than the State in which he or she resides for a period exceeding six (6) months and is entitled to subsistence allowance under the provisions of subsections (3) and (4) of this section, the subsistence allowance payable to him or her from the beginning of the seventh month shall be at the reduced rate of five dollars for each day or part of a day.

8. Entertainment allowance

The Chief Justice shall be entitled to be paid an entertainment allowance at the rate of six thousand dollars per annum and each other Judge an entertainment allowance at the rate of three thousand dollars per annum.

9. Allowances free of income tax

All allowances paid to a Judge shall be free of income tax.

10. Leave and leave passages

(1) A Judge is not entitled as of right to leave or leave passages.

(2) Leave is granted subject to the exigencies of the public service and sums payable in respect of leave passages may be modified from time to time according to availability of public funds.

(3) The Chief Justice shall be entitled—

(*a*) to forty-two days vacation leave annually and such leave may be accumulated up to a maximum of one hundred and sixty-eight days;

(*b*) to twenty-four days departmental leave annually; and

(*c*) to twenty-eight days sick leave annually.

(4) A Judge other than the Chief Justice is eligible for forty-two days vacation leave annually of which not less than fourteen days must be taken annually either in one period or in a series of periods according to the requirements of the Judicial and Legal Services Commission, and such leave may be accumulated up to a maximum of one hundred and twenty-six days.

(5) A Judge is eligible for leave passages every four years which may be—

(*a*) a return air passage, twice during the period he or she holds office of Judge, for himself and his wife and half the cost of one adult return air passage in respect of his children to the United Kingdom or to some other destination:

Provided that the cost of the passages to that destination does not exceed the cost of passages to the United Kingdom; and

(*b*) on other occasions an amount to be spent on air passages, equal to two and one half times the cost of a return air passage to any destination in the Caribbean specified for the purposes of this section by the Judicial and Legal Services Commission.

(6) A Judge is also eligible for passages on first appointment to the State to which he or she is assigned for duty and for passages on retirement to his or her country of origin or to another place of retirement:

Provided that the cost involved does not exceed the cost of passages to his or her country of origin. Passages on retirement are normally only granted where a Judge has completed three years of service since his or her last overseas leave.

(7) Leave passages as prescribed by subsections (5) and (6) of this section are provided for the Judge, his wife and children who are under the age of eighteen (18) years, unmarried, and dependent upon him or her, provided that—

(i) the cost of passages is limited to the equivalent of first class air travel; and

(ii) the amount to be granted shall not exceed the cost of two and one-half adult return passages, at the rate prescribed in paragraph (i) above—

(*a*) to the place where the leave is to be taken if the leave is taken within the territories covered by the jurisdiction of the Court, Barbados, Jamaica and Trinidad;

(*b*) to the United Kingdom if the leave is taken outside the territories covered by the Jurisdiction of the Court, Barbados, Jamaica and Trinidad.

11. Levy

The salary and pension of a Judge shall not attract or be liable to income tax, levy or any other charge.

12. Pensions

In computing the pension of a Judge who on retirement from the service holds one of the offices mentioned in the First Schedule to this Order the additions in the said Schedule mentioned shall be made to his or her period of service:

Provided that no addition shall be made which together with the number of years of his or her actual pensionable service shall amount to more than four months.

13. Revocation

The Orders and Instruments set out in the Second Schedule to this Order are hereby revoked.

14. Commencement

This Order shall be deemed to have come into operation on 1st January, 1974.

First Schedule

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

SUPREME COURT (SALARIES, ALLOWANCES AND CONDITIONS OF SERVICE OF JUDGES) ORDER*

Chief Justice	Ten years
Justice of Appeal	Seven years
Puisne Judge	Five years

Second Schedule

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ACT

SUPREME COURT (SALARIES, ALLOWANCES AND CONDITIONS OF SERVICE OF JUDGES) ORDER

1. The Supreme Court of the Windward Islands and Leeward Islands (Judges' Remuneration and Terms and Conditions of Office) Order, 1967.

2. The Instrument dated 23rd August, 1967, determining the terms and conditions of service of the Chief Justice.

Supreme Court (Trade Unions) Rules

SRO 269

ARRANGEMENT OF RULES

1. Citation.
2. Definitions.
3. Method of bringing appeals.
4. Notice of Motion.
5. Directions of Court in relation to Motion.
6. Powers of Court.
7. Hearing of appeals.
8. Costs.

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* All amendments made to the original Order have been incorporated.

SUPREME COURT (TRADE UNIONS) RULES

[SRO 269.]

[8*th January*, 1955.]

1. Citation

These Rules may be cited as the Supreme Court (Trade Unions) Rules.

2. Definitions

In these Rules—

"Court" means the Eastern Caribbean Supreme Court;

"Registrar" means a Registrar of Trade Unions appointed pursuant to the provisions of the relevant legislation;

"relevant legislation" means, in relation to Grenada, the Trade Unions and Trade Disputes Act, Chapter 326.

3. Method of bringing appeals

All appeals to the Supreme Court from a refusal of the Registrar to register a trade union or against the Registrar's decision to cancel the registration of a trade union shall be commenced by originating notice of motion within two months of the decision of the Registrar or within such further time as the Registrar may think fit to allow, and the Rules of the Supreme Court for the time being in force shall (except if and so far as otherwise provided by these Rules) apply to all proceedings on any such appeal.

4. Notice of Motion

The notice of motion shall be headed with a reference to the relevant legislation and also with a reference to the decision of the Registrar which is appealed against and shall contain or have scheduled or annexed thereto a concise statement of the grounds of the appeal, and no grounds other than those comprised in such statement shall (except with the leave of the Court and on such terms, if any, as the Court shall think just) be allowed to be taken by the appellant at the hearing of the motion.

5. Directions of Court in relation to Motion

(1) The Court may at any stage of the motion direct that the same be served on any persons that the Court may think proper:

Provided always that, except where the trade union or alleged trade union in question are themselves the appellants, such trade union or alleged trade union, or any person who appeared before the Registrar and in whose favour he or she decided shall (unless the Court shall otherwise order) be respondents or one of the respondents to the motion.

(2) At any stage of the motion the Court may, if it shall appear to be expedient to do so, cause notice to be given by advertisement or otherwise of the time when the motion will be, or is likely to be, heard and disposed of, or otherwise make provision for enabling any person interested in the trade union or alleged trade union in question or in the subject matter of the appeal to appear and be heard on the motion.

(3) At any stage of the motion the Court may, if it thinks fit, give any such special directions for the hearing and disposal of the motion either on affidavit evidence or with witnesses or otherwise and generally at such time and in such manner as may be just and convenient.

6. Powers of Court

In all proceedings on any such appeal the Court shall have all the powers vested by the relevant legislation in the Registrar, and may make any order which might or ought to have been made by the Registrar.

7. Hearing of appeals

All appeals shall be heard in Chambers unless the Court shall otherwise direct.

8. Costs

In all proceedings on any such appeal the costs of and incident thereto, including the costs of and incident to any proceedings before the Registrar, shall be in the discretion of the Court.

Supreme Court (Witnesses' Allowances) Rules

SRO 258

ARRANGEMENT OF RULES

1. Citation.
2. Witnesses' Allowances.

SUPREME COURT (WITNESSES' ALLOWANCES) RULES

[SRO 258.]

[31*st December*, 1954.]

1. Citation

These Rules may be cited as the Supreme Court (Witnesses' Allowances) Rules.

2. Witnesses' Allowances

The following allowances shall be paid to witnesses (other than Government Officers) in criminal proceedings in the State—

Witnesses	*Rate of allowance per day*
(*a*) Domestic servants, labourers, messengers and porters	60c. to $1.44
(*b*) Small farmers	60c. to $1.44
(*c*) Small shopkeepers	60c. to $1.44
(*d*) Chauffeurs, journeymen, mechanics	$1.20 to $2.50
(*e*) Auctioneers, clerks, tradesmen	$2.00 to $3.00
(*f*) Housekeepers, overseers, peasant proprietors, shopkeepers, artisans	$2.00 to $3.00
(*g*) Notaries	$3.60
(*h*) Bankers, merchants, planters, estate managers	$3.60
(*i*) Professional persons—	
(i) not giving professional evidence	(i) $3.60
(ii) giving professional evidence	(ii) $6.00
(*j*) Witnesses not included in above classifications	40c. to $3.00

Note.— 1.Allowance to be paid in criminal cases in the Supreme Court, in addition to reasonable and necessary expenses, if any.

2. Government officers giving evidence in criminal cases to be allowed only their reasonable and necessary expenses.

West Indies Associated States (Appeals to Privy Council) (Grenada) Order

SRO 10 of 1967

Amended by

SRO 84 of 1979
SRO 19 of 1991

ARRANGEMENT OF ORDERS

1. Citation.
2. Definitions.
3. Appeals to Her Majesty in Council from the States.
4. Applications for leave to appeal.
5. Conditional leave to appeal.
6. Powers of a single judge.
7. Stay of execution.
8. Manner of providing security.
9. Preparation of record.
10. Printing of record.
11. Consolidation of appeals.
12. Failure to prosecute appeal.
13. Notice to other parties.
14. Prosecution of appeal.
15. Withdrawal of appeal.
16. Dismissal for non-prosecution.
17. Substituting parties.
18. Printing of case.
19. Form of case.
20. Costs in a State.
21. Enforcing Order.
22. Pending proceedings.
23. Revocation of Order of 1962.

Schedule West Indies Associated States (Appeals to Privy Council) (Grenada) Order

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WEST INDIES ASSOCIATED STATES (APPEALS TO PRIVY COUNCIL) (GRENADA) ORDER

At the Court at Buckingham Palace, the 22nd day of February 1967

Present,

The Queen's Most Excellent Majesty in Council

[SRO 10 of 1967 amended by SRO 84 of 1979, SRO 19 of 1991.]

[27*th February*, 1967.]

1. Citation

This Order may be cited as the West Indies Associated States (Appeals to Privy Council) (Grenada) Order.

2. Definition

(1) In this Order, unless the context otherwise requires—

"appeal" means appeal from a decision of the Court to Her Majesty in Council;

"Court" means the Court of Appeal established by the Courts Order;

"Courts Order" means the West Indies Associated States Supreme Court Order, 1967(*b*);

"prescribed date" means the date prescribed under section 1(2) of the Courts Order;

"record" means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and decisions) proper to be laid before Her Majesty in Council on the hearing of an appeal;

"Registrar" means the Registrar of the Court or other proper officer having custody of the records of the Court;

"State" means a State as defined in section 2 of the Courts Order.

(2) The Interpretation Act, 1889(*c*) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purposes of interpreting, and in relation to, Acts of Parliament.

3. Appeals to Her Majesty in Council from the States

An appeal shall lie to Her Majesty in Council from decisions of the Court given in any proceeding originating in a State in such cases as may be prescribed by or in pursuance of the Constitution of that State.

4. Applications for leave to appeal

Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the decision to be appealed from, and the application shall give all other parties concerned notice of his or her intended application.

5. Conditional leave to appeal

Leave to appeal to Her Majesty in Council in pursuance of the provisions of any law relating to such appeals shall, in the first instance, be granted by the Court only—

(*a*) upon condition of the appellant, within a period to be fixed by the Court but not exceeding ninety days from the date of the hearing of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding £500 sterling for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his or her not obtaining an order granting him or her final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay the costs of the appeal (as the case may be); and

(*b*) upon such other conditions, if any, as to the time within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

(b) SRO 223 of 1967.
(c) 1889 c. 63.

6. Powers of a single judge

A single judge of the Court shall have power and jurisdiction—

(*a*) to hear and determine any application to the Court for leave to appeal in any case where under any provision of law an appeal lies as of right from a decision of the Court;

(*b*) generally in respect of any appeal pending before Her Majesty in Council, to make such order and to give such other directions as he or she shall consider the interests of justice of circumstances of the case require:

Provided that any order, directions or decision made or given in pursuance of this section may be varied, discharged or reversed by the Court when consisting of three judges which may include the judge who made or gave the order, directions or decision.

7. Stay of execution

Where the decision appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said decision shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said decision to be carried into execution, the person in whose favour it was given shall before the execution thereof, enter into good and sufficient security to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon.

8. Manner of providing security

For the purposes of sections 5 and 7 of this Order, a person may provide security in any manner that the Court may approve in his or her case, and for the avoidance of doubts it is declared that such security may with the approval of the Court consist in whole or in part of a deposit of money.

9. Preparation of record

(1) The preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

(2) The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the record.

(3) Where in the course of the preparation of a record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the record, as finally printed (whether in one of the States or in England) shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise the fact that, and the party by whom, the inclusion of the documents was objected to.

(4) The reasons given by judges of the Court for or against any decision pronounced in the course of the proceedings out of which the appeal arises shall be communicated by them in writing to the Registrar, and shall be included in the record.

10. Printing of record

(1) The record may be printed in any of the States or may be printed in England if the parties agree to its being printed, but in the absence of such agreement shall be duplicated by process approved by the Registrar of the Privy Council. If the record is to be printed it shall be printed in accordance with the rules set forth in the Schedule to this Order.

(2) Where the record is printed in a State the Registrar shall at the expense of the appellant, transmit to the Registrar of the Privy Council forty copies of such record, one of which copy he or she shall certify to be correct by signing his or her name on, or initialling, every eighth page thereof and by affixing thereto the seal of the Court.

(3) Where the record is to be printed or duplicated in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

(4) Where part of the record is printed in a State and part is to be printed or duplicated in England, subsections (2) and (3) of this section shall, as far as possible, apply to such parts as are printed in the State and such as are to be printed or duplicated in England respectively.

11. Consolidation of appeals

Where there are two or more applications for leave to appeal arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated and grant leave to appeal by a single order.

12. Failure to prosecute appeal

Where an appellant, having obtained an order granting him or her conditional leave to appeal, and having complied with the conditions imposed on him or her by such order, fails thereafter to apply with due diligence to the Court for an Order granting him or her leave to appeal, the Court may, on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal notwithstanding the appellant's compliance with the conditions imposed by such an order, and may give such directions as to the costs of the appeal and security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

13. Notice to other parties

(1) On an application for final leave to appeal, the Court may enquire whether notice or sufficient notice of the application has been given by the appellant to parties concerned and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires.

(2) The Registrar shall, with all convenient speed, transmit to the Registrar of the Privy Council a certificate to the effect that the respondent has received notice, or is otherwise aware, of the order of the Court granting final leave to appeal and of the transmission of the record to England.

14. Prosecution of appeal

An appellant who has obtained final leave to appeal shall prosecute his or her appeal in accordance with the rules for the time being regulating the general practice and procedure in appeals to Her Majesty in Council.

15. Withdrawal of appeal

(1) An appellant who has obtained an order granting him or her conditional leave to appeal may at any time prior to the making of an order granting him or her final leave to appeal withdraw his or her appeal on such terms as to costs and otherwise as the Court may direct.

(2) Where an appellant, having obtained final leave to appeal desires, prior to the despatch of the record to England, to withdraw his or her appeal, the Court may, upon an application in that behalf made by the appellant, grant him or her a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

16. Dismissal for non-prosecution

Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the despatch of the record to England, any respondent may, after giving the appellant due notice of his or her intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to grant such a certificate the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

17. Substituting parties

(1) Where at any time between the order granting final leave to appeal and the despatch of the record to England, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in whose behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express Order of Her Majesty in Council.

(2) Where the record subsequently to its despatch to England becomes defective by reason of the death or change of status of a party to the appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the record, in place of, or in addition to, the party who has died or undergone a change of status.

18. Printing of case

The case of each party to the appeal may be printed in any of the States or printed or duplicated in England and shall, if it is to be printed, be printed in accordance with the rules set forth in the Schedule to this Order; and it shall be signed by at least one of the counsel who attends at the hearing of the appeal, or by the party himself or herself if he or she conducts his or her appeal in person.

19. Form of case

The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party lodging the case and the reasons of appeal. Reference by page and

line to the relevant portions of the record as printed shall, as far as practicable, be printed in the margin, and care should be taken to avoid, as far as possible, the reprinting in the case of long extracts from the record. The taxing officer, in taxing the costs of the appeal, shall, either of his or her own motion or at the instance of any party, enquire into any unnecessary prolixity in the case and shall disallow the costs occasioned thereby.

20. Costs in a State

Where the Judicial Committee directs a party to bear the costs of an appeal incurred in a State, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

21. Enforcing Order

Any Order which Her Majesty in Council may think fit to make on an appeal from a decision of the Court may be enforced in like manner as any decision of the Court should or might have been executed.

22. Pending proceedings

(1) In respect of any decision of the British Caribbean Court of Appeal established by the British Caribbean Court of Appeal Order in Council 1962(*a*) given in the exercise of any jurisdiction conferred upon it by any law in force in any of the States before the prescribed date, an appeal may be commenced, continued, and concluded or continued and concluded, as the case may be, in accordance with the provisions of this Order as nearly as may be as if it were an appeal from a decision of the Court.

(2) Any Order that Her Majesty in Council may see fit to make on any such appeal or any Order made by Her Majesty in Council before the prescribed date on an appeal from a decision of the British Caribbean Court of Appeal given in the exercise of such jurisdiction, but not enforced before such commencement, may be enforced as if it were an Order made on appeal from the decision of the Court.

23. Revocation of Order of 1962

The British Caribbean (Appeal to Privy Council) Order in Council, 1962(*b*) is revoked in so far as it relates to any State, with effect from the prescribed date.

Schedule

West Indies Associated States (Appeals to Privy Council) (Grenada) Order

[Sections 10(1) and 18.]

I. Records and cases in appeals to Her Majesty in Council shall be printed in the form known as demy quarto.

II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8½ inches in width.

III. The type to be used in the text shall be pica type, but long primer shall be used in printing accounts, tabular matter and notes.

IV. The number of lines on each page of pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.

(a) SRO 1086 of 1962 (1962 II, p. 1247).
(b) 1087 of 1962 (1962 II, p. 1255).

West Indies Associated States Supreme Court Order

SRO 9 of 1967

Amended by

SRO 2 of 1976
SRO 1 of 1977
SRO 64 of 1985
SRO 30 of 1989

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WEST INDIES ASSOCIATED STATES SUPREME COURT ORDER*

An Order to provide for the West Indies Associated States Supreme Court (Grenada).

[SRO 9 of 1967 amended by, SRO 2 of 176, SRO 1 of 1977, SRO 1 of 1977, SRO 64 of 1985, SRO 30 of 1989.]

[27*st February*, 1967.]

PART I

Introductory

1. Citation, commencement and revocation

(1) This Order may be cited as the West Indies Associated States Supreme Court Order.

(2) This Order shall come into operation on 27th February, 1967:

Provided that the provisions of subsection (3) of this section and sections 18 to 23 of this Order shall come into operation on such later date (hereinafter referred to as "the prescribed date") as the Chief Justice may by order prescribe.

(3) The Windward Islands and Leeward Islands (Courts) Order in Council, 1959(*a*), as amended(*b*), (hereinafter referred to as "the Order of 1959") and the British Caribbean Court of Appeal Order in Council, 1962(c), as amended(*d*), (hereinafter referred to as "the Order of 1962") are revoked in so far as they have effect as part of the law of each State:

Provided that the provisions of sections 21(2) and 22(5) of the Order of 1959 and article 9 of the Order of 1962 shall continue in force as part of the law of each State as if those Orders had not been revoked.

2. Definition

(1) In this Order, "State" means any of the following, that is to say—

Antigua;

Dominica;

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* All amendments made to the original Order have been incorporated.

(a) SRO 2197 of 1959 (1959 I. p. 563).

(b) The relevant amending orders are SRO 1658 of 1960, 1084 of 1962, 162 of 1967 (1960 I, p. 473; 1962 II, p. 1220).

(c) SRO 1086 of 1962 (1962 II, 1247).

(d) The relevant amending Orders are SRO 1245 of 1962, 1870 of 1962, 575 of 1966, 1455 of 1966 (1962 II, pp. 1367, 2186; 1966 II, p. 1226); III p. 3858.

Grenada;

Saint Christopher and Nevis;

Saint Lucia; and

Saint Vincent.

(2) In this Order, any reference to a State shall be construed as including a reference to its dependencies, if any.

(3) In this Order, unless the context otherwise requires, any reference to the holder of an office by the term designating his or her office shall be construed as including a reference to any person who, under and to the extent of any authority in that behalf, is for the time being performing the functions of that office.

(4) (*a*) Where any person has vacated any office established by or under this Order he or she may, if qualified, again be appointed to hold that office from time to time.

(*b*) A person may be appointed to an office established by or under this Order notwithstanding that some other person may be holding that office when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this paragraph, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

(5) Any act done for the purposes of this Order by the Judicial and Legal Services Commission or the interim Commission established by section 24 of this Order shall be signified in writing under the hand of the Chairperson of the Commission.

(6) The Interpretation Act, 1889(*e*) shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

3. Application to Saint Vincent

Until such time as Saint Vincent assumes a status of association with the United Kingdom in accordance with the provisions of the West Indies Act, 1967, references in this Order to the Premier of a State shall, in their application to Saint Vincent, be construed as references to the Administrator of Saint Vincent, acting in his or her discretion.

PART II

The Supreme Court

4. Establishment of Supreme Court

(1) There shall be a Supreme Court for the States which shall be styled the Eastern Caribbean Supreme Court and shall be a superior court of record.

(2) The Supreme Court shall consist of a Court of Appeal and a High Court of Justice.

(3) Subject to the provisions of subsection (5) of this section, the judges of the Court of Appeal shall be the Chief Justice, who shall be President of the Court, and three Justices of Appeal.

(4) Subject to the provisions of subsection (5) of this section, the judges of the High Court shall be the Chief Justice and nine Puisne Judges.

(e) 1889 c. 63.

(5) The number of Justices of Appeal and of Puisne Judges of the High Court may be varied by order of the Chief Justice made with the concurrence of the Prime Ministers of all the States:

Provided that no office of Justice of Appeal or Puisne Judge shall be abolished while there is a substantive holder thereof without the consent of the holder thereof.

(6) The Court of Appeal and the High Court shall be deemed to be duly constituted notwithstanding a vacancy in the office of any judge of the Court.

(7) The Court of Appeal and the High Court shall each have and use a seal bearing the style of the court and a device approved by the Chief Justice.

5. Appointment of judges

(1) The Chief Justice shall be appointed by Her Majesty by Letters Patent and the Justices of Appeal and the Puisne Judges shall be appointed on behalf of Her Majesty by the Judicial and Legal Services Commission.

(2) A person shall not be qualified to be appointed—

(*a*) as Chief Justice or a Justice of Appeal unless—

(i) he or she has been for a period or periods amounting in the aggregate to not less than five years a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or

(ii) he or she is qualified to practise as an advocate in such a court, and has so practised, for a period of, or periods amounting in the aggregate to, not less than fifteen years;

(*b*) as a Puisne Judge unless—

(i) he or she is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court; or

(ii) he or she is qualified to practise as an advocate in such a court, and has so practised, for a period of or periods amounting in the aggregate to not less than ten years.

(3) For the purposes of subsection (2) of this section references in that subsection to a period or periods during which a person has practised as an advocate in any such court as is mentioned in that subsection shall be construed as including a period or periods during which a person—

(*a*) has been serving in the office of judge of any such court; or

(*b*) after having become qualified to practise as an advocate in any such court, has been serving in a public office in some part of the Commonwealth the functions of which include appearing as an advocate in any such court or in the office of magistrate, or registrar of a court, in some part of the Commonwealth.

6. Acting judges

(1) The Judicial and Legal Services Commission may designate generally or for a specific occasion one of the Justices of Appeal to act as Chief Justice in the event that the office of the Chief Justice is vacant or that the Chief Justice is for any reason unable to perform the functions of his or her office.

(2) If one of the Justices of Appeal is acting as Chief Justice or if the office of a Justice of Appeal or a Puisne Judge is vacant or if a Justice of Appeal or a Puisne Judge is for any reason unable to perform the functions of his or her office, the Judicial and Legal

Services Commission may appoint a person qualified for appointment as a Justice of Appeal or Puisne Judge to act as a Justice of Appeal or Puisne Judge, as the case may be.

(3) A person appointed under this section to act as Chief Justice, a Justice of Appeal or a Puisne Judge shall (unless he or she earlier resigns his or her appointment or is removed therefrom in pursuance of the provisions of section 8 of this Order) continue to act in that office for the period, if any, for which he or she was appointed or until a person has been appointed to and assumed, or has resumed, the functions of that office, as the case may be.

(4) Any person appointed to the office of, or to act as, Chief Justice, Justice of Appeal or Puisne Judge may, notwithstanding the vacation of his or her office or the termination of his or her appointment otherwise than in pursuance of the provisions of section 8 of this Order, sit as a judge for the purpose of giving judgement or otherwise in relation to any proceeding heard by him or her while he or she was holding the office of judge.

7. Oaths

Every person appointed to be a judge of the Court of Appeal or the High Court shall, before entering upon his or her functions as such, take the oaths set out in the First Schedule to this Order.

8. Tenure of office of judges

(1) Subject to the following provisions of this section, a judge of the Court of Appeal shall hold office until he or she attains the age of sixty-five years and a Puisne Judge shall hold office until he or she attains the age of sixty-two years:

Provided that the Judicial and Legal Services Commission acting with the concurrence of the Prime Ministers of all the States may permit a judge to continue in his or her office after attaining the age prescribed in this subsection for a period or periods not exceeding in the aggregate three years.

(2) The provisions of subsection (1) of this section shall not apply to a person appointed to act as a judge of the Court of Appeal or the High Court in respect of his or her acting appointment.

(3) A judge may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the following provisions of this section.

(4) The Chief Justice may be removed from office by order of Her Majesty and other judges of the Supreme Court shall be removed from office by order of the Judicial and Legal Services Commission if the question of the removal from office has, in pursuance of the next following subsection, been referred to the Judicial Committee of Her Majesty's Privy Council under any enactment enabling Her Majesty in that behalf and the Judicial Committee has advised Her Majesty that the Chief Justice or the judge, as the case may be, ought to be removed from office for inability as aforesaid or misbehaviour.

(5) If, in the case of the Chief Justice, the Prime Minister of one of the States to which this Order applies represents to the Lord High Chancellor of Great Britain or if, in the case of any other judge of the Supreme Court, the Judicial and Legal Services Commission represents to the Chief Justice that the question of removing the Chief Justice or other judge, as the case may be, for inability as aforesaid or for misbehaviour ought to be investigated then—

(*a*) the Lord Chancellor or the Chief Justice, as the case may be shall appoint a tribunal which shall consist of a Chairperson and not less than two other members selected by the Lord Chancellor or the Chief Justice, as the case may be, from among persons who hold or have held office as a judge of a court of unlimited jurisdiction in criminal and civil matters in some part of

the Commonwealth or as a judge of a court having jurisdiction in appeals from any such court; and

(*b*) that tribunal shall enquire into the matter and report on the facts thereof to the Lord Chancellor or the Chief Justice, as the case may be, and recommend whether the question of the removal of the Chief Justice or other judge, as the case may be, should be referred by Her Majesty to the Judicial Committee.

(6) The provisions set out in the Second Schedule to this Order shall apply in relation to tribunals appointed under the last foregoing subsection or to the members thereof.

(7) If the question of removing the Chief Justice or other judge of the Supreme Court has been referred to a tribunal under subsection (5) of this section the Lord Chancellor, in the case of the Chief Justice, or the Judicial and Legal Services Commission, in the case of any other judge of the court, may suspend the Chief Justice or other judge, as the case may be, from performing the functions of his or her office.

(8) Any such suspension may at any time be revoked by the Lord Chancellor or the Judicial and Legal Services Commission, as the case may be, and shall in any case cease to have effect—

(*a*) if the tribunal recommends that the question of the removal of the judge from office should not be referred by Her Majesty to the Judicial Committee; or

(*b*) if the Judicial Committee advises that the judge ought not to be removed from office.

(9) Any expenses, in connection with proceedings under this section, authorised by the Lord Chancellor or the Chief Justice, as the case may be, shall be regarded as part of the expenses of the Supreme Court.

9. Jurisdiction in the States

(1) The High Court shall have, in relation to a State, such jurisdiction and powers as may be conferred on it by the Constitution or any other law of the State.

(2) The Court of Appeal shall have, in relation to a State, such jurisdiction to hear and determine appeals and to exercise such powers as may be conferred upon it by the Constitution or any other law of the State.

(3) The process of the Supreme Court shall run throughout the States and any judgement of the court shall have full force and effect and may be executed and enforced in any of the States.

(4) The provisions of subsection (3) of this section shall be without prejudice to the provisions of the Constitution of each State relating to fundamental rights and freedoms.

10. Jurisdiction in other territories

The High Court and Court of Appeal may exercise such jurisdiction and powers, and any judge or the Chief Registrar of the Supreme Court may exercise such functions as may be conferred upon them respectively in relation to Anguilla, Montserrat or the Virgin Islands by or under any law in force in Anguilla, Montserrat or the Virgin Islands, as the case may be.

PART III

General

11. Remuneration, etc., of judges

(1) The Chief Justice, the Justices of Appeal and the Puisne Judges shall be paid the salaries specified in the Third Schedule to this Order, and shall be entitled to such allowances and shall have such terms and conditions of office as may from time to time be determined by the Judicial and Legal Services Commission with the concurrence of the Prime Ministers of all the States:

Provided that—

(*a*) the salaries specified in the Third Schedule to this Order may be altered by order made by the Judicial and Legal Services Commission with the concurrence of the Prime Ministers of all the States;

(*b*) the salary and allowances (other than allowances which are not taken into account in the computation of pensions) of a judge shall not be reduced and the terms and conditions of office applicable to a judge upon his or her appointment shall not be made less favourable to him or her during the currency of that appointment.

(2) Where a judge is entitled to exercise an option in relation to his or her salary or the other matters referred to in proviso (*b*) to subsection (1) of this section, the option as exercised by him or her shall be deemed for the purposes of that proviso to be in his or her favour.

12. Chief Registrar and other officers

(1) There shall be, for all the States, an office of Chief Registrar and such other offices of the Supreme Court as the Chief Justice may from time to time prescribe by order made with the concurrence of the Prime Ministers of all the States; and the holders of such offices shall be paid such salaries and allowances and shall have such terms and conditions of office as may from time to time be determined by the Chief Justice with the concurrence of the Prime Ministers of all the States.

(2) Power to make appointments to the office of Chief Registrar and to the other offices prescribed under this section and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Judicial and Legal Services Commission.

(3) Power to make appointments to offices conferred by the provisions of this section shall be construed as including power to appoint a person to perform the functions of any such office during any period during which it is vacant or the holder thereof is unable for any reason to perform those functions.

(4) The power to constitute offices and make appointments thereto conferred by this section shall be in addition to any power conferred by the Constitution of any State to constitute the offices of and appoint for that State a registrar and other officers of the High Court.

13. Pensions or judges. Chief Registrar and other officers

(1) For the purposes of any laws, regulations and other instruments relating to the grant of pensions, gratuities and other like benefits the judges, Chief Registrar and the holders of the other offices of the Supreme Court referred to in section 12(1) of this Order shall be in the service of such State as the Chief Justice may, in each case, from time to time direct; and any such direction given by the Chief Justice shall take effect as from such date as may be specified by the Chief Justice and shall have effect as an appointment to a pensionable office in that service.

(2) Where by virtue of this section any payment is made out of the funds of a State the Governments of the other States shall pay to the Government of that State the proportions of that payment specified by or under section 15 of this Order; and the sums

that are required by virtue of this subsection to be paid by the Government of any State are hereby charged on the Consolidated Fund of that State.

14. Resignations

(1) Any person who is appointed to any office established by or under this Order may resign from that office by writing under his or her hand addressed, in the case of the Chief Justice, to the Lord Chancellor and, in any other case, to the Chairperson of the Judicial and Legal Services Commission.

(2) The resignation of any person from any such office shall take effect when the writing signifying the resignation is received by the Lord Chancellor or the Chairperson, as the case may be.

15. Expenses of the Court

The expenses of the Supreme Court (including the remuneration and allowances referred to in section 11 of this Order but less any sums that may be paid towards expenses by the Government of Anguilla, Montserrat and the Virgin Islands) shall, except as otherwise provided by agreement between the Governments of all the States, be borne by the Governments of the States in equal proportions; and the sums that are required by virtue of this section or any such agreement to be paid by the Government of any State are hereby charged on the Consolidated Fund of that State.

16. Posting of judges

The Chief Justice shall assign a Puisne Judge to each State who shall reside in the State to which he or she is assigned.

17. Rules of court

(1) Subject to the provisions of this Order and any other law in force in any of the States, the Chief Justice and any other two judges of the Supreme Court selected by him or her may make rules of court for regulating the practice and procedure of the Court of Appeal and the High Court in relation to their respective jurisdiction and powers in respect of any of the States.

(2) Without prejudice to the generality of the foregoing subsection such rules may be made for any of the following purposes—

(*a*) for regulating the sittings of the Court of Appeal and the High Court, and the selection of judges for any purpose;

(*b*) for prescribing forms and fees in respect of proceedings in the Supreme Court and relating to costs of and incidental to any such proceedings;

(*c*) for prescribing the times in which any requirement of the rules is to be complied with;

(*d*) for prescribing and regulating the powers and duties of the Chief Registrar, registrars and officers of court;

(*e*) for providing for summary determination of any appeal which appears to the court to be frivolous or vexatious or to be brought for the purposes of delay;

(*f*) for prescribing cases in which, and conditions upon which an appellant in a criminal appeal shall be entitled to be present at the hearing of the appeal;

(*g*) for providing for a reference from a decision of a single judge of the Court of Appeal to the Court of Appeal;

(*h*) for regulating the right of practising before the Supreme Court and the representation of persons concerned in any proceedings therein.

(3) Rules made under this section may fix the number of judges of the Court of Appeal who may sit for any purpose:

Provided that—

(*a*) an uneven number of judges shall sit, which for the purposes of any final determination by the court other than the summary dismissal of an appeal, shall not be less than three; and

(*b*) any determination by the court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of the majority of the judges who sit for the purpose of determining that matter.

(4) Rules made under this section may provide for and regulate the execution and enforcement in any State of the process of the Court of Appeal or the High Court in exercise of any powers and jurisdiction conferred upon it in pursuance of section 9 or 10 of this Order.

(5) No rule of court which may involve an increase in the expenses of the Supreme Court shall be made except with the concurrence of the Prime Ministers of all the States; but the validity of a rule of court shall not in any proceedings in any court be called in question on the ground only that it was a rule to which the concurrence of the Prime Ministers was necessary and that they did not concur or are not expressed to have concurred in the making thereof.

PART IV

Judicial and Legal Services Commission

18. Establishment of Commission

(1) There shall be a Judicial and Legal Services Commission (hereinafter referred to as the "Commission") for the States which shall consist of the following persons, that is to say—

(*a*) the Chief Justice, who shall be the Chairperson;

(*b*) such Justice of Appeal or Puisne Judge as may from time to time be designated in that behalf by the Chief Justice;

(*c*) a person, appointed by the Chief Justice with the concurrence of the Prime Ministers of not less than four of the States, who has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court, not being a person who is practising as an advocate before the Supreme Court; and

(*d*) two members selected in accordance with the provisions of subsection (2) of this section.

(2) The persons for the time discharging the functions of Chairperson of the Public Service Commissions of two States, being States for the time being designated in that behalf by the Chief Justice, shall be *ex officio* members of the Commission:

Provided that—

(*a*) except as otherwise provided in any agreement between the Governments of all the States, the Chief Justice shall designate States in such manner that the Chairmen of the Public Service Commissions of the States sit as members of the Commission in rotation for periods of three years, the order of rotation among the States to be as follows—

(i) Antigua and Dominica,

(ii) Grenada and Saint Christopher and Nevis,

(iii) Saint Lucia and Saint Vincent; and

(*b*) where the Chairperson of the Public Service Commission of any designated State is in practice as an advocate before the Supreme Court, that Public Service Commission shall nominate another of its members, not being a person so in practice, to sit on the Commission in his or her stead.

(3) The office of the appointed member of the Commission shall become vacant—

(*a*) at the expiration of three years from the date of his or her appointment;

(*b*) if he or she practises as an advocate before the Supreme Court; or

(*c*) if the question of him or her ceasing to be a member of the Commission has been referred by the Chief Justice, acting on the recommendation of the Prime Ministers of not less than four of the States, to a tribunal consisting of a Chairperson and two other persons appointed by the Chief Justice, and that tribunal has recommended that such person should cease to be a member of the Commission.

(4) The Commission shall not be disqualified for the transaction of business by reason of any vacancy amongst its members.

19. Functions and procedure of Commission

(1) The Commission shall perform such functions as are conferred on it by this Order or any other law for the time being in force in any State.

(2) The Commission may by regulation or otherwise regulate its own procedure and confer powers and impose duties on any officer or authority of the Government of a State for the purposes of the exercise of its functions:

Provided that, except in the case of an officer of the High Court, no such powers or duties shall be conferred upon any officer in the public service of a State without the consent of the Prime Minister of the State.

20. Staff

The Commission may employ such officers as are necessary for the purpose of the exercise of its functions as the Chairperson with the concurrence of the Prime Ministers of all the States may appoint.

21. Expenses

The members of the Commission other than the Chief Justice and the Justice of Appeal or Puisne Judge, shall be paid such remuneration as the Chief Justice may with the concurrence of the Prime Ministers of all the States prescribe; and the Government of the States shall, except as otherwise provided by agreement between the Governments of all the States, contribute in equal proportions to the expenses of the Commission; and the sums that are required by virtue of this section to be paid by the Government of any State are hereby charged on the Consolidated Fund of that State.

PART V

Transitional Provisions

22. Pending proceedings

(1) Any proceedings originating in any of the States and pending immediately before the prescribed date in the British Caribbean Court of Appeal or in the Supreme Court or the Court of Appeal of the Windward Islands and Leeward Islands, may be continued on or after that date—

(*a*) in the case of proceedings pending in the British Caribbean Court of Appeal, in the Court of Appeal, and

(*b*) in the case of proceedings pending in the Supreme Court or the Court of Appeal of the Windward Islands and Leeward Islands, in the High Court.

(2) An appeal shall lie to the Court of Appeal on and after the prescribed date from any judgement of the Supreme Court of the Windward Islands and Leeward Islands given before the prescribed date in any proceedings originating in any of the States as if it were a judgement of the High Court.

(3) Any judgement of the British Caribbean Court of Appeal that was given but not satisfied before the prescribed date in any proceedings originating in any of the States may be enforced on or after the prescribed date as if it were a judgement of the Court of Appeal and any such judgement of the Court of Appeal or the High Court of the Windward Islands and Leeward Islands may be so enforced as if it were a judgement of the High Court.

(4) Until such time as other provision is made in that behalf by any law in force in a State, an appeal shall lie to the High Court from the decision of a magistrate in that State in any case in which an appeal would have lain to the Court of Appeal of the Windward Islands and Leeward Islands if the Order of 1959 had not been revoked.

23. Existing laws, etc.

(1) Any rule of court made under or kept in force by the Order of 1959 or the Order of 1962 and having effect as part of the law of a State immediately before the prescribed date shall continue in force on and after that date notwithstanding the revocation of those Orders.

(2) Any law (including any rule of court) other than the Order of 1959 and the Order of 1962 having effect as part of the law of a State immediately before the prescribed date shall have effect on and after the prescribed date as if—

(*a*) references therein to the British Caribbean Court of Appeal were references to the Court of Appeal; and

(*b*) references therein to the Supreme Court or the Court of Appeal of the Windward Islands and Leeward Islands were references to the High Court.

(3) The foregoing provisions of this section shall be without prejudice to any powers conferred by any law in force in a State upon any person or authority to make provision for any matter, including the amendment or revocation of any law (including any rule of court) having effect as part of the law of that State immediately before the prescribed date or the making on or after that date of rules of court so having effect.

24. Interim Commission

(1) Until the prescribed date, the power conferred on the Judicial and Legal Services Commission by sections 5 and 12 of this Order may be exercised by an interim Commission consisting of—

(i) the Chief Justice, who shall be Chairperson,

(ii) one person, appointed by the Chief Justice, who is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court, and

(iii) three persons appointed by the Chief Justice with the concurrence of the Premiers or, as the case may be, Chief Ministers of not less than four of the States, one of whom has been a judge of such court.

(2) A person who is in practice as an advocate before the Supreme Court established by the Order of 1959 shall not be appointed under subsection (1) of this section.

25. Terms of service of judges

Until other provision is made under section 11(1) of this Order, the allowances of the judges of the Court of Appeal and of the High Court and their terms and conditions of service, other than their salaries, shall be those to which the judges of the Supreme Court established by the Order of 1959 were entitled or which were applicable to them immediately before the commencement of this Order.

First Schedule

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ORDER, 1967

Forms of Oaths and Affirmations

[Section 7.]

1. Oath of Allegiance

I, ... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law. So help me God.

2. Affirmation of Allegiance

I, ... do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, according to law.

3. Oath for due execution of office

I, ... do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second in the office of (*here insert the description of the office*). So help me God.

4. Affirmation for due execution of office

I, ... do solemnly and sincerely affirm and declare that I will well And truly serve Her Majesty Queen Elizabeth the Second in the office of (*here insert the description of the office*).

Second Schedule

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ORDER, 1967

Provisions applying in relation to tribunals appointed under section 8(5)

[Section 8(6).]

1. The members of a tribunal may make such rules for their own guidance, and the conduct and management of proceedings before them and the hours and times and places for their sittings, as they may, from time to time, think fit, and may, from time to time, adjourn for such time and to such place as they may think fit.

2. The members of a tribunal shall have the powers of a judge of the High Court to summon witnesses, and to call for the production of books and documents, and to

examine witnesses on oath, and no member shall be liable to any action or suit for any matter or thing done by him or her as such.

3. Any person whose conduct is the subject of inquiry by a tribunal shall be entitled to, and any other person may by leave of the tribunal, be represented by counsel at the whole of the inquiry.

4. Any witness who shall wilfully give false evidence in any such inquiry, concerning the subject matter of such inquiry, shall be guilty of perjury, and be liable to be prosecuted and punished accordingly.

5. All persons summoned to attend and give evidence or to produce documents or any other matter at any sitting of a tribunal, shall be bound to obey the summons served on them as fully, in all respects, as witnesses are bound to obey subpoenas issued from the High Court, and shall be entitled to the like expenses as if they had been summoned to attend the High Court on a criminal trial, if the same shall be allowed by the tribunal, but the tribunal may disallow the whole or any part of such expenses in any case, if they think fit. Orders for the payment of such witnesses shall be made, as nearly as may be, as orders are made for the payment of witnesses at the High Court. Every person refusing or omitting, without sufficient cause, to attend at the time and place mentioned in the summons served on him or her, and every person attending, but leaving the inquiry without the permission of the tribunal, or refusing to answer, or to answer fully and satisfactorily to the best of his or her knowledge and belief, all questions put to him or her by or with the concurrence of the tribunal, or refusing or omitting, without sufficient cause, to produce any documents or other matters in his or her possession or under his or her control and mentioned or referred to on the summons served on him or her, and every person who shall, at any sitting of a tribunal, wilfully insult any member or servant of the tribunal or wilfully interrupt the proceedings of the tribunal, shall be liable, on summary conviction, to a penalty not exceeding two hundred dollars.

6. No statement made by any person who is called as a witness before a tribunal in answer to any question put by or with the concurrence of the tribunal shall, except in cases of indictments for perjury, be admissible in evidence in any civil or criminal proceeding.

Third Schedule

WEST INDIES ASSOCIATED STATES SUPREME COURT (GRENADA) ORDER

[Section 11.]

Salaries of Judges of Supreme Court

Chief Justice	$184,140 per year
Justice of Appeal	$153,450 per year
High Court Judge	$135,036 per year

Supreme Court (Masters) Order

SRO 2 of 2001

ARRANGEMENT OF ORDERS

1. Citation.
2. Definitions.

3. Establishment of the office of Master.
4. Functions.
5. Number of Masters.
6. Variation of Number of Masters.
7. Abolition of office only with consent of incumbent.
8. Appointment of Masters.
9. Discipline.
10. Qualifications.
11. Tenure of Office of Masters.
12. Retirement.
13. Pensions.
14. Status of Acting Masters.
15. Posting.
16. Assignments.
17. Salary.
18. Housing Allowance.
19. Travel Allowance.
20. Accommodation and Subsistence Allowance.
21. Telephone.
22. Relocation Expenses.
23. Vacation Leave.
24. Medical Leave.
25. Medical Fitness.
26. Oaths.
27. Commencement.
First Schedule
Second Schedule Travel Allowance

SUPREME COURT (MASTERS) ORDER

[SRO 2 of 2001.]

[1*st July*, 2000.]

1. Citation

This Order may be cited as the Supreme Court (Masters) Order.

2. Definitions

In this Order—

"Courts Order" means the Eastern Caribbean Supreme Court Order;

"Master" means the office established by section 3 and, where the context so admits, includes the holder of the office and unless otherwise stated includes a person appointed to act in the office;

"State" means—

(*a*) Antigua and Barbuda;

(*b*) Grenada;

(*c*) Saint Christopher and Nevis;

(*d*) Saint Lucia;

(*e*) Saint Vincent and the Grenadines; and

(*f*) The Commonwealth of Dominica;

"Territory" means—

(*a*) Anguilla;

(*b*) Montserrat; and

(*c*) The British Virgin Islands.

3. Establishment of the office of Master

There is established as an office of the Supreme Court the office of Master of the Supreme Court.

4. Functions

(1) A Master shall perform the duties and exercise the functions conferred upon Masters by the rules of court made pursuant to section 17(1) and (2) of the Courts Order.

(2) A Master may exercise such functions, as may be conferred upon Masters in relation to any State or Territory, by any law in force in that State or Territory.

5. Number of Masters

There shall be two Masters.

6. Variation of Number of Masters

The number of Masters may be varied by order of the Chief Justice made with the concurrence of the Prime Ministers of all the States.

7. Abolition of office only with consent of incumbent

No office of Master shall, without the consent of the holder of the office, be abolished while there is a substantive holder of that office.

8. Appointment of Masters

The appointment of Masters is provided for in section 12(2) of the Courts Order.

9. Discipline

The discipline of Masters is provided for in section 12(2) of the Courts Order.

10. Qualifications

(1) A person shall not be qualified to be appointed as a master unless that person—

(*a*) is qualified to practise as an advocate in a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in a court having jurisdiction in appeals from such a court and has so practised, for a period of or for periods amounting in the aggregate to not less than seven years; or

(*b*) has been serving in the office of judge in such court for a period of or for periods amounting in the aggregate to not less than seven years.

(2) For the purpose of subsection (1), a reference to a period or periods during which a person has practised as an advocate shall be construed as including periods during which a person has served in a public office in some part of the Commonwealth—

(*a*) in the office of magistrate;

(*b*) in the office of registrar of a court of unlimited civil and criminal jurisdiction in some part of the Commonwealth; or

(*c*) as an officer the functions of whose office includes appearing as an advocate in such court.

(3) For the purpose of subsection (1), a reference to a period or periods during which a person has served in a court of unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in a court having jurisdiction in appeals from such a court shall be construed as including periods during which a person has served—

(*a*) as case management master with functions comparable to those of a Master;

(*b*) as master with functions comparable to those of a Master.

11. Tenure of Office of Masters

(1) Subject to subsection (2), persons holding the office of Master, other than acting Master, hold office until attaining the age of sixty-five years.

(2) The Judicial and Legal Services Commission may remove a Master from office for cause at any time.

(3) In subsection (2), "cause" means—

(*a*) inability to discharge the functions of the office, whether arising from—

(i) infirmity of body or mind,

(ii) failure in the due execution of the office,

(iii) having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of the office, or

(iv) any other cause; or

(*b*) misconduct.

12. Retirement

(1) A Master shall retire upon attaining the age of sixty-five years.

(2) A Master may retire upon attaining an age that is less than sixty-five years where the Master is eligible for retirement under the pension laws of the State or Territory of which, by direction of the Chief Justice made pursuant to section 13(1) of the Courts Order, the Master shall be deemed to be in the service for the purpose of the grant of a pension.

13. Pensions

(1) A Master is entitled to pension in accordance with section 13 of the Courts Order.

(2) The pension of a Master shall not attract or be liable to income tax or any other charge or levy.

14. Status of Acting Masters

(1) A person appointed by the Judicial and Legal Services Commission to act as a Master shall, unless that person earlier resigns from the office or is removed from the office by the Judicial and Legal Services Commission continue act in that office for the period, if any, for which that person was appointed or until a person has been appointed to and assumed or has resumed the functions of that office, as the case may be.

(2) Sections 11 and 13 shall not apply to a person appointed to act as a Master in respect of that person's acting appointment.

15. Posting

A Master shall reside in the State or Territory to which the Chief Justice, from time to time, posts the Master.

16. Assignments

A Master shall serve the States or Territories that the Chief Justice, from time to time, assigns to the Master.

17. Salary

(1) A Master shall be paid a salary equivalent to eighty-five per cent of the salary specified for a Puisne judge in the Third Schedule to the Courts Order, as amended from time to time.

(2) The salary of a Master shall not attract or be liable to income tax or any other charge or levy.

18. Housing Allowance

(1) Subject to subsection (2), a Master shall be paid the housing allowance in the First Schedule to this Order.

(3) If the Master is ordinarily resident in the State or Territory to which the Master is posted, the Housing Allowance shall be fifty per cent of the amount prescribed in the First Schedule for that State or Territory.

19. Travel Allowance

(1) A Master who owns a car shall be paid the travel allowance in the Second Schedule to this Order.

(2) A Master who does not own a car may, at the discretion of the Chief Justice, be reimbursed transportation costs incurred within the State or Territory to which the Master is posted, up to a maximum amount of the travel allowance specified in Second Schedule for that State or Territory.

20. Accommodation and Subsistence Allowance

(1) Subject to subsections (3), (4) and (5), a Master is entitled to be paid for each calendar day while on duty outside the State or Territory to which the Master is posted an accommodation and subsistence allowance based on the United Nations Daily Subsistence Allowance.

(2) A Master may, at the discretion of the Chief Justice, be paid a supplementary allowance where, for reasons beyond the control of the Master, the actual costs of accommodation are significantly higher than the average hotel costs used in calculating the daily accommodation component of the United Nations Daily Subsistence Allowance.

(3) Where a Master's travel on duty outside the State or Territory to which the master is posted does not involve an overnight stay, the Master is entitled to be paid forty per cent of the accommodation and subsistence allowance.

(4) Where a Master on duty outside the State or Territory to which the Master is posted elects to stay in private accommodation, the Master is entitled to be paid fifty per cent of the accommodation and subsistence allowance.

(5) Where a Master on duty outside the State or Territory to which the Master is posted—

(*a*) is accommodated free of charge by the Eastern Caribbean Supreme Court or by the Government of a State or Territory, the Master is entitled to be paid fifty per cent of the accommodation and subsistence allowance;

(*b*) is accommodated and provided with meals free of charge by the Eastern Caribbean Supreme Court or by the Government of a State or Territory, the Master is entitled to be paid twenty per cent of the subsistence allowance.

21. Telephone

(1) A Master shall be provided with local residential telephone service at the Master's residence in the State or Territory to which the Master is posted, at no cost to the Master.

(2) A Master is entitled to be reimbursed for business related long distance telephone calls.

22. Relocation Expenses

Masters are entitled to have their personal effects and household goods moved, at the expense of the Eastern Caribbean Supreme Court, from the State or Territory of their former posting or their place of residence immediately prior to their appointment, as the case may be, to the State or Territory of current posting, by packers, shippers and freight forwarders selected by the Chief Justice.

23. Vacation Leave

(1) A Master is entitled to forty-two calendar days vacation leave annually of which not less than twelve must be taken annually either in one period or in a series of periods according to the requirements of the Judicial and Legal Services Commission.

(2) Vacation leave may be accumulated up to a maximum of one hundred and twenty calendar days.

(3) Leave in excess of one hundred and twenty calendar days is forfeited.

(4) There is no entitlement to remuneration for leave forfeited.

24. Medical Leave

A Master is entitled to two working days per month of uncertified medical leave and to a reasonable period of certified medical leave annually.

25. Medical Fitness

A Master shall, before appointment, be certified by a medical practitioner, who is duly registered in a State or Territory, as being in good health and free from any ailment likely to adversely affect the discharge of the functions and duties of the office of Master.

26. Oaths

A Master shall, before entering upon the functions of the office, take the oaths set out in the First Schedule to the Courts Order.

27. Commencement

This Order comes into force on the 1st day of July, 2000.

First Schedule

SUPREME COURT (MASTERS) ORDER

Housing Allowance ..... E.C. $18,000.00 per year

Second Schedule

SUPREME COURT (MASTERS) ORDER

Travel Allowance

COLUMN ONE *State or Territory to which Master posted*	*COLUMN TWO* *Allowance*
1. ST. LUCIA	E.C. $ 6,960.00 per year

Eastern Caribbean Supreme Court Civil Procedure Rules

SRO 3 of 2001

Amended by

S.I. 1 of 2003
SRO 26 of 2011

ARRANGEMENT OF RULES

1. Citation.
2. Rules in the Schedule.
3. Reference to Rules.
4. Repeal.
5. Commencement.
Schedule

EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE RULES

[SRO 3 of 2001 amended by S.I. 1 of 2003, SRO 26 of 2011.]

[31*st December*, 2000.]

1. Citation

These Rules may be cited as the Eastern Caribbean Supreme Court Civil Procedure Rules.

2. Rules in the Schedule

The rules in the Schedule hereto are the rules governing civil procedure in the Eastern Caribbean Supreme Court.

3. Reference to rules

It shall not be necessary to include the Schedule to these Rules in the annual volume of the Laws of a Member State or Territory of the Eastern Caribbean Supreme Court, but a reference may be made thereto in such volume and shall be sufficient.

4. Repeal

The Rules of the Supreme Court (Revision), 1970 are repealed, subject to the transitional provisions contained in Part 73 of the Schedule hereto.

5. Commencement

These Rules comes into force in each of the Member States and Territories of the Eastern Caribbean Supreme Court on 31st December, 2000.

Schedule

EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE RULES

[Rule 2.]

Eastern Caribbean Supreme Court Civil Procedure Rules, 2000, published by the Caribbean Law Publishing Company Ltd. at the request and by the authority of the Chief Justice and two other judges appointed by him or her.

Amended by

SRO 26 of 2011

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

ARRANGEMENT OF DIRECTIVES

DIRECTIVE

1. Citation.
2. Introductory note.
3. Administration.
4. Referral to mediation.
5. Selection of mediator and date for mediation.
6. Pre-mediation requirements.
7. Attendance at mediation session.
8. Procedures.
9. Practice forms.
10. Commencement.

FIRST SCHEDULE

Procedures

SECOND SCHEDULE

Practice Forms

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to Part 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000, and supplements Part 25.1(*h*) of the Rules.

[SI 1 of 2004.]

[16*th January*, 2004.]

Citation

1. In this Practice Direction, unless otherwise provided for or the context otherwise requires—

"ADR" means a collective description of methods of resolving disputes otherwise than through the trial process including, in particular, mediation;

"Court" means the High Court and, where the context so admits and in Part 61, the Court of Appeal;

"court office" refers to—

(*a*) the place where documents are to be filed, etc. and includes a Registry of the High Court and of the Court of Appeal; and

(*b*) members of the court staff who carry out work of a formal or administrative nature under rule 2.6(1) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000;

"court-connected mediation services" means mediation services provided as the result of a referral by the court;

"ECSC regional mediation co-ordinator" means the person appointed by the Chief Justice to co-ordinate the development of court-connected mediation in the Member States and Territories;

"Judicial Education Institute" means the Judicial Education Institute of the Eastern Caribbean Supreme Court;

"mediation" means a flexible dispute resolution procedure in which a neutral third party, the mediator, facilitates negotiations between the parties to help them settle their dispute;

"mediation co-ordinator" means the person appointed to be responsible for the management of court-connected mediation in each of the Member States;

"mediation session" refers to a mediation including continuations and adjournments of the same matter held with a mediator and attended by parties and or their lawyers to a dispute to which this Practice Direction applies;

"mediator" means an individual engaged as a neutral third party to provide mediation services and whose name appears on the Roster of Mediators for the Eastern Caribbean Supreme Court;

"Member States" means—

(*a*) Antigua and Barbuda;

(*b*) Commonwealth of Dominica;

(*c*) Grenada;

(*d*) Saint Christopher and Nevis;

(*e*) Saint Lucia; and

(*f*) Saint Vincent and the Grenadines;

"party" includes both the party to the claim and any legal practitioner on record for that party unless any rule specifies or it is clear from the context that it relates to the client or to the legal practitioner only;

"referral order" means an order to attend mediation as a result of a referral by a master or judge;

"Rules" means Eastern Caribbean Supreme Court Civil Procedure Rules, 2000;

"statement of case" means—

(*a*) a claim form, statement of claim, defence, counterclaim, ancillary claim form or defence and a reply; and

(*b*) any further information given in relation to any statement of case under Part 33 of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000, either voluntarily or by order of the court;

"Territories" means—

(*a*) Anguilla;

(*b*) Montserrat; and

(*c*) the British Virgin Islands;

"to refer" means to provide a party to a case with the name of one or more mediators for the purpose of selecting a mediator.

Introductory note

2. Court-connected mediation was introduced in Saint Lucia by Practice Direction No. 2 of 2002. Practice Direction No. 1 of 2003 extends court-connected mediation to all Member States and makes provision for the referral to mediation of civil actions filed in the Court.

Under Part 25.1(*h*) of the Rules, the Court must actively manage cases, by "encouraging the parties to use any appropriate form of dispute resolution including, in particular, mediation, if the court considers it appropriate and facilitating the use of such procedures". In order to facilitate the use of such procedures and to provide litigants with a timely and cost-effective method to the conventional way of resolving civil disputes, the Court is instituting court-connected mediation in the Member States.

Practice Direction No. 1 of 2003 does not provide for court-connected mediation in family proceedings, insolvency (including winding up of companies), non-contentious probate proceedings, proceedings when the High Court is acting as a prize court and any other proceedings in the Supreme Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings.

Administration

3. Court-connected mediation will be managed on a regional and national basis. In each Member State and Territory there will be a national court-connected Mediation committee which may include—

- Members of the Judiciary;
- Registrar of the High Court;
- Representatives from—
    - the Ministry responsible for legal affairs;

- the Bar Association;
- the private sector;
- trade unions;
- religious organisations.

- Such other persons as may be selected by the Chief Justice.

These committees shall be responsible for selecting mediators, who have been certified by the Judicial Education Institute, to be placed on the Roster of Mediators. The committees will also deal with complaints, assess the effectiveness of the process and make recommendations.

The Roster of Mediators from which litigants can choose a mediator will be available at the High Court Office and at the office of the Mediation Co-ordinator. Mediators on the roster will be paid on a fee basis established by the Court.

The Regional Court-connected Mediation Committee shall be comprised of—

- representatives of the national Court-connected Mediation Committees;
- such other persons as may be selected by the Chief Justice.

This Committee will serve as an advisory body to the Chief Justice.

Referral to mediation

4. At any stage of the proceedings—

- a master or judge may make an order referring any civil action filed in the Court to mediation;
- the parties may by consent notify the court that they wish to have their case referred to mediation and in such case, the master or judge shall make a referral order.

Parties will not be allowed to opt out of the Referral Order to mediation except by order of a master or judge and upon adducing good and substantial reasons.

Selection of mediator and date for mediation

5. It is the joint responsibility of the parties to select a Mediator mutually agreed to by them. If the parties cannot agree upon a mutually acceptable mediator, a master or judge shall make an order appointing a Mediator from the Roster of Mediators.

The Mediation Co-ordinator shall be responsible for the scheduling of mediation sessions, which will be conducted on facilities under the management and control of the Court. Parties will be required to attend a mediation session of up to three hours but they may choose to go beyond that period if they so desire.

After the holding of a mediation session, the following cases will be returned to case management—

- cases in which a Certificate of Non-compliance has been filed;
- cases in which a Notice of Outcome of Mediation indicates that the parties have not settled.

Pre-mediation requirements

6. After an order has been made referring a matter to mediation, the parties are required to—

- submit a copy of the Statement of Case to the Mediator at least seven days prior to the mediation session;

- sign a Confidentiality Agreement prior to the mediation session.

If the parties have agreed to settle or have settled the claim prior to the scheduled mediation session, they must cancel the session and provide the Mediation Co-ordinator with the details of the terms of the agreement or settlement.

Attendance at mediation session

7. All parties to the litigation are required to attend the mediation session. The Mediator shall lodge with the Mediation Co-ordinator a Certificate of Non-compliance if a party to the claim fails to attend the mediation session whether or not their legal practitioners attend.

Procedures

8. The Procedures to be followed in relation to court-connected mediation are prescribed in the First Schedule.

Practice forms

9. The Practice Forms are contained in the Second Schedule.

Commencement

10. This Practice Direction came into effect on the 16th day of January, 2004, and is applicable to all civil actions filed in the Court.

FIRST SCHEDULE

CIVIL PROCEDURE ACT

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

Procedures

Referral of Cases to Mediation

1. 1.1 At any stage of the proceedings—

(*a*) a master or judge may make an order in Form M1 referring any civil action filed in the Court to mediation; or

(*b*) the parties may by consent notify the Court in Form M8 that they wish to have their case referred to mediation, and in such case, the Master or judge may make a Referral Order.

1.2 This Practice Direction does not apply to the following matters as excluded by Part 2.2(3) of the Civil Procedure Rules, 2000—

- family proceedings;
- insolvency (including winding up of companies);
- non-contentious probate proceedings;
- proceedings when the High Court is acting as a prize court; and
- any other proceedings in the Supreme Court instituted under any enactment, in so far as rules made under that enactment regulate these proceedings.

1.3 After the Referral Order has been made, the court office shall send a copy to the Mediation Co-ordinator.

Criteria for Referral of Cases

2. 2.1 In considering whether to refer a case to mediation, the master or judge shall take into account all relevant circumstances including the following—

(*a*) the relationship between the parties;

(*b*) the willingness of the parties to resolve their dispute by a collaborative process;

(*c*) opportunities for joint gains not available through litigation in the court; or

(*d*) any other criteria considered appropriate by the master or judge.

Application to Dispense with Mediation

3. Within fifteen days after the Referral Order, a party may apply to the court to vacate the Referral Order if good and substantial reason is shown to the master or judge.

Time for Conducting the Mediation Session

4. The mediation session hearing shall be held within forty-five days of the Referral Order unless otherwise ordered by the master or judge, on application by any party.

Extension of Time for Mediation

5. 5.1 In considering whether to extend the time within which the mediation is to be conducted the master or judge shall take into account all circumstances, including—

(*a*) the number of parties and the complexity of the issues in the action; and

(*b*) whether the mediation will be more likely to succeed if it is postponed to allow the parties to acquire more information.

Roster of Mediators

6. 6.1 The Mediation Co-ordinator shall maintain a Roster of Mediators for that Member State, as selected by the Court-connected Mediation Committee.

6.2 The Roster of Mediators shall be exhibited at the High Court Office and at the office of the Mediation Co-ordinator.

Selection of Mediator by the Parties

7. 7.1 All court-connected mediations shall be conducted by a mediator from the Roster of Mediators, who is—

(*a*) mutually agreed to by the parties; or

(*b*) assigned by the master or judge, where the parties fail to agree.

7.2 The parties may select the mediator—

(*a*) at the time of filing the Notice for Referral to Mediation;

(*b*) at the time the Referral Order is made; or

(*c*) within ten days of the Referral Order, by filing a Notice of Selection of Mediator in Form M2.

7.3 If the parties fail to select a mediator, the Mediation Co-ordinator shall request—

(*a*) That the master or judge assign a mediator from the Roster of Mediators; and

(*b*) Issue a Notice of Selection of Mediator in Form M3, to the parties.

Scheduled Date for Mediation

8. When the Notice of Selection of Mediator is filed in Forms M2 and M3, the Mediation Co-ordinator shall—

(*a*) in consultation with the parties and the mediator, fix a date for the mediation session; and

(*b*) serve on every party a Notice of Scheduled Mediation (Form M4) stating the place, date and time of the mediation.

Procedure Before the Mediation Session

9. 9.1 Parties are required to—

(*a*) submit a copy of the Statement of Case to the Mediator at least seven days prior to the mediation session;

(*b*) sign a Confidentiality Agreement prior to the mediation session.

9.2 If the parties have agreed to settle or have settled the matter prior to the scheduled mediation session, they must cancel the session and provide the Mediation Co-ordinator with the details of the terms of the agreement or settlement.

Attendance at the Mediation Session

10. 10.1 The parties are required to attend a three-hour mediation session. After the first three hours, the mediation may be continued if the parties and the mediator agree to do so and the parties agree to pay the scheduled additional hourly rate.

10.2 A party who requires another person's approval before agreeing to a settlement shall, before the mediation session, arrange to have ready access to the other person throughout the session.

10.3 Where a party is not a natural person, the person attending on behalf of that party must be authorised to settle the dispute or be in a position to be able to obtain such authority during the mediation.

10.4 With the consent of all parties and the mediator, a mediation session may be adjourned at any time. In the event of an adjournment, the parties must reschedule the mediation session within the time limits set out in the Practice Direction.

Failure To Attend

11. If a party fails to attend the mediation session within half an hour of the appointed time or attends the mediation session without having authority to settle the mediator shall—

(*a*) cancel the session; and

(*b*) immediately lodge with the Mediation Co-ordinator a Certificate of Non-compliance (Form M5) for filing at the Court Office.

Non-Compliance with the Referral Order

12. When a Certificate of Non-compliance is filed with the Court Office, the Registrar shall refer the matter to the master or judge who may make an order under Part 25 (case management – the court's powers) or under Part 63 (costs – general) of the Rules against a party who fails to comply with the Practice Direction.

Confidentiality

13. Prior to commencement of the mediation session the parties shall sign a Confidentiality Agreement (Form M6).

Mediator's Report

14. At the end of the mediation session, the mediator shall complete and lodge the Notice of Outcome of Mediation (Form M7) with the Mediation Co-ordinator, for filing at the Court Office.

Agreement

15. 15.1 If there is an agreement resolving some or all of the issues in the dispute—

(*a*) it shall be signed by the parties and the mediator and lodged with the Mediation Co-ordinator for filing at the Court Office; and

(*b*) within seven days after the agreement is signed the parties shall apply to the court for an order in terms of the agreement and the master or judge shall make an order in Form M9.

15.2 If the parties fail to make an application to the court for an order in terms of the signed agreement within seven days after the agreement is signed, the master or judge shall make an order under Part 25.2 of the Rules.

No Agreement

16. If no agreement is reached that resolves all the issues in dispute, the matter shall be returned to case management.

SECOND SCHEDULE

Practice Forms

FORM 1

CIVIL PROCEDURE ACT

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

Mediation Referral Order

[Directive 1.1(*a*).]

The Eastern Caribbean Supreme Court

In the High Court of Justice

[State/Territory] .....

Claim No. .....

Between *A.B.* ..... Claimant

and

C.D. ..... Defendant

Mediation Referral Order

Made the ..... day of ....., 20 .....

Upon this matter coming on before:

The Honourable Justice/Master

[And Upon Hearing ..... Counsel for the Claimant and ..... Counsel for the Defendant]

[And Upon the Claimant and/or Defendant being present]

It is ordered that:

The parties to these proceedings are required to attend a mediation session with a mediator within forty-five days from today's date. Parties shall select a mediator from the Roster of Mediators and advise the Mediation Co-ordinator of the name of the mediator within ten days of the receipt of this notice. If parties fail to select a mediator, one will be appointed by the Court.

By the Court

[SEAL]

Registrar

FORM 2

CIVIL PROCEDURE ACT

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

Notice of Selection of Mediator

[Directive 7.2.]

Heading: *same as in Form M1*

Notice of Selection of Mediator

Take notice that the parties have selected ..... (*Name of Mediator*) from the Roster of Mediators.

Dated: ..... Signed .....

Claimant/Claimant's Legal Practitioner

(*Name, address, telephone number, email*) .....

To: Mediation Co-ordinator

(*Name, address, telephone number, email*) .....

FORM 3

CIVIL PROCEDURE ACT

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

Notice of Selection of Mediator by Judge or Master

[Directive 7.3.]

Heading: *same as in Form M1*

Notice of Selection of Mediator by Judge or Master

Take notice that a Notice of Selection of Mediator by the parties has not been filed in this action. Accordingly, I have assigned ..... (*Name of Mediator*) to conduct the mediation session in these proceedings.

Unless the court orders otherwise, you are required to attend this mediation session. If you have a Lawyer representing you in this action, he or she is also required to attend.

You may be penalised if you fail to attend the mediation session.

(Dated) .....

By the Court

[SEAL]

.....

Registrar

To: Claimant's Legal Practitioner/ Claimant
(*Name, address, telephone number, email*) .....

And to: Defendant's Legal Practitioner/ Defendant
(*Name, address, telephone number, email*) .....

And to: Mediation Co-ordinator
(*Name, address, telephone number, email*).....

FORM 4

CIVIL PROCEDURE ACT

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

Notice of Scheduled Mediation

[Directive 8(*b*).]

Heading: *same as in Form M1*

Notice of Scheduled Mediation

Take notice that the parties/the Master or Judge have/has selected. (*Name of Mediator*) from the Roster of Mediators. The mediation is scheduled to take place on the ..... day, of ..... (*date*) from ..... to ..... (*time*) at the Office of the Mediation Co-ordinator at ..... (*address*)

You are required to attend a three-hour mediation session. If you have a lawyer representing you in this proceeding, he or she is also required to attend. Any party attending the mediation must be authorised to settle the dispute or be in a position to be able to obtain such authority during the mediation.

When you attend the mediation session, you should bring with you any documents that you consider of central importance to your case. You should plan to remain throughout the scheduled time.

Dated: ..... Signed .....

Mediation Co-ordinator

(*Name, address, telephone number, email*) .....

To: The Mediator

(*Name, address, telephone number, email*) .....

To: Claimant's Legal Practitioner/ Claimant

(*Name, address, telephone number, email*) .....

And to: Defendant's Legal Practitioner/ Defendant

(*Name, address, telephone number, email*) .....

FORM 5

CIVIL PROCEDURE ACT

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

Certificate of Non-Compliance

[Directive 11.1(*b*).]

Heading: *same as in Form M1*

Certificate of Non-Compliance

Take notice that

- ☐ The Claimant failed to attend the mediation session.
- ☐ The Defendant failed to attend the mediation session.
- ☐ The Claimant or his or her representative attended the mediation but had no authority to settle.
- ☐ The Defendant or his or her representative attended the mediation but had no authority to settle.

Dated ..... Signed.....

Mediator

(*Name, address, telephone number, email*) .....

To: Mediation Co-ordinator

(*Name, address, telephone number, email*) .....

And to: The Registrar

(*Name, address, telephone number, email*) .....

FORM 6

CIVIL PROCEDURE ACT

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

Confidentiality Agreement

[Directive 13.]

Heading: *same as in Form M1*

Confidentiality Agreement

The parties will participate in a Mediation Session to be conducted in accordance with the Practice Direction regarding the Court-connected Mediation Pilot Project. The parties agree that—

(1) statements made and documents produced in a mediation session and not otherwise discoverable are not subject to disclosure through discovery or any other process and are not admissible into evidence for any purpose, including impeaching credibility;

(2) the notes, records and recollections of the mediator conducting the session are confidential and protected from disclosure for all purposes; and

(3) at no time shall any party summon, subpoena or call the mediator as a witness to testify as to the fact of the mediation or as to any oral or written communication made at any stage of the mediation.

Each of the parties and their lawyers has read this agreement and agree to proceed with the mediation on the terms contained herein.

Dated: ....

Defendant

.....

Claimant

.....

Legal Practitioner for the Defendant

.....

Legal Practitioner for the Claimant

To: The Mediation Co-ordinator

(*Name, address, telephone number, email*) .....

FORM 7

CIVIL PROCEDURE ACT

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

Notice of Outcome of Mediation

[Directive 14.]

Heading*: same as in Form M1*

Notice of Outcome of Mediation

Take notice that a mediation session was conducted in this proceeding on the .....

day of ..... (*Date*)

- ☐ The parties settled prior to the mediation session.
- ☐ The parties settled as a result of the mediation session.
- ☐ The parties did not settle.
- ☐ The parties settled some issues as a result of the mediation session.
- ☐ The terms of the settlement on all issues are hereto annexed.

Dated: ..... Signed .....

The Mediator

(*name, address, telephone number, email*) .....

To: The Mediation Co-ordinator

(*Name, address, telephone number, email*) .....

And to: The Registrar

(*Name, address, telephone number, email*) .....

FORM 8

CIVIL PROCEDURE ACT

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

Notice for Referral to Mediation

[Directive 1.1(*b*).]

Heading: *same as in Form M1*

Notice for Referral to Mediation

Take notice that:

1. I, ..., (*name*) of ..... (*address*) the Claimant herein consent to have the Court refer this matter to mediation.
2. I, ..., (*name*) of ..... (*address*) the Defendant herein consent to have the Court refer this matter to mediation.
3. We have selected ..... (*name of mediator*) from the Roster of Mediators.

Dated: ..... Signed .....

Claimant/Claimant's Legal Practitioner

(*name, address, telephone number, email*) .....

Defendant/ Defendant's Legal Practitioner

(*name, address, telephone number, email*) .....

To: The Registrar

FORM 9

CIVIL PROCEDURE ACT

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

Order subsequent to Mediation Agreement

[Directive 15. l(*b*).]

Heading: *same as in Form M1*

Order subsequent to Mediation Agreement

Made the ..... day of ....., 20 .....

Upon this matter coming on before:

The Honourable Justice/Master

[And Upon Hearing ..... Counsel for the Claimant and .....Counsel for the Defendant]

[And Upon the Claimant and/or Defendant being present]

Upon this matter having been referred to mediation.

And upon the parties having agreed to the terms set out in the signed agreement annexed hereto.

It is ordered that all further proceedings in this matter are stayed except for the purpose of carrying into effect the terms of the said agreement.

For that purpose the parties have permission to apply to the court.

By The Court

.....

Registrar

EASTERN CARIBBEAN SUPREME COURT (SITTINGS OF CRIMINAL CAUSES) RULES

ARRANGEMENT OF RULES

PART 1

Overriding Objective

1.1 The overriding objective.
1.2 Application of overriding objective by the court.
1.3 Duty of parties.

PART 2

Application and Interpretation of these Rules

2.1 Citation.
2.2 Application of these Rules.
2.3 Application of Interpretation Acts.
2.4 Definitions.
2.5 Who may exercise the powers of the court.
2.6 Court staff.
2.7 Court's discretion as to where, when and how it deals with cases.

PART 3

Time, Documents

3.1 Time – court to state calendar date.
3.2 Time – computation.
3.3 Vacations.
3.4 Hearings in vacations.
3.5 Time – vacations.
3.6 Documents.
3.7 Filing of documents.
3.8 Filing and service by fax.
3.9 Sealing of documents issued by the court.
3.10 Forms.
3.11 Statements of case – address for service.
3.12 Statements of case – certificate of truth.
3.13 Failure to give certificate of truth.
3.14 Right to inspect, etc., certain documents filed in court office.

PART 4

Practice Directions and Guides

4.1 Who may issue practice directions.
4.2 Scope of practice directions.
4.3 Publication of practice directions.
4.4 Compliance with practice directions.
4.5 Practice guides.
4.6 Date from which practice directions and guides take effect.

PART 5

Service of Claim Form within Jurisdiction

5.1 Service of claim form – normal method.
5.2 Statement of claim to be served with claim form.
5.3 Method of personal service.
5.4 Permitted place of service.
5.5 Proof of personal service.
5.6 Service on legal practitioner.
5.7 Service on limited company.
5.8 Service on firm or partnership.
5.9 Service on body corporate.
5.10 Service on minors and patients.
5.11 Proof of postal service.
5.12 Proof of service by fax.
5.13 Alternative methods of service.
5.14 Power of court to make order for service by specified method.
5.15 Proof of service by specified method.
5.16 Service of claim form by contractually agreed method.
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5.18 Service of claim for possession of vacant land.
5.19 Deemed date of service.

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6.1 Who is to serve documents other than claim form.
6.2 Method of service.
6.3 Address for service.
6.4 Serving documents where no address for service is given.
6.5 Service of documents on person who is not a party.
6.6 Deemed date of service.
6.7 Proof of service.
6.8 Power of court to dispense with service.
6.9 Service of notices, etc. on Attorney-General.

PART 7

Service of Court Process out of Jurisdiction

7.1 Scope of this Part.
7.2 General rule as to service of claim form out of jurisdiction.
7.3 Service of claim form out of jurisdiction in specified proceedings.
7.4 Proceedings which include other types of claim.
7.5 Permission to serve claim form out of jurisdiction.
7.6 Acknowledgment of service and defence where claim form served out of the jurisdiction.
7.7 Application to set aside service under rule 7.3.
7.8 Mode of service of claim form – general provisions.
7.8A Mode of service – alternative procedure.
7.8B Power of the court to dispense with service of the claim form.
7.9 Service of claim form through foreign governments, or judicial or consular authorities.
7.10 Procedure where claim form is to be served through foreign Governments, etc.
7.11 Service of claim form on a State where court permits service out of jurisdiction.
7.12 Translation of claim form.
7.13 Undertaking to be responsible for expenses of Minister with responsibility

for foreign affairs.
7.14 Service of court process other than claim form.

PART 8

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8.1 The claimant – how to start proceedings.
8.2 Statement of claim, etc. to be issued and served with claim form.
8.3 Where to start proceedings.
8.4 Right to make claim which includes two or more claims.
8.5 Claim not to fail by adding or failing to add parties.
8.6 What must be included in claim form.
8.7 Claimant's duty to set out case.
8.7A Permission to rely on allegation or factual argument.
8.8 Certificate of value (small claims).
8.9 Special requirements applying to claims for personal injuries.
8.10 Relator claims.
8.11 Service of claim form.
8.12 Time within which claim form may be served.
8.13 Extension of time for serving claim form.
8.14 Defence form, etc. must be served with claim form.

PART 9

Acknowledgment of Service and Notice of Intention to Defend

9.1 Scope of this Part.
9.2 Filing acknowledgment of service and consequence of not doing so.
9.3 The period for filing acknowledgment of service.
9.4 Notice to claimant of filing of acknowledgment of service.
9.5 Contents of acknowledgment of service.
9.6 Right to dispute jurisdiction of court not taken away by acknowledgment of service.
9.7 Procedure for disputing court's jurisdiction, etc.
9.7 Procedure for disputing court's jurisdiction.
97A Procedure for applying for a stay etc. where the defendant is served out of jurisdiction.

PART 10

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10.1 Scope of this Part.
10.2 The defendant – filing defence and consequences of not doing so.
10.3 The period for filing defence.
10.4 Service of copy of defence.
10.5 Defendant's duty to set out case.
10.6 Special requirements applying to claims for personal injuries.
10.7 Consequences of not setting out defence.
10.8 Defence of tender.
10.9 Reply to defence.

PART 11

General Rules about Applications for Court Orders

11.1 Scope of this Part.
11.2 Applicants and respondents.
11.3 Applications to be dealt with at case management conference.

11.4 Time when application is made.
11.5 Where to make application.
11.6 Application to be in writing.
11.7 What application must include.
11.8 Notice of application and evidence in support.
11.9 Evidence in support of application.
11.10 Contents of notice of application.
11.11 Service of notice of application.
11.12 Powers of court in relation to conduct of application.
11.13 Consequence of not asking for order in application.
11.14 Applications which may be dealt with without hearing.
11.15 Service of application where order made on application made without notice.
11.16 Applications to set aside or vary order made on application made without notice.
11.17 Power of court to proceed in absence of party.
11.18 Application to set aside order made in absence of party.

PART 12

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12.1 Scope of this Part.
12.2 Claims in which default judgement may not be obtained.
12.3 Cases in which permission required.
12.4 Conditions to be satisfied – judgement for failure to file acknowledgment of service.
12.5 Conditions to be satisfied – judgement for failure to defend.
12.6 Admission of part – request for time to pay.
12.7 Procedure.
12.8 Claim for specified sum of money.
12.9 Claim against more than one defendant.
12.10 Nature of default judgement.
12.11 Interest.
12.12 Costs.
12.13 Defendant's rights following default judgement.

PART 13

Setting Aside or varying Default Judgement

13.1 Scope of this Part.
13.2 Cases where court must set aside default judgement.
13.3 Cases where court may set aside or vary default judgement.
13.4 Applications to vary or set aside default judgement – procedure.
13.5 Court to impose condition as to filing of defence.
13.6 Hearing to be treated as case management conference.
13.7 Abandoned claims to be restored if judgement set aside.

PART 14

Judgement on Admissions

14.1 Making an admission.
14.2 Satisfaction.
14.3 Admissions where party a minor or patient.
14.4 Admission by notice in writing – application for judgement.
14.5 Admission in whole or in part of money claim.
14.6 Admission of whole of claim for specified sum of money.
14.7 Admission of part of claim for money only.

14.8 Admission of liability to pay whole of claim for unspecified sum of money.
14.9 Requests for time to pay.
14.10 Requests for time to pay – procedure where time and rate agreed.
14.11 Requests for time to pay – procedure where time and rate not agreed.
14.12 Right of redetermination.
14.13 Variation of order.

PART 15

Summary Judgement

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15.2 Grounds for summary judgement.
15.3 Types of proceedings for which summary judgement is not available.
15.4 Procedure.
15.5 Evidence for purpose of summary judgement hearing.
15.6 Powers of court on application for summary judgement.

PART 16

Assessment of Damages

16.1 Scope of this Part.
16.2 Assessment of damages after default judgement.
16.3 Assessment of damages after admission of liability on claim for unspecified sum of money.
16.4 Assessment of damages after direction for trial of issue of quantum.

PART 17

Interim Remedies

17.1 Orders for interim remedies.
17.2 Time when an order for interim remedy may be made.
17.3 How to apply for interim remedy.
17.4 Interim injunctions and similar orders.
17.5 Interim payments – general procedure.
17.6 Interim payments – conditions to be satisfied and matters to be taken into account.
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Ancillary Claims

18.1 Meaning of ancillary claim.
18.2 Ancillary claim to be treated as claim for purposes of these Rules.
18.3 Defendant's claim for contribution or indemnity from co-defendant.
18.4 Procedure for making ancillary claim.
18.5 Service of ancillary claim form.
18.6 Counterclaim may survive claim.
18.7 Restrictions on right to make counterclaim or set-off in proceedings by or against Crown.
18.8 Adding other defendants to counterclaim.
18.9 Defence to ancillary claim.
18.10 Matters relevant to whether ancillary claim should be dealt with separately from main claim.
18.11 Effect of service of ancillary claim form.
18.12 Special provisions relating to judgement on failure to file defence to

ancillary claim.
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PART 19

Addition and Substitution of Parties

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19.2 Change of parties – general.
19.3 Procedure for adding and substituting parties.
19.4 Special provisions about adding or substituting parties after end of relevant limitation period.

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Changes to Statements of Case

20.1 Changes to statements of case.
20.2 Changes to statement of case after end of relevant limitation period.
20.3 Filing an amended statement of case.

PART 21

Representative Parties

21.1 Representative claimants and defendants – general.
21.2 Appointment of representative claimant or defendant – procedure.
21.3 Consequence of order appointing representative party.
21.4 Representation of persons who cannot be ascertained, etc. in proceedings about estates, trusts and construction of written instruments.
21.5 Compromise in proceedings to which rule 21.4 applies.
21.6 Representation of beneficiaries by trustees.
21.7 Proceedings against estate of deceased person.
21.8 Power of court to give directions to enable proceedings to be carried on after party's death.
21.9 Power of court to strike out action after death of claimant.

PART 22

Miscellaneous Rules about Parties

22.1 Partners.
22.2 Person carrying on business in another name.
22.3 Bodies corporate.

PART 23

Minors and Patients

23.1 Scope of this Part.
23.2 Requirement of next friend in proceedings by or against minors or patients.
23.3 Stage of proceedings at which next friend becomes necessary.
23.4 Who may be minor's next friend.
23.5 Who may be patient's next friend.
23.6 Conditions for being next friend.
23.7 How person becomes next friend without court order.
23.8 How person becomes next friend by court order.
23.9 Court's power to terminate appointment of and substitute next friend.

23.10 Appointment of next friend by court order – supplementary.
23.11 Procedure where appointment as next friend ceases.
23.12 Compromise, etc. on behalf of minor or patient.
23.13 Control of money recovered by or on behalf of minor or patient.

PART 24

Security for Costs

24.1 Scope of this Part.
24.2 Application for order for security for costs.
24.3 Conditions to be satisfied.
24.4 Security for costs against counterclaiming defendant.
24.5 Enforcing order for security for costs.

PART 25

Case Management – The Objective

25.1 Court's duty to actively manage cases.

PART 26

Case Management – The Court's Powers

26.1 Court's general powers of management.
26.2 Courts power to make orders of its own initiative.
26.3 Sanctions – striking out statement of case.
26.4 Court's general power to strike out statement of case.
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Case Management Conferences – Procedure

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27.2 Fixed date claims – first hearing.
27.3 Case management conference.
27.4 Attendance at case management conference or pre-trial review.
27.5 Orders to be made at case management conference.
27.6 Dispensing with case management conference in simple and urgent proceedings.
27.7 Adjournment of case management conference.
27.8 Variation of case management timetable.
27.9 Listing questionnaire.
27.10 Fixing trial date.

PART 28

Disclosure and Inspection of Documents

28.1 Scope of this Part.
28.2 Duty of disclosure limited to documents which are or have been in party's control.
28.3 Disclosure of copies.

28.4 Standard disclosure.
28.5 Specific disclosure.
28.6 Criteria for ordering specific disclosure.
28.7 Procedure for disclosure.
28.8 Duty of legal practitioner.
28.9 Requirement for maker to certify understanding of the duty of disclosure.
28.10 Disclosure in stages.
28.11 Inspection and copying of listed documents.
28.12 Duty of disclosure continuous during proceedings.
28.13 Consequence of failure to disclose documents under order for disclosure.
28.14 Claim of right to withhold disclosure or inspection of document.
28.15 Restriction on use of a privileged document inspection of which has been inadvertently allowed.
28.16 Documents referred to in statements of case, etc.
28.17 Subsequent use of disclosed documents.
28.18 Notice to prove document.

PART 29

Evidence

29.1 Power of court to control evidence.
29.2 Evidence at trial – general rule.
29.3 Evidence by video link or other means.
29.4 Requirement to serve witness statements.
29.5 Form of witness statements.
29.6 Witness summaries.
29.7 Procedure where one party does not serve witness statement by date directed.
29.8 Witness to give evidence unless court otherwise orders.
29.9 Amplifying witness statements at trial.
29.10 Cross-examination on witness statement.
29.11 Consequence of failure to serve witness statement or summary.
29.12 Use of witness statement for other purposes.
29.13 Notice to admit facts.

PART 30

Affidavits

30.1 Affidavit evidence.
30.2 Form of affidavits.
30.3 Contents of affidavits.
30.4 Documents to be used in conjunction with affidavits.
30.5 Making of affidavits.
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PART 31

Miscellaneous Rules about Evidence

31.1 Use of plans, photographs, etc. as evidence.
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31.3 Evidence of consent of trustee to act.

PART 32

Experts and Assessors

32.1 Scope of this Part.

32.2 General duty of court and of parties.
32.3 Expert's overriding duty to court.
32.4 Way in which expert's duty to court is to be carried out.
32.5 Expert's right to apply to court for directions.
32.6 Court's power to restrict expert evidence.
32.7 General requirement for expert evidence to be given in written report.
32.8 Written questions to experts.
32.9 Court's power to direct evidence by single expert.
32.10 Cross-examination of court appointed expert.
32.11 Instructions to single expert.
32.12 Power of court to direct party to provide expert report.
32.13 Expert's reports to be addressed to court.
32.14 Contents of report.
32.15 Meeting of experts.
32.16 Consequence of failure to disclose expert's report.
32.17 Appointment of assessor.

PART 33

Court Attendance by Witnesses and Depositions

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33.2 Witness summonses.
33.3 Issue of witness summons.
33.4 Witness summons in aid of inferior court or tribunal.
33.5 Time for serving witness summons.
33.6 Compensation for loss of time.
33.7 Evidence by deposition before examiner.
33.8 Conduct of examination.
33.9 Evidence without examiner being present.
33.10 Enforcing attendance of witness.
33.11 Special report.
33.12 Fees and expenses of examiner.
33.13 Order for payment of examiner's fees.
33.14 Use of deposition at hearing.
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PART 34

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PART 35

Offers to Settle

35.1 Scope of this Part.
35.2 Introductory.
35.3 Making offer to settle.
35.4 Time when offer to settle may be made.
35.5 Procedure for making offer to settle.
35.6 Extent to which offer to settle covers interest, costs or counterclaim.
35.7 Offer to settle made after interim payment.
35.8 Offer to settle part of claim.

35.9 Time limit for accepting offer to settle.
35.10 Procedure for acceptance.
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Form 8: Request for Entry of Judgement on Admissions
Form 9: Ancillary Claim Form
Form 10: Listing Questionnaire
Form 11: List of Documents
Form 12: Witness Summons
Form 13: Notice to Non-Party Served With Order
Form 14: Order for Oral Examination
Form 15: Notice of Adjourned Examination
Form 16: Financial Position Notice
Form 17: Writ of Execution Against Goods (Fieri Facas)
Form 18: Writ of Possession
Form 19: Writ of Delivery or Value
Form 20: Writ of Specific Delivery
Form 21: Judgement Summons
Form 22: Writ of Habeas Corpus
Form 23: Notice of Appeal
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Form 25: Admiralty Claim In Rem
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Form 27: Warrant of Arrest (Admiralty)
Form 28: Request for Claim to be recorded as satisfied
Form 29: Request for Order for Oral Examination of an Individual
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PART 1

The Overriding Objective

1.1 The overriding objective

(1) The overriding objective of these Rules is to enable the court to deal with cases justly.

(2) Dealing justly with the case includes—

(*a*) ensuring, so far as is practicable, that the parties are on an equal footing;

(*b*) saving expense;

(*c*) dealing with cases in ways which are proportionate to the—

(i) amount of money involved,

(ii) importance of the case,

(iii) complexity of the issues, and

(iv) financial position of each party;

(*d*) ensuring that it is dealt with expeditiously; 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.

1.2 Application of overriding objective by the court

The court must seek to give effect to the overriding objective when it—

(*a*) exercises any discretion given to it by the Rules; or

(*b*) interprets any rule.

1.3 Duty of parties

It is the duty of the parties to help the court to further the overriding objective.

- Part 25 deals with the court's duty to forward the overriding objective by active case management.

PART 2

Application and Interpretation of these Rules

2.1 Citation

(1) These Rules may be cited as the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000.

(2) A reference to a rule as CPR 2.7 or rule 2.7 is a reference to a rule so numbered in these Rules.

2.2 Application of these Rules

(1) Subject to paragraph (3), these Rules apply to all civil proceedings in the Eastern Caribbean Supreme Court in any of the Member States or Territories.

(2) In these Rules "civil proceedings" include Judicial Review and applications to the court under the Constitution of any Member State or Territory under Part 56.

(3) These Rules do not apply to proceedings of the following kinds—

(*a*) family proceedings;

(*b*) insolvency (including winding-up of companies);

(*c*) non-contentious probate proceedings;

(*d*) proceedings when the High Court is acting as a prize court; or

(*e*) any other proceedings in the Supreme Court instituted under any enactment, in so far as rules made under that enactment regulate those proceedings, except that part 62 shall apply to paragraphs (*a*) and (*b*).

(4) Notwithstanding paragraph (3)(*d*) these Rules apply to proceedings when the High Court is acting as a prize court in St. Vincent and The Grenadines.

2.3 Application of Interpretation Acts

The Interpretation Act of the Member State or Territory where a claim proceeds applies to the interpretation of these Rules in those proceedings.

2.4 Definitions

In these Rules, unless otherwise provided for or the context otherwise requires—

"ADR procedure" means any procedure for alternative dispute resolution including, in particular, mediation;

"ancillary claim" has the meaning given in rule 18.1;

"ancillary claimant" has the meaning given in rule 18.1;

"ancillary defendant" and "second ancillary defendant" have the meanings given in rule 18.1;

"applicant" has the meaning given in rule 11.2;

"application" has the meaning given in rule 11.2;

"body corporate" means a company or other body corporate wherever or however incorporated, other than a corporation sole, and includes a limited company unless a rule otherwise provides;

"certificate of value" has the meaning given in rule 8.8;

"Chief Justice" includes, in relation to any period in which the office of Chief Justice is vacant, the person for the time being performing the functions of the Chief Justice;

"circuit" means—

(*a*) the Saint Christopher circuit; and

(*b*) the Nevis circuit,

in the State of Saint Christopher and Nevis;

"claim" is to be construed in accordance with Part 8;

"claim form" is to be construed in accordance with Part 8;

"claim for a specified sum of money" means—

(*a*) a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract; and

(*b*) for the purposes of Parts 12 (default judgements) and 14 (judgement on admissions), a claim for—

(i) the cost of repairs executed to a vehicle,

(ii) the cost of repairs executed to any property in, on or abutting a road, or

(iii) any other actual financial loss other than loss of wages or other income,

claimed as a result of damage which is alleged to have been caused in an accident as a result of the defendant's negligence where the amount of each item in the claim is specified and copies of receipted bills for the amounts claimed are attached to the claim form or statement of claim;

"claim for personal injuries" means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death;

"claimant" means a person who makes a claim and, in relation to any proceedings commenced before these Rules came into force, includes a plaintiff in an action or the petitioner or applicant in any proceedings commenced by petition, originating summons or motion;

"Constitution" means the Constitution of the relevant Member State or Territory;

"court" means the High Court and, where the context so admits and in Part 62, the Court of Appeal;

"court office" refers to—

(*a*) the place where documents are to be filed, etc. and includes a Registry of the High Court and of the Court of Appeal; and

(*b*) members of the court staff who carry out work of a formal or administrative nature under rule 2.6(1);

"Crown" for the purpose of these Rules includes the Commonwealth of Dominica;

"defendant" means a person against whom a claim is made and, in relation to proceedings commenced before these Rules came into force, includes a respondent to any petition, originating summons or motion;

"external company" means any incorporated body of persons that is formed under the laws of a country other than a Member State or Territory;

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

"filing" is to be construed in accordance with rule 3.7;

"fixed date claim form" is a claim form in Form 2 upon which there is stated a date, time and place for the first hearing of the claim;

"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 15 November, 1965;

"judge"—

(*a*) includes the Chief Justice and, in the case of Part 62, a judge of the Court of Appeal; but

(*b*) does not include a master except where required by the context;

"judgement creditor" has the meaning given in rule 43.1;

"judgement debtor" has the meaning given in rule 43.1;

"jurisdiction" means the jurisdiction of the court as extending throughout the Member States and Territories and any part of their territorial waters;

"legal practitioner" includes a Queen's or Senior Counsel, a barrister at law, a solicitor, an attorney at law and a notary royal;

"limited company" means a body corporate that is incorporated or continued under the relevant legislation relating to companies in each Member State or Territory;

"master" means a master of the Eastern Caribbean Supreme Court;

"Member States" means—

(*a*) Antigua and Barbuda;

(*b*) Commonwealth of Dominica;

(*c*) Grenada;

(*d*) Saint Christopher and Nevis;

(*e*) Saint Lucia; and

(*f*) Saint Vincent and the Grenadines;

"minister with responsibility for foreign affairs" includes in the case of a Territory the person within the Territory who has responsibility for the service of foreign process;

"minor" means a person who has not attained the age of majority in accordance with the relevant enactment of the appropriate Member State or Territory;

"month" means a calendar month;

"next friend" has the meaning given by Part 23;

"order" includes an award, declaration, decree, direction, or judgement;

"overriding objective" means the objective set out in rule 1.1;

"party" includes both the party to the claim and any legal practitioner on record for that party unless any rule specifies or it is clear from the context that it relates to the client or to the legal practitioner only;

"patient" means a person who by reason of mental disorder within the meaning of the relevant mental health legislation in the Member State or Territory where the proceedings are being conducted is incapable of managing his or her own affairs and

in St. Lucia also includes a person to whom a curator has been given under the Civil Code, Chapter 242;

"period for filing a defence" has the meaning given by rule 10.3;

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"procedural appeal" has the meaning given in rule 62.1(2);

"statement of case" means—

(*a*) a claim form, statement of claim, defence, counterclaim, ancillary claim form or defence and a reply; and

(*b*) any further information given in relation to any statement of case under Part 34 either voluntarily or by order of the court;

"statutory rate of interest" means the rate of interest on judgement debts that may be prescribed for the time being under any relevant enactment of the appropriate Member State or Territory;

"summary appeal" is an appeal in accordance with rule 62.6;

"Supreme Court" means the Eastern Caribbean Supreme Court established under the West Indies Associated States Supreme Court Order, 1967;

"Territories" means—

(*a*) Anguilla;

(*b*) Montserrat; and

(*c*) the British Virgin Islands.

2.5 Who may exercise the powers of the court

(1) Except where any enactment, rule or practice direction provides otherwise the functions of the High Court may be exercised by—

(*a*) a master;

(*b*) a registrar;

(*c*) a single judge of the court whether or not assigned to the Member State or Territory in which the proceedings are taking place;

(*d*) the Chief Justice; or

(*e*) the Chief Registrar,

in accordance with these Rules and any practice direction made by the Chief Justice.

(2) The functions of the Court of Appeal relating to—

(*a*) a procedural appeal;

(*b*) an application for leave to appeal;

(*c*) a summary appeal;

(*d*) the case management of an appeal including the giving of directions relating to an appeal; and

(*e*) procedural applications (other than applications for leave to appeal),

may be carried out by any one judge of the Court of Appeal.

(3) The functions of the Court of Appeal relating to—

(*a*) applications for leave to appeal may also be carried out by the judge of the court below;

(*b*) the case management of an appeal including the giving of directions relating to an appeal may, where the Chief Justice directs, be carried out by a master or the Chief Registrar; and

(*c*) procedural applications (other than applications for leave to appeal) may, where the Chief Justice so directs, be carried out by a master, the Chief Registrar or the registrar of the court below.

(4) An appeal from a magistrate's court may be heard by any two judges of the Court of Appeal.

(5) All other functions of the Court of Appeal may be carried out by any three judges of the Court of Appeal.

(6) The Chief Justice may by direction allocate the work of the court between judges, masters, the Chief Registrar and registrars.

(7) The Chief Registrar may exercise any of the functions of a master.

(8) Where—

(*a*) a trial has been commenced but not completed by a judge; or

(*b*) any enactment or rule requires an application to be made to, or jurisdiction exercised by, the judge by whom a claim was tried,

then if—

(i) the judge ceases to be a judge of the High Court,

(ii) the judge dies or is incapacitated, or

(iii) for any other reason it is impossible or inconvenient for the judge to act in the claim,

the Chief Justice may nominate some other judge to retry or complete the trial of the claim or to hear any application.

2.6 Court staff

(1) Where these Rules refer to an act being done by the court office or require or permit the performance of an act of a formal or administrative character, that act may be performed by a member of the court staff authorised generally or individually in writing by the Chief Justice.

(2) Where these Rules expressly so provide, any other functions of the court may be carried out by a member of the court staff authorised in writing by the Chief justice.

(3) If a step may be taken by a member of the court staff—

(*a*) that person may consult a judge, master or registrar before taking the step; and

(*b*) that step may be taken by a judge, master or registrar instead of a member of the court staff.

2.7 Court's discretion as to where, when and how it deals with cases

(1) Claims, motions and petitions shall be heard in open court and shall be in chambers except that—

(*a*) any hearing, except the trial of an action, may be conducted in chambers if the court so directs; and the court shall, in each case, decide whether the application is a proper one to be made in open court or by application in chambers, and may at or before hearing, why it shall think fit, remove the same into open court or into chambers, as the case may be; and

(*b*) any proceedings may be heard in private, with the consent of the parties.

(2) An order made in chambers shall have the same force and effect as an order made in open court, and the court sitting in chambers shall have the same power to enforce, vary, or deal with any such order, as if sitting in open court.

(3) The court may order that any hearing be conducted in whole or in part, by means of a telephone conference call, video-conference or any other form of electronic communication.

(4) The court may give directions to facilitate the conduct of a hearing, by the use of any electronic or digital means of communication, or storage or retrieval of information, or any other technology it considers appropriate.

"Action" has the meaning given to it by the Supreme Court Act.

PART 3

Time, Documents

3.1 Time – court to state calendar date

When making any judgement, order or direction which imposes a time limit for doing any act the court must, wherever practicable, state—

(*a*) the calendar date; and

(*b*) the time of day,

by which the act must be done.

3.2 Time – computation

(1) This Rule shows how to calculate any period of time for doing any act which is fixed by—

(*a*) any judgement or order of the court;

(*b*) any practice direction; or

(*c*) these Rules.

(2) All periods of time expressed as a number of days are to be computed as clear days.

(3) In this Rule—

"clear days" means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

(Examples

(*a*) Documentss served by post are deemed to be served fourteen days after posting: A Document posted on 1st September is deemed to be served on 16th September.

(*b*) Document must be filed at least three days before the hearing – application is to be heard on Friday 20th October:

The last date for filing the document is Monday 16th October.)

(4) When the specified period—

(*a*) is seven days or less; and

(*b*) includes—

(i) a Saturday or Sunday; or

(ii) any other day on which the court office is closed,

that day does not count.

(Example

Notice of application must be given not less than seven days before a hearing – Hearing on Friday 20th October:

Notice must be given not later than Tuesday 10th October.)

(5) If the period specified for doing any act at the court office ends on a day on which the court is closed, the act is in time if done before close of business on the next day on which the court is open.

(6) If the period specified for doing any act which does not need to be done at court ends on—

(*a*) a Saturday or Sunday; or

(*b*) any public holiday,

the act must be done before 4 p.m. on the next ordinary business day.

3.3 Vacations

There are three vacations in each year, that is to say the—

(*a*) Christmas vacation which begins on 23rd December and ends on 10th January;

(*b*) Easter vacation which begins on the Thursday before and ends on the Saturday after Easter Sunday; and

(*c*) long vacation which begins on 1st August and ends on 15th September,

and the dates are inclusive.

3.4 Hearings in vacations

(1) During vacations the—

(*a*) Court of Appeal may sit to hear and determine appeals and applications as the Court of Appeal may direct; and

(*b*) High Court may sit to hear and determine trials and applications as a judge of the court may direct.

(2) A party may apply to the Court of Appeal for any appeal or application to be heard in vacation.

(3) Any such application may be determined by a single judge of the Court of Appeal.

(4) A party may apply to the High Court for any trial to take place or application to be heard in vacation.

3.5 Time – vacations

(1) During the long vacation, time prescribed by these Rules or by any practice direction for filing or serving any statement of case, (other than a statement of claim) does not run unless the court orders or directs that time shall run.

(2) In this Rule "long vacation" has the meaning given by rule 3.3.

3.6 Documents

(1) So far as is practicable, every document prepared for use in the Supreme Court must be on "letter size" paper approximately 11 inches (28cm) long by 8.5 inches (21.5cm) wide. Margins of 1" (2.5 cm) must be left at the top and bottom and of 1.5" (3.5 cm) at each side.

(2) The Chief Justice may by practice direction—

(*a*) require any document filed or to be used at court to be in the format that the Chief Justice prescribes to facilitate electronic recording or filing of that document; and

(*b*) prescribe the conditions under which documents may be served or filed electronically.

(3) Every document to be filed at the court must—

(*a*) be headed with the—

(i) full title of the proceedings, and

(ii) title of the document;

(*b*) state the—

(i) name,

(ii) business address,

(iii) reference (if any),

(iv) telephone number, and

(v) fax number (if any),

of the person or persons filing it;

(*c*) contain its date;

(*d*) (except in the case of an affidavit) be signed by the person filing it; and

(*e*) state the name of the party on whose behalf it is filed.

(4) If a document is signed the full name of the signatory must be set out legibly below the signature.

3.7 Filing of documents

(1) A document may be filed by—

(*a*) delivering it;

(*b*) posting it; or

(*c*) sending it by fax,

to the court office where the claim is proceeding or intended to proceed.

(2) A document is filed on the day when it is received at the court office or, if it is received at a time when the court office is closed, on the next day on which the court office is open.

(3) If a fee is to be paid, a document is not to be treated as filed until—

(*a*) the fee is paid; or

(*b*) an undertaking to pay the fee acceptable to the registrar is received.

3.8 Filing and service by fax

In addition to any condition contained in a practice direction, any document—

(*a*) filed; or

(*b*) served,

by fax, must include a cover page stating the—

(i) name, address and telephone number of the sender,

(ii) date and time of transmission,

(iii) total number of pages transmitted, including the cover page,

(iv) number of the fax machine at which documents may be received; and

(v) name and telephone number of a person to contact if problems occur in transmission.

3.9 Sealing of documents issued by the court

(1) The court must seal the following documents on issue—

(*a*) the claim form;

(*b*) all notices of appeal; and

(*c*) all judgements, orders or directions of the court.

(2) The court may place the seal on any document by—

(*a*) hand; or

(*b*) printing a facsimile of the seal on the document electronically or by any other means.

(3) All judgements and orders and directions of the court must also be signed by the registrar.

(4) A document purporting to bear the court's seal is admissible in evidence without further proof.

3.10 Forms

(1) The forms in the Appendix to these Rules and, where appropriate, practice forms must be used in the cases to which they apply.

(2) A form may be varied if the variation is required by the circumstances of a particular case.

(3) A form must not be varied so as to leave out any information or guidance which the form in the Appendix or practice form gives to the intended recipient of the form.

(4) If these Rules require a party to send a blank form to any other party, the party must send it to the other party without variation except the insertion of the title of the case and the court's address to which that document is to be returned.

(5) A form marked with the word 'Seal' must bear the seal of the Supreme Court.

3.11 Statement of case – address for service

(1) Every statement of case must contain an address within the jurisdiction at which the party filing the statement of case will accept service of documents.

(2) The address for service must also state—

(*a*) if given by a legal practitioner – the name or reference of the person who is dealing with the matter; and

(*b*) the telephone number and (if applicable) the fax number of the legal practitioner filing the document or of the party if in person.

(3) A party must notify the court and all other parties immediately if the address for service is changed, and any document sent to the original address before notice of such change is received by the party serving the document is regarded as validly served.

Rule 2.4 defines "statement of case".

3.12 Statement of case – certificate of truth

(1) Every statement of case must be verified by a certificate of truth.

(2) The certificate of truth should be signed by the party personally.

(3) If it is impracticable for the party personally to sign the certificate required by paragraph (1) it may be given by that person's legal practitioner.

(4) A certificate of truth given by the legal practitioner must also certify—

(*a*) that the certificate is given on the client's instructions; and

(*b*) the reasons why it is impractical for the client to give the certificate.

(5) If a statement of case is changed under Part 20, the amended statement of case must be verified by a certificate of truth.

(6) Information given under Part 34 (whether voluntarily or following an order of the court) must be verified by a certificate of truth.

(7) A certificate of truth given by a party personally must be in the following form—

"I [*name*] certify that I believe that the facts stated in this [*name document*] are true."

(8) A certificate given by the legal practitioner for a party must be in the following form—

"I [name of the individual legal practitioner giving the certificate] certify that—

(*a*) the [*claimant or as the case may be*] believes that the facts stated in this [name document] are true; and

(*b*) this certificate is given on the [*claimant's or as the case may be*] instructions.

The [*claimant or as the case may be*] cannot give the certificate because [*state reason*]".

3.13 Failure to give certificate of truth

(1) The court may strike out any statement of case which has not been verified by a certificate of truth.

(2) Any party may apply for an order under paragraph (1).

3.14 Right to inspect, etc., certain documents filed in court office

(1) On payment of the prescribed fee, any person is entitled, during office hours, to search for, inspect and take a copy of any of the following documents filed in the court office, namely—

(*a*) a claim form;

(*b*) a notice of appeal;

(*c*) a judgement or order given or made in court; and

(*d*) with the leave of the court, which may be granted on an application made without notice, any other document.

(2) Nothing in paragraph (1) prevents a party in any proceedings from searching for, inspecting and taking a copy of any affidavit or other document filed in the court office in those proceedings or filed before the commencement of those proceedings but with a view to its commencement.

(3) Any document filed in or in the custody of a court office must not be taken out of the court office without the leave of the court unless the document is to be sent to another court office or to a magistrate's court.

PART 4

Practice Directions and Guides

4.1 Who may issue practice directions

Practice directions may be issued only by the Chief Justice.

4.2 Scope of practice directions

(1) A practice direction may be issued in any case where provision for such a direction is made by these Rules.

(2) Where there is no express provision in these Rules for such a direction, the Chief Justice may give directions as to the practice and procedure to be followed in the Supreme Court.

4.3 Publication of practice directions

Practice directions and guides must forthwith be—

(*a*) published in the Official *Gazette* for each Member State and Territory; and

(*b*) displayed and made available at each court office.

4.4 Compliance with practice directions

(1) A party must comply with any relevant practice direction unless there are good reasons for not doing so.

(2) The court may make an order under Part 26 (case management – the court's powers) or Part 64 (costs – general) against a party who fails to comply with a practice direction.

4.5 Practice guides

(1) The Chief Justice may issue practice guides to assist parties in the conduct of litigation.

(2) Parties must have regard to any relevant practice guide.

(3) The court may take into account the failure of any party to comply with any practice guide when deciding whether or not to make an order under Part 26 (case management – the court's powers) or Part 64 (costs – general).

4.6 Date from which practice directions and guides take effect

A practice direction or guide takes effect from the date specified in the direction or guide.

PART 5

Service of Claim Form within Jurisdiction

5.1 Service of claim form – normal method

(1) The general rule is that a claim form must be served personally on each defendant.

(2) The Chief Justice may by practice direction authorise the use of electronic means of communication (including fax and e-mail) for service of a claim form.

Part 6 deals with service of other documents.

5.2 Statement of claim to be served with claim form

(1) The general rule is that the claimant's statement of claim must be served with the claim form.

(2) The claim form may be served without the statement of claim in accordance with rule 8.2.

(3) In this Part reference to service of the claim form requires that—

(*a*) the statement of claim; or

(*b*) if these Rules so require, an affidavit or other document;

(*c*) a copy of any order that may have been made; and

(*d*) a copy of any order or application made under rule 8.2,

must be served with the claim form unless the statement of claim is contained in the claim form.

5.3 Method of personal service

A claim form is served personally on an individual by handing it to or leaving it with the person to be served.

5.4 Permitted place of service

Except as permitted by Part 7 (service out of the jurisdiction), a claim form must be served at a place within the jurisdiction.

5.5 Proof of personal service

(1) Personal service of the claim form is proved by an affidavit sworn by the server stating—

(*a*) the date and time of service;

(*b*) the precise place or address at which it was served;

(*c*) the precise manner by which the person on whom the claim form was served was identified; and

(*d*) precisely how the claim form was served.

(2) If the person served was identified by another person, there must also be filed where practicable an affidavit by that person—

(*a*) proving the identification of the person served; and

(*b*) stating how the maker of the affidavit was able to identify the person served.

(3) If the server identified the person to be served by means of a photograph or description there must also be filed an affidavit by a person—

(*a*) verifying the description or photograph as being of the person intended to be served; and

(*b*) stating how the maker of the affidavit is able to verify the description or photograph as being of the person intended to be served.

5.6 Service on legal practitioner

If a legal practitioner—

(*a*) is authorised to accept service of the claim form on behalf of a party; and

(*b*) has notified the claimant in writing that he or she is so authorised,

the claim form must be served on that legal practitioner.

5.7 Service on limited company

Service on a limited company may be effected—

(*a*) by leaving the claim form at the registered office of the company;

(*b*) by sending the claim form by telex, fax or prepaid post or cable addressed to the registered office of the company;

(*c*) by serving the claim form personally on an officer or manager of the company at any place of business of the company which has a real connection with the claim;

(*d*) by serving the claim form personally on any director, officer, receiver, receiver-manager or liquidator of the company; or

(*e*) in any other way allowed by any enactment.

5.8 Service on firm or partnership

(1) Service on a firm or partnership may be effected—

(*a*) by serving the claim form personally on a manager of the firm at any place of business of the firm or partnership which has a real connection with the claim;

(*b*) by serving the claim form personally on any partner of the firm; or

(*c*) in any other way allowed by any enactment.

(2) If the claimant knows that a partnership has been dissolved when the claim is issued, the claim form must be served personally on every person within the jurisdiction whom the claimant seeks to make liable.

5.9 Service on body corporate

(1) Service on a body corporate (other than a limited company) may be effected—

(*a*) by sending the claim form by prepaid post to the principal office of the body corporate;

(*b*) by serving the claim form personally on any principal officer of the body corporate; or

(*c*) in any other way allowed by any enactment.

(2) In this Rule—

"principal officer" means the mayor, chairman or president of the body, or the town clerk, chief executive officer, clerk, secretary, treasurer or other similar officer of the body.

Rule 59.2 deals with service on the Crown.

5.10 Service on minors and patients

(1) Paragraphs (2) to (5) specify the persons on whom a claim form must be served if it would otherwise be served on a minor or patient.

(2) A claim form which would otherwise be served on a minor who is not also a patient must be served on—

(*a*) one of the minor's parents or guardians (including in Saint Lucia the curator appointed under the Civil Code, Chapter 242); or

(*b*) the person with whom the minor resides or in whose care the minor is, if there is no parent or guardian.

(3) If a person is authorised under any relevant enactment to conduct the proceedings in the name of the patient or on the patient's behalf, a claim form must be served on that person.

(4) If there is no person so authorised, a claim form must be served on the person with whom the patient resides or in whose care the patient is.

(5) The court may make an order permitting the claim form to be served on the minor or patient, or on some person other than the person specified in paragraphs (2) to (4).

(6) The court may order that, although paragraphs (2) to (4) have not been complied with, the claim form is to be treated as properly served.

(7) An application for an order under paragraph (5) or (6) may be made without notice but must be supported by evidence on affidavit.

Part 23 deals generally with parties who are minors or patients.

5.11 Proof of postal service

(1) Service by post is proved by an affidavit of service by the person responsible for posting the claim form to the person to be served.

(2) The affidavit must exhibit a copy of the claim form and state the—

(*a*) address to which it was sent; and

(*b*) date and time of posting.

5.12 Proof of service by fax

(1) Service by fax is proved by an affidavit of service by the person responsible for transmitting the claim form to the person to be served.

(2) The affidavit must exhibit a copy of—

(*a*) the document served;

(*b*) any cover sheet to that document; and

(*c*) the transmission record, and must state the—

(i) date and time of transmission, and

(ii) fax number to which it was sent.

5.13 Alternative methods of service

(1) Instead of personal service a party may choose an alternative method of service.

(2) Where a party—

(*a*) chooses an alternative method of service; and

(*b*) the court is asked to take any step on the basis that the claim form has been served,

the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.

(3) An affidavit under paragraph (2) must—

(*a*) exhibit a copy of the documents served;

(*b*) give details of the method of service used;

(*c*) show that—

(i) the person intended to be served was able to ascertain the contents of the documents, or

(ii) it is likely that he or she would have been able to do so; and

(*d*) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents.

(4) The court office must immediately refer any affidavit filed under paragraph (2) to a judge, master or registrar who must—

(*a*) consider the evidence; and

(*b*) endorse on the affidavit whether it satisfactorily proves service.

(5) If the court is not satisfied that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the court office must fix a date, time and place to consider making an order under rule 5.14 and give at least seven days notice to the claimant.

5.14 Power of court to make order for service by specified method

(1) The court may direct that a claim form served by a method specified in the court's order be deemed to be good service.

(2) An application for an order to serve by a specified method may be made without notice but must be supported by evidence on affidavit—

(*a*) specifying the method of service proposed; and

(*b*) showing that that method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim.

5.15 Proof of service by specified method

Service is proved by an affidavit made by the person who served the document showing that the terms of the order have been carried out.

5.16 Service of claim form by contractually agreed method

(1) This Rule applies where a contract contains a term specifying how any proceedings under the contract should be served.

(2) A claim form containing a claim in respect of a contract may be served by any method permitted by that contract.

(3) If the claim form is served within the jurisdiction in accordance with the contract, it is to be treated as having been served on the defendant.

(4) If the claim form is served out of the jurisdiction in accordance with the contract, it is not to be treated as having been served on the defendant unless service out of the jurisdiction is permitted under Part 7.

5.17 Service of claim form on agent of principal who is out of jurisdiction

(1) If the conditions specified in paragraph (2) are satisfied, the court may permit a claim form relating to a contract to be served on a defendant's agent.

(2) The court may not make an order under this Rule unless it is satisfied that—

(*a*) at the time of the application—

(i) the agent's authority had not been terminated, or

(ii) the agent is still in business relations with the defendant;

(*b*) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and

(*c*) the defendant cannot be served within the jurisdiction.

(3) An application may be made without notice but must be supported by evidence on affidavit.

(4) An order under this Rule must state the periods within which the defendant must file—

(*a*) an acknowledgment of service; and

(*b*) a defence.

(5) When the court makes an order under this Rule, the claimant must serve the agent with the—

(*a*) claim form;

(*b*) order; and

(*c*) statement of claim,

and at the same time send to the defendant at the defendant's address out of the jurisdiction a copy of each document.

5.18 Service of claim form for possession of vacant land

(1) Paragraphs (2) to (3) deal with the service of a claim form for possession of land where—

(*a*) there is no person in occupation of the land; and

(*b*) service cannot otherwise be effected on the defendant.

(2) The court may direct that a claim form and statement of claim be served by affixing a copy of the claim form to some conspicuous part of the land and by publishing a notice of the claim at least once in one or more newspapers of general circulation in the Member State or Territory in which the land is situated.

(3) An application for an order under this Rule—

(*a*) may be made without notice; but

(*b*) must be supported by evidence on affidavit that there is no—

(i) other method of serving the defendant, and

(ii) person in occupation of the land.

5.19 Deemed date of service

(1) A claim form that has been served within the jurisdiction by prepaid post is deemed to be served, unless the contrary is shown, on the day shown in the table in rule 6.6.

(2) If a claim is sent to the legal practitioner of a party who certifies that he or she accepts service on behalf of the defendant, the claim is deemed to have been served on the date on which the legal practitioner certifies that he or she accepts service.

(3) If an acknowledgment of service is filed, whether or not the claim form has been duly served, the claimant may treat—

(*a*) the date of filing the acknowledgment of service; or

(*b*) (if earlier) the date shown on the acknowledgment of service for receipt of the claim form,

as the date of service.

(4) A claimant may file evidence on affidavit to prove that service was in fact effected on a date earlier than the date on which it is deemed to be effected.

PART 6

Service of other Documents

6.1 Who is to serve documents other than claim form

(1) Subject to paragraph (2) any judgement or order which requires service must be served by the court, unless—

(*a*) a rule provides that a party must serve the document in question; or

(*b*) the court orders otherwise.

(2) The following orders must be served by the party obtaining the order—

(*a*) a freezing order under rule 17.1(*f*);

(*b*) an injunction;

(*c*) any order listed in rule 17.1(c), (*d*), (*k*) or (1);

(*d*) an order under rule 17.1(g); and

(*e*) a search order under rule 17.1(h).

(3) Any other document must be served by a party, unless—

(*a*) a rule otherwise provides; or

(*b*) the court orders otherwise.

6.2 Method of service

If these Rules require a document other than a claim form to be served on any person it may be served by any of the following methods—

(*a*) any means of service in accordance with Part 5;

(*b*) leaving it at or sending it by prepaid post to any address for service in accordance with rule 6;

(*c*) if rule 6 applies by fax; or

(*d*) other means of electronic communication if this is permitted by a relevant practice direction,

unless a rule otherwise provides or the court orders otherwise.

6.3 Address for service

(1) Documents must be delivered or posted to a party at any address for service within the jurisdiction given by that party.

(2) If a party's address for service includes a fax number, documents may be sent by fax to that number.

(3) If a party to be served has not given an address within the jurisdiction at which documents for that party may be served, documents must be served at the address indicated in rule 6.4.

6.4 Serving documents where no address for service is given

(1) If no address is given for service the document may be served by leaving it or posting it at or to—

(*a*) in the case of a firm or partnership – either—

(i) the principal or last known address of the firm or partnership or any place where the firm or partnership carries on business and which has a real connection with the claim, or

(ii) the usual or last known place of residence of one of the partners;

(*b*) in the case of an individual – that person's usual or last known place of residence;

(*c*) in the case of a proprietor of a business – that person's—

(i) usual or last known place of residence, or

(ii) place of business or last known place of business; or

(*d*) the business address of any legal practitioner who purports to act for the party in the proceedings.

(2) The provisions of Part 5 may be applied to such a document as if it were a claim form.

6.5 Service of documents on person who is not a party

If the court or a party is to serve documents on a person who is not a party, such documents must be served by one of the methods specified in Part 5.

6.6 Deemed date of service

(1) A document which is served within the jurisdiction in accordance with these Rules is deemed to be served on the day shown in the following table—

Method of Service	**Deemed date of service**
Post	14 days after posting
Registered Post	10 days after the date indicated on the Post Office or courier receipt

Leaving document at a permitted address	The day after leaving the document
Fax	(*a*) If it is transmitted on a business day before 4 p.m. – the day of transmission; (*b*) In any other case – the business day after the day of transmission.
Other electronic method of service.	The business day after the day of transmission.

(2) Any document served after 4 p.m. on a business day or at any time on a day other than a business day is treated as having been served on the next business day.

(3) In this Rule "business day" means any—

(*a*) day other than a Saturday, Sunday or Bank Holiday; or

(*b*) other day on which the court office is closed,

and is to be determined by reference to the relevant enactment of the Member State or Territory in which the document is to be served.

6.7 Proof of service

If proof of service *of* any document is required, it may be proved by any method of proving service set out in Part 5.

6.8 Power of court to dispense with service

(1) The court may *dispense* with service of a document if it is appropriate to do so.

(2) An application for an order to dispense with service may be made without notice.

6.9 Service of notices, etc. on Attorney-General

(1) This Rule applies where any document has to be served on the Attorney-General of any Member State or Territory in connection with any proceedings of which notice has to be given to the Attorney-General and where express provision as to service is not made by any enactment or rule.

(2) Any such document must be served in accordance with rule 59.2

PART 7

Service of Court Process out of Jurisdiction

7.1 Scope of this Part

(1) This Part contains provisions about the—

(*a*) circumstances in which court process may be served out of the jurisdiction; and

(*b*) procedure for serving court process out of the jurisdiction.

(2) In this Part references to service or filing copies of the claim form include—

(*a*) the statement of claim (unless contained in the claim form);

(*b*) an affidavit in support of the claim, if these Rules so require; and

(*c*) if permission has been given under rule 8.2 to serve the claim form without the statement of claim – a copy of the order giving permission.

7.2 General rule as to service of claim form out of jurisdiction

A claim form may be served out of the jurisdiction only if—

(*a*) rule 7.3 allows; and

(*b*) the court gives permission.

7.3 Service of claim form out of jurisdiction in specified proceedings

(1) The court may permit a form to be served out of the jurisdiction, if the proceedings are listed in this Rule.

(2) *Features which may arise in any type of claim*.—A claim form may be served out of the jurisdiction if a claim is made—

(*a*) against someone on whom the claim form has been or will be served, and—

(i) there is between the Claimant and that person, a real issue which it is reasonable for the court to try, and

(ii) the Claimant now wishes to serve the claim form on another person who is outside the jurisdiction, and who is a necessary and proper party to that claim;

(*b*) for an injunction, ordering the Defendant to do or refrain from doing some act within the jurisdiction; or

(*c*) for a remedy, against a person domiciled or ordinarily resident within the jurisdiction.

(3) *Claims about contracts*.—A claim form may be served out of the jurisdiction if—

(*a*) a claim is made in respect of a breach of contract committed within the jurisdiction;

(*b*) a claim is made in respect of a contract, where the contract—

(i) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract, or

(ii) is by its terms or by implication governed by the law of any Member State or Territory,

(iii) was made by or through an agent trading or residing within the jurisdiction, or

(iv) was made within the jurisdiction; or

(*c*) the claims is for a declaration that no contract exists, where, if the contract did exist, it would fulfil one or more of the conditions in subparagraph (*b*) of this Rule.

(4) *Claim in tort*.—A claim form may be served out of the jurisdiction, if a claim in tort is made, and the act causing the damage was committed within the jurisdiction or the damage was sustained within the jurisdiction.

(5) *Enforcement.*—A claim form may be served out of the jurisdiction if a claim is made to enforce any judgement or arbitral award which was made—

(*a*) within the jurisdiction; or

(*b*) by a foreign court or tribunal, and registered in the High Court pursuant to Part 72.

(6) *Claims about property within the jurisdiction*.—A claim form may be served out of the jurisdiction, if the whole subject matter of the claim relates to property within the jurisdiction.

(7) *Claims about companies*.—A claim form may be served out of the jurisdiction, if the subject matter of the claim relates to—

(*a*) the constitution, administration, management or conduct of the affairs; or

(*b*) the ownership or control of a company incorporated within the jurisdiction.

(8) *Claims about trusts*.—A claim form may be served out of the jurisdiction if—

(*a*) a claim is made for a remedy against the defendant as constructive trustee and the defendant's alleged ability arises out of acts committed within the jurisdiction;

(*b*) a claim is made for—

(i) any remedy which might be obtained in proceedings for the administration of the estate of, or

(ii) in probate proceedings as defined in Part 68, relating to; a person who died domiciled within the jurisdiction; or

(*c*) a claim is made for any remedy which might be obtained in proceedings to execute the trust of a written instrument, and the—

(i) trusts ought to be executed according to the law of any Member State or Territory; and

(ii) person on whom the claim is to be served is a trustee of the trusts.

(9) *Claims of restitution*.—A claim is made for restitution, where the defendant's alleged ability arises out of acts committed within the jurisdiction, or out of acts which, wherever committed, were to the detriment of a person domiciled within the jurisdiction.

(10) *Claims under an enactment conferring jurisdiction on the Court*.—A claim is made under an enactment which confers jurisdiction on the court, and the proceedings are not covered by any of the other grounds referred to in this Rule.

7.4 Proceedings which include other types of claim

If the claimant makes a claim which falls within—

(*a*) rule 7.3(3) (claims about contracts);

(*b*) rule 7.3(4) (claims in tort); or

(*c*) rule 7.3(7)(*a*) (claims against the defendant as a constructive trustee),

the court may grant any claim for a remedy which—

(i) does not fall within rule 7.3, but

(ii) arises out of the same facts or substantially the same facts as the claim in respect of which the order is made.

7.5 Permission to serve claim form out of jurisdiction

(1) An application for permission to serve out of the jurisdiction may be made without notice but must be supported by evidence on affidavit stating—

(*a*) the grounds on which the application is made;

(*b*) that in the deponent's belief the claimant has a claim with a realistic prospect of success;

(*c*) in what place, within what country, the defendant may probably be found; and

(*d*) if the application is made under rule 7.3(2)(*a*), the grounds for the deponent's belief that the conditions are satisfied.

(2) An order granting permission to serve the claim form out of the jurisdiction must state the periods within which the defendant must—

(*a*) file an acknowledgement of service in accordance with Part 9; and

(*b*) file a defence in accordance with Part 10.

(3) The periods for filing a document under paragraph (2) are to be determined by reference to a relevant practice direction.

7.6 Acknowledgment of service and defence where claim form served out of the jurisdiction

A claim form to be served out of the jurisdiction must be amended to state the period within which the—

(*a*) acknowledgement of service; and

(*b*) defence,

must be filed.

7.7 Application to set aside service under rule 7.3

(1) Any person on whom a claim form has been served out of the jurisdiction under rule 7.3 may apply to set aside service of the claim form.

(2) The court may set aside service under this Rule if—

(*a*) service out of the jurisdiction is not permitted by the rules;

(*b*) the claimant does not have a good cause of action; or

(*c*) the case is not a proper one for the court's jurisdiction.

(3) This Rule does not limit the court's power to make an order under rule 9.7 (procedure for disputing the court's jurisdiction, etc.).

7.8 Mode of service of claim form – general provisions

(1) Subject to the following paragraphs of this Rule and rule 7.8A if a claim form is to be served out of the jurisdiction, it may be served—

(*a*) by a method provided for by—

(i) rule 7.9 (service through foreign governments, etc.), or

(ii) rule 7.11 (service on a State);

(*b*) in accordance with the law of the country in which it is to be served; or

(*c*) personally by the claimant or the claimant's agent.

(2) Nothing in this Part or in any court order may authorise or require any person to do anything in the country where the claim form is to be served which is against the law of that country.

7.8A Mode of service – alternative procedure

(1) Where service under rule 7.8 is impracticable, the claimant may apply for an order under this Rule, that the claim form be served by a method specified by the court.

(2) An order made under this Rule, shall specify the date on which service of the claim form shall be deemed to have been affected.

(3) Where an order is made under this Rule, service by the method specified in the court's order, shall be deemed to be good service.

(4) An application for an order under this Rule may be made without notice, but must be supported by evidence on affidavit—

(*a*) specifying the method of service proposed;

(*b*) providing full details as to why service under rule 7.8 is impracticable;

(*c*) showing, that such method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim; and

(*d*) certifying, that the method of service proposed is not contrary to the law of the country in which the claim form is to be served.

(5) Where any method of service specified in an order made under this Rule is subsequently shown to be contrary to the law of the country in which the claim was purportedly served, such service shall be invalid.

7.8B Power of the court to dispense with service of the claim form

(1) The court may dispense with service of a claim form in exceptional circumstances.

(2) An application for an order to dispense with service may be made at any time and—

(*a*) must be supported by evidence on affidavit; and

(*b*) may be made without notice.

7.9 Service of claim form through foreign governments, or judicial or consular authorities

(1) This Rule does not apply to service in—

(*a*) any independent Commonwealth country;

(*b*) the Republic of Ireland; or

(*c*) the United Kingdom, the Isle of Man or the Channel Islands; unless the claim form is to be served in accordance with paragraph (3).

(2) The methods of service permitted by this Rule are in addition to any method of service permitted under rule 7.8(1)(*b*) or (*c*).

(3) *Service under the Hague Convention.*—A claim form to be served on a defendant in any country which is a party to the Hague Convention may be served—

(*a*) through the authority designated under the Hague Convention in respect of that country; or

(*b*) if the law of that country permits—

(i) in the case of a claim form issued in a Member State – through its consular authority in that country,

(ii) in the case of a claim form issued in a Territory – through the British consular authority in that country, or

(iii) through the judicial authorities of that country.

(4) *Service under other Conventions.*—A claim form to be served on a defendant in any country which is a party to a Civil Procedure Convention (to which the relevant Member State or Territory is also a party or which has been extended to the relevant Member State or Territory) other than the Hague Convention providing for service of court process in that country, may be served, if the law of that country permits—

(i) in the case of a claim form issued in a Member State – through its consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served),

(ii) in the case of a claim form issued in a Territory – through the British consular authority in that country (subject to any provision of the convention as to the nationality of persons who maybe so served), or

(iii) through the judicial authorities of that country.

(5) *Service where there is no applicable Convention.*—A claim form to be served on a defendant in any country with respect to which there is no relevant Civil Procedure Convention providing for service of court process in that country may be served, if the law of that country so permits—

(i) in the case of a claim form issued in a Member State – through its consular authority in that country,

(ii) in the case of a claim form issued in a Territory – through the British consular authority in that country, or

(iii) through the government of that country, if that government is willing to serve it.

7.10 Procedure where claim form is to be served through foreign governments, etc.

(1) This Rule applies where the claimant wishes to serve the claim form through the—

(*a*) authority designated under the Hague Convention or any other relevant Civil Procedure Convention in respect of that country;

(*b*) consular authority of a Member State or, in the case of a Territory, the British consular authority in that country;

(*c*) government of that country; or

(*d*) judicial authorities of the country where the claim form is to be served.

(2) If this Rule applies, the claimant must file—

(*a*) a copy of the claim form;

(*b*) an additional copy of the claim form for each person to be served;

(*c*) a request for service of the claim form by the claimant's chosen method; and

(*d*) any translation required by rule 7.12.

(3) When the claimant files the documents specified in paragraph (2) the court office must—

(*a*) seal the copy of the claim form; and

(*b*) send the documents filed to the minister with responsibility for foreign affairs with a request that the minister arrange for the claim form to be served—

(i) by the method indicated in the request for service filed under paragraph (2), or

(ii) if the request indicates alternative methods – by the most convenient method.

(4) An official certificate which—

(*a*) is made by—

(i) a consular authority of a Member State or a British consular authority in the country where the claim form was served,

(ii) the government or judicial authorities in that country, or

(iii) any other authority designated in respect of that country under the Hague Convention or any other relevant Civil Procedure Convention;

(*b*) states that the claim form has been served in accordance with this Rule either personally or in accordance with the law of the country in which service was effected; and

(*c*) specifies the date on which the claim form was served,

is evidence of the facts stated in the certificate.

(5) A document purporting to be an official certificate under paragraph (4) is to be treated as such a certificate, unless it is proved not to be.

7.11 Service of claim form on a State where court permits service out of jurisdiction

(1) This Rule applies where a claimant wishes to serve a claim form on a State.

(2) If the State has agreed to a method of service other than a method permitted by this Part, the claim form may be served either by the method agreed or in accordance with the other rules in this Part.

(3) The claimant must file at the court office—

(*a*) a copy of the claim form;

(*b*) any translation required by virtue of rule; and

(*c*) a request for service to be arranged by the Minister with responsibility for foreign affairs.

(4) The court office must send documents filed under this Rule to the minister with responsibility for foreign affairs with a request that the minister arrange for the claim form to be served.

(5) If a Member State or Territory has under any enactment relating to state immunity agreed to a method of service, the claim form may be served either by the method agreed or in accordance with this Rule.

(6) An official certificate by the minister with responsibility for foreign affairs stating that a claim form has been duly served on a specified date in accordance with a request made under this Rule is evidence of that fact.

(7) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.

7.12 Translation of claim form

(1) Except where paragraph (4) or (5) applies, every copy of the claim form filed under rule 7.10 or rule 7.11 must be accompanied by a translation of the claim form.

(2) The translation must be—

(*a*) in the official language of the country in which it is to be served; or

(*b*) if there is more than one official language of that country – in any official language which is appropriate to the place in the country where the claim form is to be served.

(3) Every translation filed under this Rule must be certified by the person making it to be a correct translation, and the certificate must state—

(*a*) the name of the person making the translation; and

(*b*) his or her—

(i) address, and

(ii) qualifications for making the translation.

(4) If the claim form is to be served—

(*a*) in a country of which English is an official language; or

(*b*) by a consular authority of a Member State or, in the case of a Territory, a British consular authority on a citizen of a Member State or Territory,

the claimant is not required to file a translation of a claim form filed under rule 7.9 (service through foreign governments, etc.) unless a relevant Civil Procedure Convention expressly requires a translation.

(5) The claimant is not required to file a translation of a claim form filed under rule 7.11 (service on a State) if English is an official language of the State where the claim form is to be served.

7.13 Undertaking to be responsible for expenses of minister with responsibility for foreign affairs

(1) A person filing a request for service under rule 7.9 (service through foreign governments, etc.) or rule 7.11 (service on a State) must undertake in the request—

(*a*) to be responsible for all expenses incurred by the Minister with responsibility for foreign affairs; and

(*b*) on being informed of the amount of those expenses to—

(i) pay that amount to the Accountant-General or other financial officer for the Member State or Territory concerned, and

(ii) produce a receipt for the payment to the court office.

(2) The claimant may take no further step in the proceedings until the claimant produces the receipt required by paragraph (1)(*b*)(ii).

7.14 Service of court process other than claim form

(1) An application, order or notice issued, made or given in any proceedings may be served out of the jurisdiction without the court's permission if it is served in proceedings in which permission has been given to serve the claim form out of the jurisdiction.

(2) The procedure by which a document specified in paragraph (1) is to be served is the same as that applicable to the service of a claim form and accordingly rules 7.8 to 7.13 apply.

PART 8

How to Start Proceedings

8.1 The claimant – how to start proceedings

(1) A claimant starts proceedings by filing in the court office the original and one copy (for sealing) of—

(*a*) the claim form; and (subject to rule 8,2)

(*b*) the statement of claim; or

(*c*) if any rule or practice direction so requires – an affidavit or other document.

(2) A claim is issued on the date entered on the claim form by the court office.

(3) For the purpose of any enactment relating to the limitation of proceedings, a claim is brought on the day on which the claim form is filed at the court office.

Rule 3.7(2) defines when a document is filed.

(4) A claim form must be in Form 1 except in the circumstances set out in paragraph (5).

(5) Form 2 (fixed date claim form) must be used—

(*a*) in claims arising out of hire-purchase or credit sale agreements;

(*b*) in proceedings for possession of land;

(*c*) whenever its use is required by a rule or practice direction; and

(*d*) where by any enactment proceedings are required to be commenced by originating summons or motion.

Rule 27.2 deals with the procedure under a fixed date claim.

(6) A person who seeks a remedy—

(*a*) before proceedings have been started; or

(*b*) in relation to proceedings which are taking place, or will take place, in another jurisdiction,

must seek that remedy by an application under Part 11.

8.2 Statement of claim, etc. to be issued and served with claim form

(1) A claim form may be issued and served without the statement of claim or affidavit or other document required by rule 8.1(1)(*b*)or (*c*) only if the—

(*a*) claimant has included in the claim form all the information required by rules 8.6, 8.7, 8.8 and 8.9; or

(*b*) court gives permission.

(2) In a case of emergency when it is not practicable to obtain the permission of the court a claimant may issue and serve the claim form without a statement of claim or affidavit or other document required by rule 8.1(1)(*b*) or (*c*) provided that the claimant—

(*a*) certifies in writing that the issue and service of the claim form is a matter of emergency, stating why; and

(*b*) serves a copy of the—

(i) certificate, and

(ii) application for permission,

with the claim form.

(3) If a claim form is issued under paragraph (2), the claimant may take no further steps except to serve the claim form until permission is given.

(4) The court may give permission under paragraph (1) only if it is satisfied that—

(*a*) a relevant limitation period is about to expire and the claimant has obtained legal advice relating to the claim for the first time within the twenty-eight days prior to the date that the claimant wishes to file the claim; or

(*b*) the claim form must be issued as a matter of urgency and it is not practicable for the claimant to prepare a statement of claim or affidavit.

(5) An application for permission may be made without notice but must be supported by evidence on affidavit.

(6) Any order giving permission for the claim form to be served without a statement of claim or affidavit or other document required by rule 8.1(1)(*b*) or (*c*) must state a date by which that document must be served.

(7) Such date must in no case be more than fifty-six days from the date of issue of the claim form.

(8) A copy of the order or the certificate and application under paragraph (2) must be served with the claim form.

(9) The claimant must file a copy of the statement of claim or affidavit or other document required by rule 8.1(1)(*b*) or (*c*), served in accordance with paragraph (6), endorsed with a certificate stating the date of service and the address at which and the manner in which it was served.

8.3 Where to start proceedings

(1) This Rule identifies the court office at which a claim form may be issued.

(2) Where proceedings relate to land they may be commenced only in the court office for the Member State, Territory or circuit in which the land is situated.

(3) Any other proceedings may be commenced only in the court office for the Member State, Territory or circuit where either the—

(*a*) cause of action arose; or

(*b*) defendant resides or carries on business.

8.4 Right to make claim which includes two or more claims

A claimant may use a single claim form to include all or any other claims which can be conveniently disposed of in the same proceedings.

8.5 Claim not to fail by adding or failing to add parties

(1) The general rule is that a claim will not fail because a person—

(*a*) who should have been made a party was not made a party to the proceedings; or

(*b*) was added as a party to the proceedings who should not have been added.

(2) However—

(*a*) where a claimant claims a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be parties to the proceedings, unless the court orders otherwise; and

(*b*) if any such person does not agree to be a claimant, that person must be made a defendant, unless the court orders otherwise.

(3) This Rule does not apply in probate or administration proceedings.

Rules 67.2 and 68.3 deal with parties in such proceedings.

8.6 What must be included in claim form

(1) The claimant must in the claim form—

(*a*) include a short description of the nature of the claim;

(*b*) specify any remedy that the claimant seeks; and

(*c*) give an address for service in accordance with rule 3.11.

(2) Notwithstanding paragraph (1)(*b*) the court may grant any other remedy to which the claimant may be entitled.

(3) A claimant who seeks aggravated damages and/or exemplary damages must say so in the claim form.

(4) A claimant who is seeking interest must—

(*a*) say so expressly in the claim form; and

(*b*) include, in the claim form or statement of claim, details of the—

(i) basis of entitlement,

(ii) rate, and

(iii) period for which it is claimed.

(5) If the claim is for a specified sum of money, the total amount of interest claimed to the date of the claim and the daily rate at which interest will accrue after the date of the claim must be expressly stated in the claim form.

(6) A claimant who claims in a representative capacity under Part 21 must state what that capacity is.

(7) A claimant suing a defendant in a representative capacity under Part 21 must state what that capacity is.

Rule 3.12 requires the claim form to include a certificate of truth.

8.7 Claimant's duty to set out case

(1) The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.

(2) The statement must be as short as practicable.

(3) The claim form or the statement of claim, must identify any document which the Claimant considers is necessary to his or her case.

(4) If the claimant seeks recovery of any property, the claimant's estimate of the value of that property must be stated.

(5) The statement of claim must include a certificate of truth in accordance with rule 3.12.

8.7A Permission to rely on allegation or factual argument

The claimant may not rely on any allegation or factual argument which is not set out in the claim, but which could have been set out there, unless the court gives permission or the parties agree.

- Rule 20.1 contains provisions about amendments to statements of case.

8.8 Certificate of value (small claims)

In any case in which the quantum of damages alone determines in which court the claim is to be brought but the amount of any damages claimed is not specified, the claim form must include a certificate by the claimant that the damages claimed exceed the civil jurisdiction of the District or Magistrate's Court in the Member State or Territory in which the claim form is issued.

8.9 Special requirements applying to claims for personal injuries

(1) This Rule sets out additional requirements with which a claimant making a claim for personal injuries must comply.

(2) The claimant's date of birth or age must be stated in the claim form or statement of claim.

(3) If the claimant intends to rely at trial on the evidence of a medical practitioner, the claimant must attach to the claim form a report from the medical practitioner on the personal injuries alleged in the claim.

(4) Paragraph (3) does not restrict the right of the claimant to call other or additional medical evidence at the trial of the claim.

(5) The claimant must include in, or attach to the claim form or statement of claim a schedule of any special damages claimed.

8.10 Relator claims

A person's name may not be used in any claim as a relator unless that person has given written authority to that effect and the authority is filed at the court office before the claim is issued.

8.11 Service of claim form

After the claim form has been issued it may be served on the defendant in accordance with Part 5 (service of claim form within jurisdiction) or Part 7 (service of court process out of the jurisdiction).

8.12 Time within which claim form may be served

(1) The general rule is that a claim form must be served within six months after the date when the claim was issued.

(2) The period for—

(*a*) service of a claim form out of the jurisdiction; or

(*b*) service of an Admiralty claim form *in rem*,

is twelve months.

Part 7 deals with service out of the jurisdiction.

Part 70 deals with Admiralty proceedings.

8.13 Extension of time for serving a claim form

(1) The claimant may apply for an order extending the period within which a claim form may be served.

(2) The period by which the time for serving a claim form is extended may not be longer than six months on any one application.

(3) An application under paragraph (1)—

(*a*) must be made within the period—

(i) for serving a claim form specified by rule 8.12, or

(ii) of any subsequent extension permitted by the court; and

(*b*) may be made without notice but must be supported by evidence on affidavit.

(4) The court may make an order under paragraph (1) only if it is satisfied that—

(*a*) the claimant has taken all reasonable steps to—

(i) trace the defendant, and

(ii) serve the claim form,

but has been unable to do so; or

(*b*) there is some other special reason for extending the period.

(5) If an order is made extending the validity of the claim form—

(*a*) the claim form must be marked with an official stamp showing the period for which its validity has been extended; and

(*b*) a sealed copy of any order made must be served with the claim form.

(6) No more than one extension may be allowed unless the court is satisfied that—

(*a*) the defendant is deliberately avoiding service; or

(*b*) there is some other compelling reason for doing so.

8.14 Defence form, etc. must be served with claim form

(1) When a claim form is served on a defendant, it must be accompanied by—

(*a*) a copy of any order made under rule 8.2 or 8.13;

(*b*) a defence form (Form 5);

(*c*) a form of acknowledgment of service (Form 4 or 4(A));

(*d*) if the claim is for money – an application to pay by instalments (Form 3); and

(*e*) the prescribed notes for defendants (Form 1A).

(2) There must be inserted on each form the—

(*a*) address of the court office to which the defendant is to return the forms;

(*b*) reference number of the claim; and

(*c*) title of the claim.

(3) If there is a standard defence form appropriate to the particular case set out in a practice guide, the form sent to the defendant must be in a standard form of that type.

PART 9

Acknowledgment of Service and Notice of Intention to Defend

9.1 Scope of this Part

(1) This Part deals with the procedure to be used by a defendant who wishes to contest proceedings and avoid a default judgement being entered.

Part 12 deals with default judgements.

(2) The defendant does so—

(*a*) by filing—

(i) a defence in accordance with Part 10, and

(ii) an acknowledgment of service in Form 3 or 4 containing a notice of intention to defend within the time limit under rule 9.3; or

(*b*) by filing a defence in accordance with Part 10 within the time limit under rule 9.3.

(3) The filing of an acknowledgment of service is to be treated as the entry of an appearance for the purpose of any enactment referring to the entry of such an appearance.

Part 14 deals with the case where the defendant wishes to admit all or part of the claim and enables the defendant to make an offer as to the time and rate of payment.

9.2 Filing acknowledgment of service and consequence of not doing so

(1) A defendant who wishes to—

(*a*) dispute the claim; or

(*b*) dispute the court's jurisdiction,

must file at the court office at which the claim form was issued an acknowledgment of service in Form 4 or 4 (A) containing a notice of intention to defend.

(2) A defendant files an acknowledgment of service by completing the form of acknowledgment of service and handing it in at, or sending it by post or fax to the court office.

(3) An acknowledgment of service has no effect until it is received at the court office.

(4) A defendant need not file an acknowledgment of service if a defence is filed within the period specified in rule 9.3.

(5) If a defendant fails to file an acknowledgement of service or a defence, judgement may be entered if Part 12 allows it.

9.3 The period for filing acknowledgment of service

(1) The general rule is that the period for filing an acknowledgment of service is the period of fourteen days after the date of service of the claim form.

(2) If a claim form is issued in one Member State, Territory or circuit and served in another the period is twenty-eight days after the date of service of the claim form.

(3) If permission has been given under rule 8.2 for a claim form to be served without a statement of claim, the period for filing an acknowledgment of service is to be calculated from the date when the statement of claim is served.

(4) A defendant may file an acknowledgment of service at any time before a request for default judgement is received at the court office out of which the claim form was issued.

(5) Paragraph (1) does not apply where the claim is served—

(*a*) outside the jurisdiction in accordance with Part 7; or

(*b*) on an agent of an overseas principal under rule 5.17.

Rules 7.5(2) and 5.17(4) deal with the time for filing an acknowledgment of service in those cases.

Rule 59.3 makes special provision for extending the time for the Crown to acknowledge service.

9.4 Notice to claimant of filing of acknowledgment of service

(1) The court office must forthwith notify the claimant in writing that an acknowledgment of service has been filed.

(2) A copy of the acknowledgment of service must be annexed to the notice.

9.5 Contents of acknowledgment of service

(1) A defendant acknowledging service—

(*a*) may state in the acknowledgment of service that all or part of the claim is admitted;

(*b*) must state in the acknowledgment of service the date on which the defendant received the claim form;

(*c*) who admits all or part of a claim for a specified sum of money – may file with the acknowledgment of service—

(i) details of the defendant's financial circumstances, and

(ii) proposals for payment of any sums admitted;

(*d*) who admits part of the claim under paragraph (*a*) – must state the amount admitted.

Part 14 deals with the way in which proposals referred to in this paragraph are decided.

(2) A defendant who admits part of the claim must also file a defence as to the disputed part of the claim within the time for filing a defence.

Rule 10.3 sets out the time for filing a defence.

(3) The defendant or the defendant's legal practitioner must sign the acknowledgment of service.

(4) The defendant must include in the acknowledgment of service an address for service within the jurisdiction to which documents may be sent.

9.6 Right to dispute jurisdiction of court not taken away by acknowledgment of service

A defendant who files an acknowledgment of service does not by doing so lose any right to dispute the court's jurisdiction.

9.7 Procedure for disputing court's jurisdiction

(1) A Defendant who disputes the court's jurisdiction to try the claim, may apply to the court for a declaration to that effect.

(2) A Defendant who wishes to make an application under paragraph (1) must first file an acknowledgment of service.

(3) An application under paragraph (1) of this Rule must be made within the period for filing a defence; the period for making an application under this Rule includes any period by which the time for filing a defence has been extended, where the court has made an order, or the parties have agreed, to extend the time for filing a defence.

- Rule 10.3 sets out the period for filing a defence.

(4) An application under this Rule must be supported by evidence on affidavit.

(5) A Defendant who—

(*a*) files an acknowledgment of service; and

(*b*) does not make an application under this Rule within the period for filing a defence, is treated as having accepted that the court has jurisdiction to try the claim.

(6) An order under this Rule may also—

(*a*) discharge an order made before the claim was commenced or the claim form served;

(*b*) set aside service of the claim form; and

(*c*) strike out a statement of claim.

(7) If, on application under this Rule, the court does not make a declaration, it—

(*a*) may—

(i) fix a date for a case management conference, or

(ii) treat the hearing of the application as a case management conference; and

(*b*) must make an order as to the period for filing a defence.

- Part 26 sets out powers which the court may exercise on a case management conference.

(8) Where a Defendant makes an application under this Rule, the period for filing a defence is extended until the time specified by the court under paragraph (7)(*b*), and such period may be extended only by an order of the court.

- Rule 10.3(4) deals with an application to stay proceedings where there is a binding agreement to arbitrate.

9.7A Procedure for applying for a stay etc. where the defendant is served out of jurisdiction

(1) A defendant who contends that the court should not exercise its jurisdiction in respect of any proceedings, may apply to the court for a stay and a declaration to that effect.

(2) A defendant who wishes to make an application under this paragraph (1), must first file an acknowledgement of service if he has not previously done so.

(3) An application under this paragraph (1) of this Rule may be made at any time.

(4) An application under this Rule must be supported by evidence on affidavit.

(5) If, on application under this Rule, the court does not make a declaration, it—

(*a*) may—

(i) fix a date for a case management conference; or

(ii) treat the hearing of the application as a case management conference; and

(*b*) must make an order as to the period for filing a defence, if none has yet been filed.

- Part 26 sets out powers which the court may exercise at a case management conference.

(6) Where a defendant makes an application under this Rule, the period for filing a defence (where none has yet been filed), is extended until the time specified by the court under paragraph (5)(b), and such period may be extended only by an order of the court.

- Rule 10.3(4) deals with the application to stay proceedings where there is a binding agreement to arbitrate.

PART 10

Defence

10.1 Scope of this Part

The Rules in this Part set out the procedure for disputing the whole or part of a claim.

Part 18 deals with the procedure for making a counterclaim.

10.2 The defendant – filing defence and the consequences of not doing so

(1) A defendant who wishes to defend all or part of a claim must file a defence (which maybe in Form 5).

(2) If—

(*a*) a claim is commenced by a fixed date claim form in Form 2 and there is served with that claim form an affidavit instead of a statement of claim; or

(*b*) any rule requires the service of an affidavit,

the defendant may file an affidavit in answer instead of a defence.

(3) In this Part the expression "defence" includes an affidavit filed under paragraph (2).

(4) A defendant who admits liability and wishes to be heard on the issue of quantum must file and serve a defence dealing with that issue.

(5) If a defendant fails to file a defence within the period for filing a defence, judgement for failure to defend maybe entered if Part 12 allows it.

Part 14 deals with the procedure to admit all or part of the claim.

10.3 The period for filing defence

(1) The general rule is that the period for filing a defence is the period of twenty-eight days after the date of service of the claim form.

(2) If a claim form is issued in one Member State, Territory or circuit and served in another, the period is forty-two days after the date of service of the claim form.

(3) If permission has been given under rule 8.2 for a claim form to be served without a statement of claim, the period for filing a defence is the period of twenty-eight days after the service of the statement of claim.

(4) If the defendant within the period set out in paragraph (1), (2) or (3) makes an application under any relevant legislation relating to arbitration to stay the claim on the grounds that there is a binding agreement to arbitrate, the period for filing a defence is extended to fourteen days after the determination of that application.

(5) The parties may agree to extend the period for filing a defence specified in paragraph (1), (2), (3) or (4).

(6) The parties may not make more than two agreements under paragraph (5).

(7) The maximum total extension of time that may be agreed is fifty-six days.

(8) The defendant must file details of such an agreement.

(9) A defendant may apply for an order extending the time for filing a defence.

(10) The general rule is subject to—

(*a*) rule 5.17(4) (service of claim form on agent of overseas principal);

(*b*) rule 7.5(2) (service of claim form outside jurisdiction);

(*c*) rule 9.7 (procedure for disputing court's jurisdiction); and

(*d*) rule 59.3 (claims against the Crown).

10.4 Service of copy of defence

On filing a defence, the defendant must also serve a copy on every other party.

10.5 Defendant's duty to set out case

(1) The defence must set out all the facts on which the defendant relies to dispute the claim.

(2) Such statement must be as short as practicable.

(3) In the defence the defendant must say which (if any) allegations in the claim form or statement of claim—

(*a*) are admitted;

(*b*) are denied;

(*c*) are neither admitted nor denied, because the defendant does not know whether they are true; and

(*d*) the defendant wishes the claimant to prove.

(4) If the defendant denies any of the allegations in the claim form or statement of claim—

(*a*) the defendant must state the reasons for doing so; and

(*b*) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.

(5) If, in relation to any allegation in the claim form or statement of claim, the defendant does not—

(*a*) admit it; or

(*b*) deny it and put forward a different version of events,

the defendant must state the reasons for resisting the allegation.

(6) The defendant must identify in or annex to the defence any document which is considered to be necessary to the defence.

(7) A defendant who defends in a representative capacity must say—

(*a*) what that capacity is; and

(*b*) whom the defendant represents.

(8) The defendant must verify the facts set out in the defence by a certificate of truth in accordance with rule 3.12.

10.6 Special requirements applying to claims for personal injuries

(1) This Rule sets out additional requirements with which a defendant to a claim for personal injuries must comply.

(2) If the claimant has attached to the claim form or statement of claim a report from a medical practitioner on the personal injuries which the claimant is alleged to have suffered, the defendant must state in the defence—

(*a*) whether all or any part of the medical report is agreed; and

(*b*) if any part of the medical report is disputed, the nature of the dispute.

(3) If the defendant intends to rely on a report from a medical practitioner to dispute any part of the claimant's claim for personal injuries and the defendant has obtained such a report, the defendant must attach that report to the defence.

10.7 Consequences of not setting out defence

The Defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission or the parties agree.

- Rule 20.1 contains provisions about amendments to statements of case.

10.8 Defence of tender

(1) The defence of tender is not available unless the defendant pays into—

(*a*) an interest bearing account with the agreement of the claimant or the permission of the court; or

(*b*) court,

the amount alleged to have been tendered within the period for filing a defence.

(2) If the claimant does not give notice accepting the payment into court within twenty-eight days of service of the defence, the defendant may apply for payment out of the monies.

Rule 10.3 states the period for filing a defence.

Part 36 deals with payments into court.

10.9 Reply to defence

(1) A Claimant may file or serve a reply to a defence—

(*a*) 14 days after the date of service of the defence; or

(*b*) at any time with the permission of the court.

(2) Where the defence contains a counterclaim, Part 18 shall apply.

- Part 18 deals with a defence to an ancillary claim including counterclaims.

PART 11

General Rules about Applications for Court Orders

11.1 Scope of this Part

This Part deals with applications for court orders made before, during or after the course of proceedings.

11.2 Applicants and respondents

In this Part—

"applicant" means a person who seeks a court order by making an application;

"respondent" means—

(*a*) the person against whom the order is sought and any other person on whom the applicant considers it just to serve the application; and

(*b*) any other person whom the court directs is to be served with the application.

11.3 Applications to be dealt with at case management conference

(1) So far as is practicable all applications relating to pending proceedings must be listed for hearing at a case management conference or pre-trial review.

(2) If an application is made which could have been dealt with at a case management conference or pre-trial review the court must order the applicant to pay the costs of the application unless there are special circumstances.

11.4 Time when application is made

If an application must be made within a specified period, it is so made if it is received by the court office or made orally to the court within that period.

11.5 Where to make application

(1) The general rule is that an application must be made to the court office where the claim was issued.

(2) If the claim has been transferred to another court office the application must be made to that court office.

(3) An application made before a claim has been issued must be made to the court office where it is likely that the claim to which the application relates will be made.

11.6 Application to be in writing

(1) The general rule is that an application must be in writing in Form 6.

(2) An application may be made orally if—

(*a*) the court dispenses with the requirement for the application to be made in writing; or

(*b*) this is permitted by a rule or practice direction.

11.7 What application must include

(1) An application must state—

(*a*) briefly, the grounds on which the applicant is seeking the order; and

(*b*) what order the applicant is seeking.

(2) The applicant must file with the application or not less than three days before the hearing of the application a draft of the order sought and serve a copy on all respondents to whom notice is given.

(3) If the application is made without notice, the draft order must be filed with the application.

11.8 Notice of application and evidence in support

(1) The general rule is that the applicant must give notice of the application to each respondent.

(2) An applicant may make an application without giving notice if this is permitted by a—

(*a*) practice direction; or

(*b*) rule.

(3) The applicant need not give evidence in support of an application unless it is required by a—

(*a*) court order;

(*b*) practice direction; or

(*c*) rule.

(4) Notice of the application must be included in the form used to make the application.

11.9 Evidence in support of application

Evidence in support of an application must be contained in an affidavit unless a—

(*a*) court order;

(*b*) practice direction; or

(*c*) rule,

otherwise provides.

Part 30 deals with affidavit evidence.

11.10 Contents of notice of application

(1) The notice must state the date, time and place when the application is to be heard.

(2) If there is not going to be a hearing but notice of the application is required, the notice must state how the court will deal with the application.

Rule 11.14 sets out the circumstances in which there may not be a hearing.

11.11 Service of notice of application

(1) The general rule is that a notice of an application must be served—

(*a*) as soon as practicable after the day on which it is issued; and

(*b*) at least seven days before the court is to deal with the application.

(2) The period in paragraph (1)(*b*) does not apply if any rule or practice direction specifies some other period for service.

(3) If—

(*a*) notice of an application has been given; but

(*b*) the period of notice is shorter than the period required,

the court may nevertheless direct that, in all the circumstances of the case, sufficient notice has been given and may accordingly deal with the application.

(4) The notice must be accompanied by—

(*a*) a copy of any draft order which the applicant has attached to the application; and

(*b*) any evidence in support.

(5) The notice must be served in accordance with Part 6 unless any respondent is not a party, in which case the notice must be served in accordance with Part 5.

11.12 Powers of court in relation to conduct of application

(1) The court may—

(*a*) issue a witness summons requiring a party or other person to attend the court on the hearing of the application;

(*b*) question any party or witness at the hearing; and

(*c*) require a party to produce documents or things at the hearing.

(2) The court may question a party or witness—

(*a*) by putting written questions and asking the witness to give written answers; or

(*b*) orally.

(3) Any party may then cross-examine the witness.

(4) The court may exercise any power which it might exercise at a case management conference.

11.13 Consequence of not asking for order in application

An applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission.

11.14 Applications which may be dealt with without hearing

The court may deal with an application without a hearing if—

(*a*) no notice of the application is required;

(*b*) the court considers that the application can be dealt with over the telephone or by other means of communication;

(*c*) the court does not consider that a hearing would be appropriate;

(*d*) the parties agree; or

(*e*) the parties have agreed to the terms of an order—

(i) which does not come within rule 27.8(1), and

(ii) the application (or a copy of the application) is signed by the legal practitioners for all parties to the application.

Rules 2.7(3) and (4) contain powers to enable the court to deal with applications by electronic means.

Rule 42.7 deals with consent orders.

11.15 Service of application where order made on application made without notice

After the court has disposed of an application made without notice, the applicant must serve a copy of the application and any evidence in support on all other parties.

11.16 Applications to set aside or vary order made on application made without notice

(1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.

(2) A respondent must make such an application not more than fourteen days after the date on which the order was served on the respondent.

(3) An order made on an application of which notice was not given must contain a statement telling the respondent of the right to make an application under this Rule.

11.17 Power of the court to proceed in absence of party

If the applicant or any person on whom the notice of application has been served fails to attend the hearing of the application, the court may proceed in the absence of that party.

11.18 Application to set aside order made in absence of party

(1) A party who was not present when an order was made may apply to set aside or vary the order.

(2) The application must be made not more than fourteen days after the date on which the order was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing—

(*a*) a good reason for failing to attend the hearing; and

(*b*) that it is likely that had the applicant attended some other order might have been made.

PART 12

Default Judgements

12.1 Scope of this Part

(1) This Part contains provisions under which a claimant may obtain judgement without trial where the defendant has failed to file—

(*a*) a defence in accordance with Part 10; or

(*b*) an acknowledgment of service giving notice of intention to defend in accordance with Part 9.

(2) Such a judgement is called a "default judgement".

12.2 Claims in which default judgement may not be obtained

A claimant may not obtain default judgement if the claim is—

(*a*) a claim in probate proceedings;

(*b*) a fixed date claim; or

(*c*) an admiralty claim *in rem*.

Rule 68.6 deals with probate proceedings.

Rule 70.22 makes special provision for default judgement in admiralty cases for personal injury arising out of a collision between two ships.

12.3 Cases in which permission required

(1) A claimant who wishes to obtain a default judgement on any claim which is a claim against a—

(*a*) minor or patient as defined in rule 2.4; or

(*b*) State as defined in any relevant enactment relating to state immunity,

must obtain the court's permission.

Part 59 deals with proceedings against the Crown.

Part 23 deals with proceedings involving a minor or patient.

(2) A claimant who wishes to obtain judgement in default of acknowledgment of service against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of any relevant enactment relating to diplomatic privileges must obtain the court's permission.

(3) An application under paragraph (1) or (2) must be supported by evidence on affidavit.

Rule 12.9(2) contains restrictions on a default judgement where it is sought against some but not all defendants.

12.4 Conditions to be satisfied – judgement for failure to file acknowledgment of service

The court office at the request of the claimant must enter judgement for failure to file an acknowledgment of service if—

(*a*) the claimant proves service of the claim form and statement of claim;

(*b*) the defendant has not filed—

(i) an acknowledgment of service, or

(ii) a defence to the claim or any part of it;

(*c*) the defendant has not satisfied in full the claim on which the claimant seeks judgement;

(*d*) the only claim is for a specified sum of money, apart from costs and interest, and the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it;

(*e*) the period for filing an acknowledgment of service under rule 9.3 has expired; and

(*f*) (if necessary) the claimant has the permission of the court to enter judgement.

Rules 5.5, 5.11, 5.12 and 5.15 deal with how to prove service of the claim form and statement of claim.

12.5 Conditions to be satisfied – judgement for failure to defend

The court office at the request of the claimant must enter judgement for failure to defend if—

(*a*) (i)the claimant proves service of the claim form and statement of claim, or

(ii) an acknowledgment of service has been filed by the defendant against whom judgement is sought;

(*b*) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;

(*c*) the defendant has not—

(i) filed a defence to the claim or any part of it (or the defence has been struck out or is deemed to have been struck out under rule 22.1(6)),

(ii) (if the only claim is for a specified sum of money) filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it, or

(iii) satisfied the claim on which the claimant seeks judgement; and

(*d*) (if necessary) the claimant has the permission of the court to enter judgement.

12.6 Admission of part – request for time to pay

(1) This Rule deals with the situation where the—

(*a*) defendant is an individual who has admitted liability to pay either—

(i) a specified sum towards a claim for an unspecified sum of money, or

(ii) part only of a claim for a specified sum;

(*b*) defendant has not filed a defence; and

(*c*) claimant does not accept the sum admitted.

(2) Subject to any restriction imposed by this Part, the claimant may apply for judgement to be entered for—

(*a*) the whole amount of the claim for a specified sum together with interest and fixed costs under rule 65.4; or

(*b*) if the claim is for an unspecified sum – the payment of an amount to be decided by the court.

(3) If the defendant has requested time to pay, that request must be dealt with, if the claim is for—

(*a*) a specified sum – in accordance with rules 14.9 and 14.10 or 14.11;

(*b*) an unspecified sum – when damages are assessed in accordance with rule 16.3.

12.7 Procedure

A claimant applies for default judgement by filing a request in Form 7.

Rule 16.2 sets out additional information that must be provided where the claim is for an unspecified sum of money.

12.8 Claim for specified sum of money

(1) The fact that the claimant also claims costs and interest at a specified rate does not prevent a claim from being a claim for a specified sum of money.

(2) A claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgement entered for either the sum of money claimed—

(*a*) and for interest to be assessed; or

(*b*) together with interest at the statutory rate from the date of the claim to the date of entering judgement.

(3) If a claim is partly for a specified sum and partly for an unspecified sum the claimant may abandon the claim for the unspecified sum and enter default judgement for the specified sum.

Rule 2.4 defines "claim for a specified sum of money".

12.9 Claim against more than one defendant

(1) A claimant may apply for default judgement on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with the claim against the other defendants.

(2) If a claimant applies for a default judgement against one of two or more defendants, then if the claim—

(*a*) can be dealt with separately from the claim against the other defendants—

(i) the court may enter judgement against that defendant, and

(ii) the claimant may continue the proceedings against the other defendants;

(*b*) cannot be dealt with separately from the claim against the other defendants, the court—

(i) may not enter judgement against that defendant, and

(ii) must deal with the application at the same time as it disposes of the claim against the other defendants.

(3) If a claim for delivery of goods is made against more than one defendant (with or without any other claim), the claimant may not enforce any judgement for delivery entered under this Part against a defendant unless the—

(*a*) claimant has obtained a judgement for delivery (whether or not obtained under this Part) against all the defendants to the claim; or

(*b*) court gives permission.

12.10 Nature of default judgement

(1) Default judgement on a claim for—

(*a*) a specified sum of money – must be judgement for payment of that amount or, a part has been paid, the amount certified by the claimant as outstanding—

(i) if the defendant has applied for time to pay under Part 14 – at the time and rate ordered by the court, or

(ii) in all other cases – at the time and rate specified in the request for judgement;

- Rule 2.4 defines "a claim for a specified sum of money" and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.
- Part 65 deals with the quantification of costs.

(*b*) an unspecified sum of money – must be judgement for the payment of an amount to be decided by the court;

Rule 16.2 deals with the procedure for assessment of damages where judgement is entered under this paragraph.

(*c*) goods – must be—

(i) judgement requiring the defendant either to deliver the goods or pay their value as assessed by the court,

(ii) judgement requiring the defendant to pay the value of the goods as assessed by the court, or

(iii) (if the court gives permission) a judgement requiring the defendant to deliver the goods without giving the defendant the alternative of paying their assessed value.

(2) An application for permission to enter a default judgement under paragraph (1)(*c*)(iii) must be supported by evidence on affidavit.

(3) A copy of the application and the evidence under paragraph (2) must be served on the defendant against whom judgement has been sought even though that defendant has failed to file an acknowledgment of service or a defence.

(4) Default judgement where the claim is for some other remedy shall be in such form as the court considers the claimant to be entitled to on the statement of claim.

(5) An application for the court to determine the terms of the judgement under paragraph (4) need not be on notice but must be supported by evidence on affidavit and rule 11.15 does not apply.

12.11 Interest

(1) A default judgement must include judgement for interest for the period claimed if the—

(*a*) claim form includes a claim for interest;

(*b*) claim form or statement of claim includes the details required by rule 8.6(4); and

(*c*) request for default judgement states the amount of interest to the date it was filed.

(2) If the claim form includes any other claim for interest, the default judgement must include judgement for an amount of interest to be decided by the court.

12.12 Costs

(1) A default judgement must include fixed costs under rule 65.4 unless the court assesses the costs.

(2) An application to assess costs must be on notice to the defendant.

Rule 65.11 deals with the assessment of costs.

12.13 Defendant's rights following default judgement

Unless the defendant applies for and obtains an order for the judgement to be set aside, the only matters on which a defendant against whom a default judgement has been entered may be heard are—

(*a*) an application under rule 12.10(4);

(*b*) costs;

(*c*) enforcement of the judgement; and

(*d*) the time of payment of any judgement debt.

Part 13 deals with setting aside or varying default judgements.

PART 13

Setting Aside or Varying Default judgement

13.1 Scope of this Part

The Rules in this Part set out the procedure for setting aside or varying a default judgement entered under Part 12 (default judgements).

Part 47 deals with variation of the terms of a judgement as to time and method of payment.

13.2 Cases where court must set aside default judgement

(1) The court must set aside a judgement entered under Part 12 if judgement was wrongly entered because in the case of—

(*a*) a failure to file an acknowledgment of service – any of the conditions in rule 12.4 was not satisfied; or

(*b*) judgement for failure to defend – any of the conditions in rule 12.5 was not satisfied.

(2) The court may set aside judgement under this Rule on or without an application.

13.3 Cases where court may set aside or vary default judgement

(1) If rule 13.2 does not apply, the court may set aside a judgement entered under Part 12, only if the Defendant—

(*a*) applies to the court as soon as reasonably practicable after finding out that judgement had been entered;

(*b*) gives a good explanation for the failure to file an acknowledgment of service or a defence as the case may be; and

(*c*) has a real prospect of successfully defending the claim.

(2) In any event, the court may set aside a judgement entered under Part 12, if the defendant satisfies the court that there are exceptional circumstances.

(3) Where this Rule gives the court power to set aside a judgement, the court may instead vary it.

- Part 26.1(3) enables the court to attach conditions to any order.

13.4 Applications to vary or set aside judgement – procedure

(1) An application may be made by any person who is directly affected by the entry of judgement.

(2) The application must be supported by evidence on affidavit.

(3) The affidavit must exhibit a draft of the proposed defence.

13.5 Court to impose condition as to filing of defence

If judgement is set aside under rule 13.3, the general rule is that the order must be conditional upon the defendant filing and serving a defence by a specified date.

13.6 Hearing to be treated as case management conference

(1) If judgement is set aside under rule 13.3 the court must treat the hearing as a case management conference unless it is not possible to deal with the matter justly at that time.

(2) If it is not possible to deal with the matter justly at that time, the court office must fix a date, time and place for a case management conference and give notice to the parties.

Part 26 deals with the powers of the court on a case management conference.

Part 27 deals with the procedure for case management conferences.

13.7 Abandoned claims to be restored if judgement set aside

If the claimant has abandoned any remedy sought in the claim form in order to enter a default judgement, the abandoned claim is restored if judgement is set aside.

PART 14

Judgement on Admissions

14.1 Making an admission

(1) A party may admit the truth of the whole or any part of any other party's case.

(2) A party may do this by giving notice in writing (such as in a statement of case or by letter) before or after the issue of proceedings.

(3) A defendant may admit the whole or part of a claim for money by filing an acknowledgment of service containing the admission.

(4) The defendant may do this in accordance with the following rules—

(*a*) rule 14.6 (admission of whole of claim for specified sum of money);

(*b*) rule 14.7 (admission of part of claim for money only); or

(*c*) rule 14.8 (admission of liability to pay whole of claim for unspecified sum of money).

(5) A defendant may file an admission under paragraph (4) at any time before a default judgement is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgement of service has expired.

Rule 9.3 specifies the time for filing an acknowledgment of service.

Rules 65.11 and 12 deal with assessed costs.

14.2 Satisfaction

(1) If the defendant pays the claimant the sum claimed, together with interest at the statutory rate (if claimed) and the fixed costs as set out on the claim form, within the period for filing an acknowledgment of service under rule 9.3 the—

(*a*) claim is stayed; and

(*b*) claimant must forthwith file and serve a notice of discontinuance.

(2) Rule 37.6 (liability for costs) does not apply to a notice of discontinuance served under this Rule.

(3) If the Claimant does not file and serve a notice of discontinuance in accordance with paragraph (1) within seven days of payment, the Defendant may apply and serve a notice in the form specified in Form 28, to request that the claim be recorded as satisfied.

(4) If there is no dispute, the court office must record that the claim has been satisfied.

(5) If the Claimant disputes satisfaction, the court office must fix a hearing to consider the application and give not less than 7 days notice of the hearing to the Claimant and Defendant.

(6). . . . . .

14.3 Admissions where party a minor or patient

Judgement may not be entered on an admission if the—

(*a*) defendant is a minor or patient; or

(*b*) claimant is a minor or patient and the admission is made under rule 14.7 or 14.8.

Rule 23.12 deals with compromise of claims made by or against a minor or patient.

14.4 Admission by notice in writing – application for judgement

(1) If a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgement on the admission.

(2) The terms of the judgement must be such as it appears to the court the applicant is entitled to on the admission.

14.5 Admission in whole or in part of money claim

On receipt of an admission of the whole or part of a claim for money under rule 14.1(3), the court office must send a copy of the admission and any request for time to pay under rule 14.9 to the claimant.

14.6 Admission of whole of claim for specified sum of money

(1) This Rule applies where the—

(*a*) defendant admits the whole of the claim in the acknowledgment of service;

(*b*) defendant has not requested time to pay; and

(*c*) only remedy which the claimant is seeking is payment of a specified sum of money.

(2) The claimant may file a request for judgement in Form 8 for the amount claimed, interest and fixed costs under rule 65.4 and may specify the—

(*a*) date on which the judgement debt is to be paid; or

(*b*) time and rate at which it is to be paid if by instalments.

(3) The court office must enter judgement in accordance with the request.

Rule 2.4 defines "a claim for a specified sum of money" and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.

14.7 Admission of part of claim for money only

(1) This Rule applies where—

(*a*) the only remedy which the Claimant is seeking is payment of money;

(*b*) Defendant admits a specified—

(i) sum of money, or

(ii) proportion of a claim for an unspecified sum of money; in acknowledgment of service or defence; and

(*c*) the Defendant has filed a defence as to the amount not admitted.

• If the Defendant does not file a defence the Claimant will be entitled default judgement in accordance with rule 12.5.

(2) The Claimant must serve a notice on the Defendant stating that—

(*a*) the amount or proportion admitted in satisfaction of the claim is accepted; or

(*b*) the Claimant intends to continue the claim.

(3) The Claimant must—

(*a*) file the notice under paragraph (2); and

(*b*) serve a copy on the Defendant,

within fourteen days after service of the Defendant's acknowledgment of service or defence, as the case may be.

(4) If the Claimant does not file the notice within fourteen days after service of the Defendant's acknowledgment of service or defence—

(*a*) the claim is stayed until the notice is filed; and

(*b*) any party may apply for the stay to be lifted.

(5) If the Defendant has not requested time to pay under rule 14.9, the Claimant may file a request for judgement in Form 8 for the amount admitted, interest and fixed costs and may specify—

(*a*) the date on which the judgement debt is to be paid; or

(*b*) the time and rate at which it is to be paid by instalments.

(6) The court office must enter judgement in accordance with the request.

(7) If the Claimant gives notice that he accepts the Defendant's admission of a specified proportion of a claim for an unspecified sum of money, the court must enter judgement for that proportion of an amount to be decided by the court and costs.

(8) If the Claimant files notice under paragraph (2)(*b*), the court office must fix a date, time and place for a case management conference.

- Part 27 sets out the procedure relating to a case management conference.
- Rule 65.4 deals with fixed costs.

14.8 Admission of liability to pay whole of claim for unspecified sum of money

(1) This Rule applies where the—

(*a*) amount of the claim is not specified;

(*b*) defendant admits liability in the acknowledgment of service to pay the whole of the claim and does not offer to pay a specified sum of money or proportion of the claim in satisfaction of the claim;

(*c*) defendant has not requested time to pay under rule 14.9; and

(*d*) only remedy the claimant seeks is the payment of money.

(2) The claimant may file a request for judgement in Form 7.

(3) The court office must enter judgement in accordance with the request.

(4) Judgement will be for an amount to be decided by the court and costs.

Rule 16.3 deals with how the court decides the amount of the judgement.

Part 65 deals with the quantification of costs.

14.9 Requests for time to pay

(1) A defendant who—

(*a*) makes an admission under rules 14.6, 14.7 or 14.8; and

(*b*) is an individual,

may make a request for time to pay.

(2) A request for time to pay is a proposal—

(*a*) about the date of payment; or

(*b*) to pay by instalments at a rate specified in the request.

(3) The defendant's request for time to pay must be—

(*a*) accompanied by a statement of his or her financial position in the appropriate practice form; and

(*b*) filed with the admission.

(4) The statement under paragraph (3)(*a*) must be certified by the defendant as being correct and may be used as evidence of the defendant's financial position at the date it was signed in any subsequent proceedings with regard to enforcement of the judgement.

(5) If the—

(*a*) request for time to pay relates to a claim for an unspecified sum of money; and

(*b*) court must assess damages under rule 14.8(4),

the court must deal with the request for time to pay when it assesses damages.

14.10 Requests for time to pay – procedure where time and rate agreed

(1) This Rule applies where the—

(*a*) only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;

(*b*) defendant—

(i) admits the whole of a claim for a specified sum of money, or

(ii) offers to pay a specified sum, and

(iii) requests time to pay or makes an offer to pay by instalments; and

(*c*) claimant in the request for judgement on the admission in Form 7 accepts the defendant's offer as to the amount, time and rate of payment.

(2) If this Rule applies, judgement on the admission must be judgement for the specified sum of money admitted (less any payments made), interest and fixed costs under rule 65.4, to be paid at the agreed time and rate.

14.11 Requests for time to pay — procedure where time and rate not agreed

(1) This Rule applies where—

(*a*) the only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;

(*b*) the defendant—

(i) admits the whole of a claim for a specified sum of money, or

(ii) offers to pay a specified sum, and

(ii) requests time to pay or makes an offer to pay by instalments; and

(*c*) the claimant accepts the sum admitted but does not accept the defendant's offer as to the amount, time and rate of payment.

(2) If this Rule applies, the claimant must state in the request for judgement in Form 7 the reasons for objecting to the defendant's proposals as to payment.

(3) The court must consider the defendant's request and the claimant's objections and enter judgement for the amount of the claim, interest and fixed costs under rule 65.4 on such terms as it sees fit.

(4) The general rule is that the court should enter judgement under paragraph (3) without a hearing.

(5) If the court decides to deal with the matter at a hearing, it must give the parties at least seven days' notice of the hearing.

(6) If there is a hearing, the court must determine whether to make an order for the costs of the application and by whom the costs should be paid and assess such costs under rule 65.11.

The claimant is entitled to fixed costs on the judgement in accordance with Part 65, Appendix A.

14.12 Right of redetermination

(1) If the court has determined the time and rate of payment under rule 14.11 without a hearing, either party may apply for the decision to be redetermined by the court at a hearing.

(2) An application for redetermination must be made within fourteen days after service of the judgement on the applicant.

(3) At the hearing the court may confirm the judgement or make such other order as to the time and rate of payments as it considers just.

(4) The court must determine whether to make an order for costs and by whom the costs should be paid and assess such costs under rule 65.11.

14.13 Variation of order

(1) Either a claimant or a defendant may apply to vary an order made under this Part.

(2) An application by a defendant must be made in accordance with Part 47.

PART 15

Summary Judgement

15.1 Scope of this Part

This Part sets out a procedure by which the court may decide a claim or a particular issue without a trial.

15.2 Grounds for summary judgement

The court may give summary judgement on the claim or on a particular issue if it considers that the—

(*a*) claimant has no real prospect of succeeding on the claim or the issue; or

(*b*) defendant has no real prospect of successfully defending the claim or the issue.

Rule 26.3 gives the court power to strike out the whole or part of a statement of case if it discloses no reasonable ground for bringing or defending the claim.

15.3 Types of proceedings for which summary judgement is not available

The court may give summary judgement in any type of proceedings except—

(*a*) admiralty proceedings *in rem*;

(*b*) probate proceedings;

(*c*) proceedings by way of fixed date claim;

(*d*) proceedings for—

(i) claims against the Crown,

(ii) defamation,

(iii) false imprisonment,

(iv) malicious imprisonment, and

(v) redress under the Constitution of any Member State or Territory.

15.4 Procedure

(1) Notice of an application for summary judgement must be served not less than fourteen days before the date fixed for hearing the application.

(2) The notice under paragraph (1) must identify the issues which it is proposed that the court should deal with at the hearing.

(3) The court may exercise its powers without such notice at any case management conference.

Part 11 contains general rules about applications.

15.5 Evidence for purpose of summary judgement hearing

(1) The applicant must—

(*a*) file affidavit evidence in support with the application; and

(*b*) serve copies of the application and the affidavit evidence on each party against whom summary judgement is sought,

not less than fourteen days before the date fixed for hearing the application.

(2) A respondent who wishes to rely on evidence must—

(*a*) file affidavit evidence; and

(*b*) serve copies on the applicant and any other respondent to the application,

at least seven days before the summary judgement hearing.

15.6 Powers of court on application for summary judgement

(1) The court may give summary judgement on any issue of fact or law whether or not the judgement will bring the proceedings to an end.

(2) If the proceedings are not brought to an end the court must also treat the hearing as a case management conference.

PART 16

Assessment of Damages

16.1 Scope of this Part

This Part deals with the procedure by which a hearing to assess damages is fixed.

16.2 Assessment of damages after default judgement

(1) An application for a default judgement to be entered under rule l2.10(1)(*b*) must state—

(*a*) whether the claimant is in a position to prove the amount of the damages; and, if so

(*b*) the claimant's estimate of the time required to deal with the assessment; or

(*c*) that the claimant is not yet in a position to prove the amount of the damages.

(2) Unless the application states that the claimant is not in a position to prove the amount of damages, the court office must fix a date for the assessment of damages and give the claimant at least fourteen days notice of the date, time and place fixed for the hearing.

(3) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.

(4) The court office must then fix a period within which the assessment of damages will take place and a date on which a listing questionnaire is to be sent to the claimant.

Rules 27.9 and 27.10 deal with listing questionnaires and the fixing of a date for a trial.

16.3 Assessment of damages after admission of liability on claim for unspecified sum of money

(1) This Rule applies where the defendant has admitted liability for the whole or a specified proportion of a claim for an unspecified sum of money.

(2) An application for judgement to be entered for damages to be assessed on an admission under Part 14 must—

(*a*) state whether the claimant is in a position to prove the amount of damages; and, if so

(*b*) give an estimate of the time required to deal with the assessment; or

(*c*) state that the claimant is not yet in a position to prove the amount of damages.

(3) Unless the application states that the claimant is not in a position to prove the amount of damages, the court office must fix a date for the assessment of damages and give the parties at least fourteen days notice of the date, time and place fixed for the hearing.

(4) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.

(5) The court office must then fix either—

(*a*) a case management conference and give notice to the parties; or

(*b*) a period within which the assessment of damages will take place and a date on which a listing questionnaire is to be sent to the claimant.

Rules 27.9 and 27.10 deal with listing questionnaires and the fixing of a date for trial.

(6) The defendant is entitled to cross examine any witness called on behalf of the claimant and to make submissions to the court but is not entitled to call any evidence unless the defendant has filed a defence setting out the facts the defendant seeks to prove.

(7) The court must also deal with any request under Part 14 for time to pay.

16.4 Assessment of damages after direction for trial of issue of quantum

(1) This Rule applies where the court makes a direction for the trial of an issue of quantum.

(2) The direction may be given at—

(*a*) a case management conference;

(*b*) the hearing of an application for summary judgement; or

(*c*) the trial of the claim or of an issue, including the issue of liability.

(3) On making such a direction the court must exercise the powers of a case management conference and in particular may give directions about—

(*a*) disclosure under Part 28;

(*b*) service of witness statements under Part 29; and

(*c*) service of expert reports under Part 32.

(4) The court must also fix—

(*a*) a date on which the court office is to send a listing questionnaire to the parties; and

(*b*) a period within which the assessment of damages is to commence.

Rules 27.9 and 27.10 deal with listing questionnaires and the fixing of a date for trial.

PART 17

Interim Remedies

17.1 Orders for interim remedies

(1) The court may grant interim remedies including—

(*a*) an interim declaration;

(*b*) an interim injunction;

(*c*) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (*h*);

(*d*) an order directing a party to prepare and file accounts relating to the dispute;

(*e*) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order;

(*f*) an order for a specified fund to be paid into court or otherwise secured where there is a dispute over a party's right to the fund;

(*g*) an order for interim costs;

(*h*) an order for the—

(i) carrying out of an experiment on or with relevant property,

(ii) detention, custody or preservation of relevant property,

(iii) inspection of relevant property,

(iv) payment of income from relevant property until a claim is decided,

(v) sale of relevant property (including land) which is of a perishable nature or which for any other good reason it is desirable to sell quickly,

(vi) taking of a sample of relevant property;

(*i*) an order permitting a party seeking to recover personal property to pay a specified sum of money into court pending the outcome of the proceedings and directing that, if the party does so, the property must be given up to the party;

(*j*) an order (referred to as a "freezing order") restraining a party from—

(i) dealing with any asset whether located within the jurisdiction or not,

(ii) removing from the jurisdiction assets located there;

(*k*) an order to deliver up goods;

(*l*) an order (referred to as a "search order") requiring a party to admit another party to premises for the purpose of preserving evidence, etc.;

(*m*) an order (referred to as an "order for interim payment"**)** under rules 17.5 and 17.6 for payment by a defendant on account of any damages, debt or other sum which the Court may find the defendant liable to pay.

(2) In paragraph (1)(*e*) and (*h*), "relevant property" means property which is the subject of a claim or in relation to which any question may arise on a claim.

(3) The fact that a particular type of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.

(4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

(5) The Chief Justice may issue a practice direction as to the procedure for applying for an interim order including, in particular, interim injunctions, search orders and freezing orders.

17.2 Time when an order for interim remedy may be made

(1) An order for an interim remedy may be made at any time, including—

(*a*) after judgement has been given; or

(*b*) before a claim has been made.

(2) Paragraph (1) is subject to any rule which provides otherwise.

(3) The court may grant an interim remedy before a claim has been made only if—

(i) the matter is urgent, or

(ii) it is otherwise necessary to do so in the interests of justice.

(4) Unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 17.1(1) before filing an acknowledgment of service under Part 9.

(5) If the court grants an interim remedy before a claim has been issued, it must require an undertaking from the claimant to issue and serve a claim form by a specified date.

(6) If no claim has been issued the application must be made in accordance with the general rules about applications contained in Part 11.

17.3 How to apply for interim remedy

(1) An application for an interim remedy must be supported by evidence on affidavit unless the court otherwise orders.

(1A) Where, in support of any application under this Rule, it is not practicable to produce evidence on affidavit, then the application may be supported by evidence given by witness statement and, in due course, of evidence by affidavit.

(3) The evidence in support of an application made without giving notice must state the reasons why notice has not been given.

17.4 Interim injunctions and similar orders

(1) This Rule deals with applications for—

(*a*) a freezing order under rule 17.1(1)(*j*);

(*b*) a search order under rule 17.1(1)(*l*);

(*c*) an interim injunction under rule 17.1(1)(*b*);

(*d*) an order authorising a person to enter any land or building for the purpose of carrying out an order under paragraph (*e*); and

(*e*) an order for the detention, custody or preservation of relevant property under rule 17.1(1)(*h*)(ii).

(2) Unless the court otherwise directs, a party applying for an interim order under this Rule must undertake to abide by any order as to damages caused by the granting or extension of the order.

(3) An application for an interim order under this Rule may in the first instance be made on three days notice to the respondent.

(4) The court may grant an interim order under this Rule on an application made without notice for a period of not more than twenty-eight days (unless any of these Rules permits a longer period) if it is satisfied that—

(*a*) in a case of urgency no notice is possible; or

(*b*) that to give notice would defeat the purpose of the application.

(5) On granting an order under paragraph (4) the court must—

(*a*) fix a date for further consideration of the application; and

(*b*) fix a date (which may be later than the date under paragraph (*a*)) on which the injunction will terminate unless a further order is made on the further consideration of the application.

(6) When an order is made under paragraph (4), the applicant must, not less than seven days before the date fixed for further consideration of the application, serve the respondent personally with—

(*a*) the application for an interim order;

(*b*) the evidence on affidavit in support of the application;

(*c*) any interim order made without notice; and

(*d*) notice of the date and time on which the court will further consider the application.

(7) An application to extend an interim order under this Rule must be made on notice to the respondent unless the court otherwise orders.

17.5 Interim payments – general procedure

(1) The claimant may not apply for an order for an interim payment before the end of the period for entering an acknowledgment of service applicable to the defendant against whom the application is made.

- Rule 9.3 sets out the period for filing an acknowledgment of service.

(2) The claimant may make more than one application for an order for an interim payment even though an earlier application has been refused.

(3) Notice of an application for an order must be—

(*a*) served at least fourteen days before the hearing of the application; and

(*b*) supported by evidence on affidavit.

(4) The affidavit must—

(*a*) exhibit any documentary evidence relied on by the claimant in support of the application;

(*b*) set out the grounds of the application;

(*c*) state the claimant's assessment of the amount of damages or other monetary judgement that are likely to be awarded; and

(*d*) if the claim is made under any relevant enactment in respect of injury resulting in death – contain full particulars of the—

(i) nature of the claim in respect of which the damages are sought to be recovered, and

(ii) person or persons for whom and on whose behalf the claim is brought.

(5) If the respondent to an application for an interim payment wishes to rely on evidence or the claimant wishes to rely on evidence in reply, that party must—

(*a*) file the evidence on affidavit; and

(*b*) serve copies on every other party to the application,

at least seven days before the hearing of the application.

(6) The court may order an interim payment to be made in one sum or by instalments.

17.6 Interim payment**s – conditions to be satisfied and matters to be taken into account**

(1) The court may make an order for an interim payment only if—

(*a*) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;

(*b*) the claimant has obtained an order for an account to be taken as between the claimant and the defendant and for judgement for any amount certified due on taking the account;

(*c*) the claimant has obtained judgement against that defendant for damages to be assessed or for a sum of money (including costs) to be assessed;

(*d*) (except where paragraph (3) applies), it is satisfied that, if the claim went to trial, the claimant would obtain judgement against the defendant from whom an order for interim payment is sought for a substantial amount of money or for costs; or

(*e*) the following conditions are satisfied—

(i) the claimant is seeking an order for possession of land (whether or not any other order is also being sought), and

(ii) the court is satisfied that, if the case went to trial, the defendant would be held liable (even if the claim for possession fails) to pay the claimant a sum of money for rent or for the defendant's use and occupation of the land while the claim for possession was pending.

(2) In addition, in a claim for personal injuries the court may make an order for the interim payment of damages only if the defendant is—

(*a*) a person whose means and resources are such as to enable that person to make the interim payment;

(*b*) insured in respect of the claim; or

(*c*) a public authority.

(3) In a claim for damages for personal injuries where there are two or more defendants, the court may make an order for the interim payment of damages against any defendant if—

(*a*) it is satisfied that, if the claim went to trial, the claimant would obtain judgement for substantial damages against at least one of the defendants (even if the court has not yet determined which of them is liable); and

(*b*) paragraph (2) is satisfied in relation to each defendant.

(4) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgement.

(5) The court must take into account—

(*a*) contributory negligence (where applicable); and

(*b*) any relevant set-off or counterclaim.

17.7 Powers of court where it has made order for interim payment

(1) If a defendant has been ordered to make an interim payment, or has voluntarily made an interim payment, the court may make an order to adjust the interim payment.

(2) The court may in particular—

(*a*) order a defendant to reimburse, either in whole or in part, another defendant who has made an interim payment;

(*b*) order all or part of the interim payment to be repaid; and

(*c*) vary or discharge the order for interim payment.

(3) The court may make an order under this Rule—

(*a*) on an application by a party made at any time; or

(*b*) without an application by a party if it makes the order when it disposes of the claim or any part of it.

17.8 Power of court **to order early trial**

On hearing any application under this Part, the court may exercise any of its case management powers under Parts 26 and 27 and may in particular give directions for an early trial of the claim or any part of the claim.

PART 18

Ancillary Claims

18.1 Meaning of ancillary claim

(1) An "ancillary claim" is any claim other than a claim by a claimant against a defendant or a claim for a set-off contained in a defence and includes a—

(*a*) claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and

(*b*) claim by an ancillary defendant against any other person (whether or not already a party); and

(*c*) counterclaim by a defendant against the claimant or against the claimant and some other person.

(2) In this Part—

"ancillary claimant" means a person who makes an ancillary claim; and

"ancillary defendant" means the defendant to that claim.

(3) If an ancillary defendant makes an ancillary claim against a further person that person is to be called the "second (or as the case may be) ancillary defendant".

18.2 Ancillary claim to be treated as claim for purposes of these Rules

(1) An ancillary claim is to be treated as if it were a claim for the purposes of these Rules except as provided by this Rule.

(2) Particulars of an ancillary claim must be contained in or served with the ancillary claim form in Form 9.

(3) An ancillary claim form must include—

(*a*) the ancillary claimant's address for service in accordance with rule 3.11; and

(*b*) a certificate of truth in accordance with rule 3.12.

(4) The following rules do not apply to ancillary claims—

(*a*) rules 8.12 and 8.13 (time within which a claim may be served);

(*b*) Part 12 (default judgements); and

(*c*) Part 14 (admissions) other than rule 14.1(1) and (2), 14.3 and 14.4.

(5) If the ancillary claim is a counterclaim by the defendant against a claimant (with or without any other person) the claimant is not required to file an acknowledgment of service and therefore Part 9 (acknowledgment of service) does not apply to the claimant.

18.3 Defendant's claim for contribution or indemnity from co-defendant

(1) A defendant who has filed an acknowledgment of service or a defence may make an ancillary claim for contribution or indemnity against another defendant by—

(*a*) filing a notice containing a statement of the nature and grounds of the claim; and

(*b*) serving the notice on the other defendants.

(2) Rule 18.4 does not apply to an ancillary claim under this Rule.

Part 9 deals with filing an acknowledgment of service.

Part 10 deals with filing a defence.

18.4 Procedure for making ancillary claim

(1) A defendant may make an ancillary claim (other than a claim falling within rule 18.3) without the court's permission if in—

(*a*) the case of a counterclaim – it is filed with the defence; or

(*b*) any other case – the ancillary claim form is filed before the case management conference.

(2) Where paragraph (1) does not apply an ancillary claim may be made only if the court gives permission.

(3) An application for permission under paragraph (2) may be made without notice unless the court directs otherwise.

(4) The applicant must attach to the application a draft of the proposed ancillary claim form and ancillary statement of claim.

(5) The court may give permission at the case management conference.

(6) The court may not give permission after the first case management conference to any person who was a party at the time of that conference unless it is satisfied that there has been a significant change in circumstances which became known after the case management conference.

(7) The ancillary claim is made in—

(*a*) the case of a counterclaim – when it is filed; and

(*b*) any other case – when the court issues the ancillary claim form.

18.5 Service of ancillary claim form

(1) An ancillary claim which may be made without the court's permission must be served on the person against whom it is made within fourteen days after the date the defendant files a defence.

(2) If the court gives permission to make an ancillary claim it must at the same time give directions as to the service of the ancillary claim form.

(3) A copy of the ancillary claim form and ancillary statement of claim (if any) must be served on all other parties.

18.6 Counterclaim may survive claim

The defendant may continue a counterclaim if the—

(*a*) court gives judgement on the claim for the claimant and does not dismiss the counterclaim; or

(*b*) claim is stayed, discontinued or dismissed.

18.7 Restrictions on right to make counterclaim or set-off in proceedings by or against the Crown

(1) A counterclaim may not be made or set-off pleaded in proceedings by the Crown if the—

(*a*) proceedings are for the recovery of; or

(*b*) counterclaim or set-off arises out of,

a right or claim to repayment in respect of any tax, duty or penalty.

(2) A counterclaim may not be made or set-off pleaded in any other proceedings by or against the Crown without the permission of the court or the consent of the Attorney-General.

18.8 Adding other defendants to counterclaim

(1) The defendant who alleges that another person as well as the claimant is liable on the counterclaim may add that other person as a defendant to the counterclaim.

(2) If a person so added is not already a party, the defendant must add the person's name to the title of the claim as "defendant to the counterclaim".

Rule 18.13 deals with the documents to be served on a defendant who is not already a party.

18.9 Defence to ancillary claim

(1) A person against whom an ancillary claim is made may file a defence.

(2) The period for filing a defence is the period of twenty-eight days after the date of service of the ancillary claim.

(3) The Rules relating to a defence to a claim apply to a defence to an ancillary claim except Part 12 (default judgements).

(4) An ancillary defence must include—

(*a*) a certificate of truth in accordance with rule 3.12; and

(*b*) the ancillary defendant's address for service in accordance with rule 3.11.

18.10 Matters relevant to question whether ancillary claim should be dealt with separately from main claim

(1) This Rule applies when the court is considering whether to—

(*a*) dismiss an ancillary claim;

(*b*) permit an ancillary claim to be made; or

(*c*) require the ancillary claim to be dealt with separately from the claim.

• Rules 26.1(*d*) and (*e*) deal with the court's power to decide the order in which issues are to be tried or to order that part of the proceedings be dealt with separately.

(2) The court must have regard to all the circumstances of the case including—

(*a*) the connection between the ancillary claim and the claim;

(*b*) whether the ancillary claimant is seeking substantially the same remedy which some other party is claiming from the ancillary claimant;

(*c*) whether the ancillary claimant wants the court to decide any question connected with the subject matter of the proceedings—

(i) not only between the existing parties but also between existing parties and the proposed ancillary claim defendant, or

(ii) to which the proposed ancillary defendant is already a party but also in some further capacity; and

(*d*) whether the facts in the ancillary claim are substantially the same, or closely connected with, the facts in the claim.

18.11 Effect of service of ancillary claim form

(1) A person on whom an ancillary claim form (other than a counterclaim) is served becomes a party to the proceedings if that person is not already a party.

(2) When an ancillary claim form is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the notice.

18.12 Special provisions relating to judgement on failure to file defence to ancillary claim

(1) This Rule applies if the party against whom an ancillary claim is made fails to file a defence in respect of the ancillary claim within the permitted time.

- Rule 18.9(2) deals with the time for filing a defence to an ancillary claim.

(2) The party against whom the ancillary claim is made—

(*a*) is deemed to admit the ancillary claim, and is bound by any judgement or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim;

(*b*) subject to paragraph (5), if judgement under Part 12 is given against the ancillary claimant – may apply to enter judgement in respect of the ancillary claim.

(3) Paragraph (2) does not apply in ancillary proceedings against the Crown unless the court gives permission.

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.

(5) The ancillary claimant may not enter judgement under paragraph (2)(*b*) if the ancillary claimant wishes to obtain judgement for any remedy other than a contribution or indemnity for a sum not exceeding that for which judgement has been entered against the ancillary claimant.

(6) The court may at any time set aside or vary a judgement entered under paragraph (2) if it is satisfied that the ancillary defendant—

(*a*) applied to set aside or vary the judgement as soon as reasonably practicable after finding out that judgement had been entered;

(*b*) gives a good explanation for the failure to file a defence; and

(*c*) has a real prospect of successfully defending the ancillary claim.

18.13 Procedural steps on service of ancillary claim form on person who is not a party

An ancillary claimant who serves an ancillary claim form on a person who is not already a party must also serve on that person a copy of—

(*a*) every statement of case which has already been served in the proceedings; and

(*b*) such other documents as the court may direct.

18.14 Case management where there is defence to ancillary claim

(1) If a defence is filed to an ancillary claim the court must consider the future conduct of the proceedings and give appropriate directions.

(2) The court must fix a case management conference for all parties unless it is satisfied that such further directions as are required can be given in written form.

(3) In giving directions under this Rule the court must ensure that, so far as is practicable, the ancillary claim and the main claim are managed together.

PART 19

Addition and Substitution of Parties

19.1 Scope of this Part

This Part deals with the addition or substitution of parties after proceedings have been commenced.

19.2 Change of parties – general

(1) A claimant may add a new defendant to proceedings without permission at any time before the case management conference.

(2) The claimant does so by filing at the court office an amended claim form and statement of claim, and Parts 5 (service of claim within jurisdiction), 7 (service of court process out of jurisdiction), 9 (acknowledgment of service and notice of intention to defend), 10 (defence) and 12 (default judgements) apply to the amended claim form as they do to a claim form.

> Part 18 deals with counterclaims and the adding of additional parties by a defendant.

(3) The court may add a new party to proceedings without an application if—

(*a*) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or

(*b*) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.

(4) The court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.

(5) The court may order a new party to be substituted for an existing one if the—

(*a*) court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or

(*b*) existing party's interest or liability has passed to the new party.

(6) The court may add, remove or substitute a party at the case management conference.

(7) The court may not add a party (except by substitution) after the case management conference on the application of an existing party unless that party can satisfy the court that the addition is necessary because of some change in circumstances which became known after the case management conference.

19.3 Procedure for adding and substituting parties

(1) The court may add, substitute or remove a party on or without an application.

(2) An application for permission to add, substitute or remove a party may be made by—

(*a*) an existing party; or

(*b*) a person who wishes to become a party.

(3) An application for an order under rule 19.2(5) (substitution of new party where existing party's interest or liability has passed) may be made without notice but must be supported by evidence on affidavit.

(4) A person may not be added or substituted as a claimant unless that person's written consent is filed with the court office.

(5) An order for the addition, substitution or removal of a party must be served on—

(*a*) all parties to the proceedings;

(*b*) any party added or substituted; and

(*c*) any other person affected by the order.

(6) If the court makes an order for the removal, addition or substitution of a party, it must consider whether to give consequential directions about—

(*a*) filing and serving the claim form and any statements of case on any new defendant;

(*b*) serving relevant documents on the new party;

(*c*) the management of the proceedings, and

subject to such directions, rule 19.2(2) applies.

(7) If the—

(*a*) court makes an order for the addition or substitution of a new defendant; and

(*b*) claim form is served on the new defendant,

these Rules apply to the new defendant as they apply to any other defendant.

19.4 Special provisions about adding or substituting parties after end of relevant limitation period

(1) This Rule applies to a change of parties after the end of a relevant limitation period.

(2) The court may add or substitute a party only if the—

(*a*) addition or substitution is necessary; and

(*b*) relevant limitation period was current when the proceedings were started.

(3) The addition or substitution of a party is necessary only if the court is satisfied that the—

(*a*) claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant;

(*b*) interest or liability of the former party has passed to the new party; or

(*c*) new party is to be substituted for a party who was named in the claim form in mistake for the new party.

PART 20

Changes to Statements of Case

20.1 Changes to statement of case

(1) A statement of case may be amended once, without the court's permission, at any time prior to the date fixed by the court for the first case management conference.

(2) The court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.

(3) A statement of case may not be amended without permission under this Rule, if the change is one to which any of the following applies—

(*a*) rule 19.4 (special provisions about adding or substituting parties after the end of a relevant limitation period); and

(*b*) rule 20.2 (changes to statement of case after the end of relevant period).

(4) An amended statement of case must include a certificate of truth under rule 3.12.

(5) The Chief Justice may, by practice direction, set out those factors to which the court must have regard when considering an application under this Rule.

- Rule 27.3 (1) deals with the fixing of case management conference.

20.2 Changes to statements of case after end of relevant limitation period

(1) This Rule applies to a change in a statement of case after the end of a relevant limitation period.

(2) The court may allow an amendment the effect of which will be to add or substitute a new claim but only if the new claim arises out of the same or substantially the same facts as a claim in respect of which the party wishing to change the statement of case has already claimed a remedy in the proceedings.

(3) The court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was—

(*a*) genuine; and

(*b*) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.

(4) The court may allow an amendment to alter the capacity in which a party claims.

Rule 19.4 specifies the circumstances in which the court may allow a new party to be added or substituted after the end of a relevant limitation period.

20.3 Filing an amended statement of case

A party who amends his statement of case, must file in the court office, the original amended statement of case and one copy of the amended statement of case and, after filing, serve a copy of it on every other party.

PART 21

Representative Parties

21.1 Representative claimants and defendants – general

(1) This Rule applies to any proceedings, other than proceedings falling within rule 21.4, in which 5 or more persons have the same or a similar interest.

(2) The court may appoint—

(*a*) a body having a sufficient interest in the proceedings; or

(*b*) one or more of those persons,

to represent all or some of the persons with the same or similar interest.

(3) A representative under this Rule may be either a claimant or a defendant.

21.2 Appointment of representative claimant or defendant – procedure

(1) An application for an order appointing a representative party may be made at any time, including a time before proceedings have been started.

(2) An application for such an order may be made by any—

(*a*) party;

(*b*) person or body who wishes to be appointed as a representative party; or

(*c*) person who is likely to be a party to proceedings.

(3) An application for such an order must—

(*a*) be supported by affidavit evidence; and

(*b*) identify every person to be represented, either—

(i) individually, or

(ii) by description, if it is not practicable to identify a person individually.

(4) An application to appoint a representative defendant must be on notice to the claimant.

(5) An application to appoint a representative claimant may be made without notice.

(6) The court may direct that notice of an application be given to such other persons as it thinks fit.

(7) If the court directs that a person not already a party is to be a representative defendant, it must make an order adding that person as a defendant.

21.3 Consequence of order appointing representative party

(1) If there is a representative claimant or defendant, an order of the court binds everyone whom that party represents.

(2) It may not however be enforced against a person not a party to the proceedings unless the person wishing to enforce it obtains permission from the court.

(3) An application for permission must be supported by evidence on affidavit and must be served on the person against whom it is wished to enforce the judgement.

21.4 Representation of persons who cannot be ascertained, etc. in proceedings about estates, trusts and construction of written instruments

(1) This Rule applies only to proceedings about—

(*a*) the construction of a written instrument;

(*b*) the estate of someone who is deceased; or

(*c*) property subject to a trust.

(2) The court may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether presently or for any future, contingent or unascertained interest) where—

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

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

(*c*) it is expedient to do so for any other reason.

(3) An application for an order to appoint a representative party under this Rule may be made by any—

(*a*) party; or

(*b*) person who wishes to be appointed as a representative party.

(4) A representative appointed under this Rule may be either a claimant or a defendant.

(5) A decision of the court binds everyone whom a representative claimant or representative defendant represents.

21.5 Compromise in proceedings to which rule 21.4 applies

(1) If—

(*a*) a compromise is proposed in proceedings to which rule 21.4 applies;

(*b*) some of the persons who are interested in, or who may be affected by the compromise are not parties to the proceedings;

(*c*) those persons are represented by a representative appointed under rule 21.4 when the court considers the proposed compromise; and

(*d*) the court is satisfied that the compromise will be for the benefit of the absent persons,

the court may approve the compromise.

(2) The persons for whose benefit the court may approve a compromise may be unborn or unascertained.

(3) The court's order approving the compromise binds the absent persons unless it has been obtained by fraud or non-disclosure of material facts.

21.6 Representation of beneficiaries by trustees

(1) A claim may be made by or against a person in that person's capacity as a trustee, executor or administrator.

(2) If a claim is so made, there is no need for a beneficiary also to be a party.

(3) The court may direct that notice of the proceedings be given to any beneficiary.

(4) A decision of the court in such proceedings binds a beneficiary unless the court otherwise orders.

(5) The only grounds for an order that a decision is not binding on a beneficiary is that the trustee, executor or administrator—

(*a*) could not or did not in fact, represent the interest of the beneficiary; or

(*b*) has acted fraudulently.

21.7 Proceedings against estate of deceased person

(1) If in any proceedings it appears that a deceased person was interested in the proceedings but the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceedings.

(2) A person may be appointed as a representative if that person—

(*a*) can fairly and competently conduct proceedings on behalf of the estate; and

(*b*) has no interest adverse to that of the estate,

of the deceased person.

(3) The court may make such an order on or without an application.

(4) Until the court has appointed someone to represent the deceased person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this Rule.

(5) A decision in proceedings in which the court has appointed a representative under this Rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.

21.8 Power of court to give directions to enable proceedings to be carried on after party's death

(1) If a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.

(2) An order under this Rule may be made on or without an application.

21.9 Power of court to strike out claim after death of claimant

(1) If a claimant dies and the claimant's personal representatives do not apply for an order under rule 19.3 to be substituted as claimants, the defendant may apply for the claim to be struck out.

(2) Notice of the application must be given to the personal representatives of the claimant (if any) and such other persons as the court directs.

(3) The general rule is that if the court makes an order on an application under this Rule it will be that unless the personal representatives or some other persons on behalf of the estate apply to be substituted under rule 19.3 or for directions under rule 21.8 by a specified date, the claim is to be struck out.

(4) The court may give directions under rule 21.8 at the hearing of an application under this Rule.

PART 22

Miscellaneous Rules about Parties

22.1 Partners

(1) Persons claiming to be entitled, or alleged to be liable as partners may sue or be sued in the firm's name if—

(*a*) the firm's name is the name of the firm in which they were partners; and

(*b*) they carried on business in that name within the jurisdiction, when the right to claim arose.

(2) If partners sue or are sued in the firm's name, they must, if any other party so demands in writing, immediately—

(*a*) deliver to that party; and

(*b*) file,

a statement of the names and residential addresses of all the persons who were partners in the firm when the right to claim arose.

(3) If they do not comply, the court on application by any other party may order them to provide such a statement and to certify it to the court.

(4) An application under paragraph (3) may be made without notice.

(5) The party making the application must—

(*a*) certify that the other party has not complied;

(*b*) certify that the party has made a demand in writing; and

(*c*) state the date of the demand.

(6) If the partners do not comply within twenty-one days after service of the order any claim or defence brought by them is deemed to be struck out.

- Rule 26.5 deals with the procedure for striking out a statement of case.

(7) A duly authorised employee of a partnership or firm may—

(*a*) conduct proceedings on behalf of the partnership or firm; or

(*b*) represent it in court with the court's permission.

(8) Permission under paragraph (7)(*b*) is to be given or refused at a case management conference.

Rule 43.9 deals with enforcement of a judgement against a partnership or by a firm against one of its members.

22.2 Person carrying on business in another name

(1) A claim may be made by or against a person—

(*a*) carrying on business within the jurisdiction; or

(*b*) who was carrying on business within the jurisdiction when the right to claim arose—

(i) in that person's own name,

(ii) in that person's own name, followed by the words "trading as X.Y.",

(iii) as "X.Y." followed by the words "a trading name", or

(iv) as "X.Y." followed by the words "a firm".

(2) If a claim is made by or against a person in his or her business name, the Rules about claims by or against partners apply as if that person had been a partner in a firm when the right to claim arose and the business name were the firm's name.

22.3 Bodies corporate

(1) Subject to any statutory provision to the contrary, a duly authorised director or other officer of a body corporate may conduct proceedings on its behalf.

(2) A body corporate must be represented by a legal practitioner at any hearing in open court unless the court permits it to be represented by a duly authorised director or other officer.

(3) Permission to represent the body corporate at the trial should wherever practicable be sought at a case management conference or pre-trial review.

(4) In considering whether to give permission the court must take into account all the circumstances including the complexity of the case.

(5) In paragraphs (1) and (2)—

"duly authorised" means authorised by the body corporate to conduct the proceedings on its behalf.

PART 23

Minors and Patients

23.1 Scope of this Part

(1) This Part—

(*a*) contains special provisions which apply in proceedings involving minors and patients; and

(*b*) sets out how a person becomes a minor's or patient's next friend.

Rule 5.10 contains provisions about the service of documents on minors and patients.

Rule 14.3 contains restrictions on entering judgement on an admission where a party is a minor or patient.

(2) In this Part—

"Act" means any relevant enactment relating to Mental Health and in St. Lucia includes the relevant provisions of the Civil Code, Chapter 242.

23.2 Requirement of next friend in proceedings by or against minors or patients

(1) The general rule is that a minor or patient must have a next friend to conduct proceedings on his or her behalf.

(2) The court may, on the application of a minor, make an order permitting the minor to conduct proceedings without a next friend.

(3) An application for an order under paragraph (2)—

(*a*) may be made by the minor;

(*b*) if the minor has a next friend – must be on notice to that next friend; and

(*c*) if there is no next friend – may be made without notice.

(4) If—

(*a*) the court has made an order under paragraph (2); and

(*b*) it subsequently appears to the court that it is desirable for a next friend to conduct the proceedings on behalf of the minor,

the court may appoint a person to be the minor's next friend.

(5) A next friend must act by a legal practitioner unless the court otherwise orders.

(6) The next friend must sign any certificate of truth under rule 3.12 on behalf of the minor or patient.

23.3 Stage of proceedings at which next friend becomes necessary

(1) A minor or patient must have a next friend in order to issue a claim except where the court has made an order under rule 23.2(2).

(2) A person may not—

(*a*) make any application against a minor or patient before proceedings have started; or

(*b*) take any step in proceedings except—

(i) applying for the appointment of a next friend under rule 23.8, until the minor or patient has a next friend, or

(ii) issuing and serving a claim form against a minor or patient.

(3) If a person other than a minor becomes a patient during proceedings, any party may not take any step in the proceedings apart from applying to the court for the appointment of a next friend until the patient has a next friend.

(4) Any step other than an application under—

(*a*) rule 23.2(2); or

(*b*) paragraph (2)(*b*),

taken before a minor or patient has a next friend is of no effect unless the court otherwise orders.

23.4 Who may be minor's next friend

(1) A person who satisfies the conditions set out in rule 23.6 may act as a minor's next friend without a court order, unless the court—

(*a*) has already appointed a next friend; or

(*b*) makes or has made an order under rule 23.9 (court's power to terminate appointment of and substitute next friend).

(2) In Saint Lucia the curator appointed under the Civil Code, Chapter 242, is to act as the next friend of a minor unless the court otherwise orders.

23.5 Who may be patient's next friend

(1) Unless the court appoints some other person, a person authorised under the Act to conduct legal proceedings in the name of the patient or on the patient's behalf is entitled to be the next friend of the patient in any proceedings to which the authority extends.

(2) Where nobody has been appointed by the court or authorised under the Act, a person who satisfies the conditions set out in rule 23.6 may be a patient's next friend without a court order.

(3) In Saint Lucia the curator appointed under the Civil Code, Chapter 242, is to act as the next friend of a patient unless the court otherwise orders.

23.6 Conditions for being next friend

A person may act as a next friend if that person—

(*a*) can fairly and competently conduct proceedings on behalf of the minor or patient; and

(*b*) has no interest adverse to that of the minor or patient.

23.7 How person becomes next friend without court order

(1) Where the court has not appointed a next friend, a person who wishes to act as next friend must follow the procedure set out in this Rule.

(2) A person authorised under the Act must file an official copy of the order or other document which constitutes that person's authorisation to act.

(3) Any other person must file a certificate that that person satisfies the conditions specified in rule 23.6.

(4) A person who is to act as a next friend for a claimant must file the—

(*a*) authorisation; or

(*b*) certificate under paragraph (3),

at the time when the claim is made.

(5) A person who is to act as a next friend for a defendant must file the—

(*a*) authorisation; or

(*b*) certificate under paragraph (3),

at the time when the next friend first takes a step in the proceedings on behalf of the defendant.

(6) The next friend must—

(*a*) serve a copy of the certificate under paragraph (3) on every person on whom in accordance with rule 5.10 (service on minors and patients) the claim form should be served; and

(*b*) file an affidavit of service.

23.8 How person becomes next friend by court order

(1) The court may make an order appointing a next friend with or without an application.

(2) An application for an order appointing a next friend may be made by a—

(*a*) party; or

(*b*) person,

who wishes to be a next friend.

(3) If—

(*a*) a person makes a claim against a minor or patient;

(*b*) the minor or patient has no next friend; and

(*c*) either—

(i) someone who is not entitled to be a next friend files a defence, or

(ii) the claimant wishes to take some step in the proceedings,

the claimant must apply to the court for an order appointing a next friend for the minor or patient.

(4) An application for an order appointing a next friend must be supported by evidence on affidavit.

(5) The court may not appoint a next friend under this Rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

23.9 Court's power to terminate appointment of and substitute next friend

(1) The court may—

(*a*) appoint a new next friend in substitution for an existing one;

(*b*) direct that a person may not act as a next friend; or

(*c*) terminate a next friend's authority to act.

(2) The court may make an order under paragraph (1) with or without an application.

(3) An application for an order under paragraph (1) must be supported by evidence on affidavit.

(4) The court may not appoint a next friend under this Rule unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

23.10 Appointment of next friend by court order – supplementary

(1) An application for an order under rule 23.8 or 23.9 must be served on every person on whom, in accordance with rule 5.10 (service on minors or patients) the claim form should have been served.

(2) An application for an order under rule 23.9 (courts power to terminate appointment of and substitute next friend) must also be served on the person who—

(*a*) is or purports to act as next friend; and

(*b*) it is proposed should act as next friend if that person is not the applicant.

(3) On an application for an order under rule 23.8 or 23.9, the court may appoint the person proposed or any other person.

23.11 Procedure where appointment as next friend ceases

(1) The appointment of a minor's next friend ceases when a minor who is not a patient reaches the age of majority.

(2) When a party, other than a minor, ceases to be a patient during the course of proceedings, the next friend's appointment continues until it is ended by court order.

(3) An application for an order under paragraph (2) may be made by—

(*a*) a party; and

(*b*) the former patient; or

(*c*) the next friend,

must be supported by evidence on affidavit.

(4) The minor or patient in respect of whom the appointment to act has ceased must serve notice on the other parties—

(*a*) giving an address for service;

(*b*) stating that the appointment of the next friend has ceased; and

(*c*) stating whether or not he or she chooses to carry on the proceedings.

(5) If the notice is not served within twenty-eight days after the appointment of the next friend ceases the court may, on application, strike out any claim or defence brought or filed by the minor or patient.

(6) The liability of a next friend for costs continues until the—

(*a*) minor or patient serves the notice referred to in paragraph (4); or

(*b*) next friend serves notice on the other parties that the appointment has ceased.

23.12 Compromise, etc. by or on behalf of minor or patient

(1) If a claim is made—

(*a*) against a minor or patient; or

(*b*) by or on behalf of a minor or patient,

any settlement, compromise or payment and any acceptance of money is not valid, so far as it relates to the claim by, on behalf of, or against the minor or patient, without the approval of the court.

(2) If—

(*a*) before proceedings in which a claim is to be made by or on behalf of a minor or patient (whether alone or with any other person) have begun, an agreement is reached for the settlement of the claim; and

(*b*) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim,

the claim may be made by a fixed date claim form (Form 2) which may—

(i) be issued jointly by the claimant and defendant, and

(ii) include a request to the court for approval of the settlement.

23.13 Control of money recovered by or on behalf of minor or patient

(1) If, in any proceedings money—

(*a*) is recovered by or on behalf of or for the benefit of a minor or patient; or

(*b*) paid into court is accepted by or on behalf of a minor or patient; that money must be dealt with in accordance with directions given by the court under this Rule and not otherwise.

(2) Directions given under this Rule may provide that the money must be wholly or partly paid into court and invested or otherwise dealt with.

PART 24

Security for Costs

24.1 Scope of this Part

This Part deals with the power of the court to require a claimant to give security for the costs of the defendant.

Additional provision is made in relevant enactments relating to limited companies for security to be ordered against an insolvent claimant company.

24.2 Application for order for security for costs

(1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.

(2) Where practicable such an application must be made at a case management conference or pre-trial review.

(3) An application for security for costs must be supported by evidence on affidavit.

(4) The amount and nature of the security shall be such as the court thinks fit.

24.3 Conditions to be satisfied

The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that—

(*a*) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover;

(*b*) the claimant—

(i) failed to give his or her address in the claim form,

(ii) gave an incorrect address in the claim form, or

(iii) has changed his or her address since the claim was commenced,

with a view to evading the consequences of the litigation;

(*c*) the claimant has taken steps with a view to placing the claimant's assets beyond the jurisdiction of the court;

(*d*) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21, and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;

(*e*) the claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor;

(*f*) the claimant is an external company; or

(*g*) the claimant is ordinarily resident out of the jurisdiction.

24.4 Security for costs against counterclaiming defendant

Rules 24.2 and 24.3 apply where a defendant makes a counterclaim as if references in those rules—

(*a*) to a claimant – were references to a defendant making a counterclaim;

(*b*) to a defendant – were references to a claimant defending a counterclaim.

24.5 Enforcing order for security for costs

On making an order for security for costs the court must also order that—

(*a*) the claim (or counterclaim) be stayed until such time as security for costs is provided in accordance with the terms of the order;

(*b*) if security is not provided in accordance with the terms of the order by a specified date, the claim (or counterclaim) be struck out.

PART 25

Case Management – The Objective

25.1 Court's duty to actively manage cases

The court must further the overriding objective by actively managing cases. This may include—

(*a*) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;

(*b*) considering whether the likely benefits of taking a particular step will justify the cost of taking it;

(*c*) dealing with as many aspects of the case as is practicable on the same occasion;

(*d*) dealing with as many aspects of the case, as it appears appropriate to do, without requiring the parties to attend court;

(*e*) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

(*f*) deciding the order in which issues are to be resolved;

(*g*) encouraging the parties to co-operate with each other in the conduct of proceedings;

(*h*) encouraging the parties to use any appropriate form of dispute resolution including, in particular, mediation, if the court considers it appropriate and facilitating the use of such procedures;

(*i*) ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application;

(*j*) fixing timetables or otherwise controlling the progress of the case;

(*k*) giving directions to ensure that the trial of the case proceeds quickly and efficiently;

(*l*) identifying the issues at an early stage; and

(*m*) making appropriate use of technology.

Part 1 sets out the overriding objective.

PART 26

Case Management – The Court's Powers

26.1 Court's general powers of management

(1) The list of powers in this Rule is in addition to any powers given to the court by any other rule, practice directions or any enactment.

(2) Except where these Rules provide otherwise, the court may—

(*a*) adjourn or bring forward a hearing to a specific date;

(*b*) consolidate proceedings;

(*c*) deal with a matter without the attendance of any of the parties;

(*d*) decide the order in which issues are to be tried;

(*e*) direct a separate trial of any issue;

(*f*) direct that any evidence be given in written form;

(*g*) direct that notice of any proceedings or application be given to any person;

(*h*) direct that part of any proceedings (such as a counterclaim or other ancillary claim) be dealt with as separate proceedings;

(*i*) dismiss or give judgement on a claim after a decision on a preliminary issue;

(*j*) exclude an issue from determination if the court can do substantive justice between the parties on the other issues and determines it would therefore serve no worthwhile purpose;

(*k*) extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed;

(*l*) give the conduct of any matter to any person it thinks fit and make any appropriate consequential order about costs;

(*m*) hold a hearing and receive evidence by telephone or use any other method of direct oral communication;

(*n*) instead of holding an oral hearing deal with a matter on written representations submitted by the parties;

(*o*) require any party or a party's legal practitioner to attend the court;

(*p*) require the maker of an affidavit or witness statement to attend for cross-examination;

(*q*) stay the whole or part of any proceedings generally or until a specified date or event;

(*r*) transfer proceedings to the Family Court or the District or Magistrate's Court;

(*s*) transfer the whole or any part of any proceedings to another court office from the court office of one Member State, Territory or circuit;

(*t*) try two or more claims on the same occasion;

(*u*) where there is a substantial inequality in the proven financial position of each party, order any party having the greater financial resources who applies for an order to pay the other party's costs of complying with the order in any event;

(*v*) where two or more parties are represented by the same legal practitioner—

(i) direct that they be separately represented,

(ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged, and

(iii) make any consequential order as to costs thrown away; and

(*w*) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective.

(3) When the court makes an order or gives a direction, it may make the order or direction subject to conditions.

(4) The conditions which the court may impose include a condition—

(*a*) requiring a party to give an undertaking;

(*b*) requiring a party to give security;

(*c*) requiring a party to pay all or part of the costs of the proceedings;

(*d*) requiring the payment of money into court or as the court may direct; and

(*e*) that a party permit entry to property owned or occupied by that party to another party or someone acting on behalf of another party.

(5) In considering whether to make an order, the court may take into account whether a party is prepared to give an undertaking.

(6) In special circumstances on the application of a party the court may dispense with compliance with any of these Rules.

26.2 Court's power to make orders of its own initiative

(1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(2) If the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations.

(3) The opportunity may be to make representations orally, in writing, telephonically or by any other means as the court considers reasonable.

(4) If the court proposes to—

(*a*) make an order of its own initiative; and

(*b*) hold a hearing to decide whether to do so,

the court office must give each party likely to be affected by the order at least seven days' notice of the date, time and place of the hearing.

26.3 Sanctions – striking out statement of case

(1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that—

(*a*) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;

(*b*) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;

(*c*) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or

(*d*) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

(2) If—

(*a*) the court has struck out a claimant's statement of case;

(*b*) the claimant is ordered to pay costs to the defendant; and

(*c*) before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the same facts,

the court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid.

26.4 Court's general power to strike out statement of case

(1) If a party has failed to comply with any of these Rules or any court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the court for an "unless order".

(2) Such an application may be made without notice but must be supported by evidence on affidavit which—

(*a*) contains a certificate that the other party is in default;

(*b*) identifies the rule or order which has not been complied with; and

(*c*) states the nature of the breach.

(3) The court office must refer any such application immediately to a judge, master or registrar who may—

(*a*) grant the application;

(*b*) direct that an appointment be fixed to consider the application and that the court office give to all parties notice of the date, time and place for such appointment; or

(*c*) seek the views of the other party.

(4) If an appointment is fixed the court must give seven days' notice of the date, time and place of the appointment to all parties.

(5) An "unless order" must identify the breach and require the party in default to remedy the default by a specified date.

(6) The general rule is that the respondent should be ordered to pay the assessed costs of such an application.

(7) If the defaulting party fails to comply with the terms of any "unless order" made by the court that party's statement of case shall be struck out.

(8) Rule 26.9 (general power of the court to rectify matters where there has been a procedural error) shall not apply.

Rule 11.16 deals with applications to set aside any order made on an application made without notice.

26.5 Judgement without trial after striking out

(1) This Rule applies where the court makes an order which includes a term that the statement of case of a party be struck out if the party does not comply with the "unless order" by the specified date.

(2) If the party against whom the order was made does not comply with the order, any other party may ask for judgement to be entered and for prescribed costs appropriate to the stage that the proceedings have reached.

(3) A party may obtain judgement under this Rule by filing a request for judgement.

(4) The request must—

(i) certify that the right to enter judgement has arisen because the court's order was not complied with,

(ii) prove service of the "unless order", and

(iii) state the facts which entitle the party to judgement.

(5) If the party wishing to obtain judgement is the claimant and the claim is for—

(*a*) an amount of money to be decided by the court;

(*b*) a specified sum of money;

(*c*) delivery of goods and the claim form gives the defendant the alternative of paying their value; or

(*d*) any combination of these remedies,

judgement must be in accordance with the terms of the statement of claim plus any interest and costs after giving credit for any payment that may have been made.

(6) If the party wishing to obtain judgement is the claimant and the claim is for some other remedy, the judgement must be such as the court considers that the claimant is entitled to.

(7) If the party wishing to obtain judgement is a defendant, judgement must be for assessed costs.

(8) If a decision of the court is necessary in order to decide the terms of the judgement, the party making the request must apply for directions.

Part 65 deals with the quantification of costs.

26.6 Setting aside judgement entered after striking out

(1) A party against whom the court has entered judgement under rule 26.5 when the right to enter judgement had not arisen may apply to the court to set it aside.

(2) If the right to enter judgement had not arisen at the time when judgement was entered, the court must set aside judgement.

(3) If the application to set aside is made for any other reason, rule 26.8 (relief from sanctions) applies.

26.7 Court's powers in cases of failure to comply with rules, etc.

(1) If the court makes an order or gives directions, the court must whenever practicable also specify the consequences of failure to comply.

(2) If a party has failed to comply with any of these Rules, a direction or any order, any sanction for non-compliance imposed by the rule, direction or the order has effect unless the party in default applies for and obtains relief from the sanction, and rule 26.9 does not apply.

(3) If a rule, practice direction or order—

(*a*) requires a party to do something by a specified date; and

(*b*) specifies the consequences of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

(4) *Procedural default costs*—In circumstances where—

(*a*) a pre-trial memorandum or a bundle is not filed in accordance with rule 39.1(5);

(*b*) a core bundle is not filed in accordance with rule 62.12(4); or

(*c*) a legal practitioner fails to comply with a provision of these Rules, a court order, a practice direction or a practice guide,

and, as a result of that default, a party has incurred costs or a hearing has to be vacated, then the court may, on its own initiative, order the practitioner responsible to pay to any party and or to the court, an amount of money which does not exceed the sum or sums specified by the relevant practice direction.

(5) Any sum paid under an order made under rule 26.7(4), may be payable, in addition to any sum which the court may order a practitioner to pay by way of wasted costs, under rule 64.8 or pay under rule 64.10.

26.8 Relief from sanctions

(1) An application for relief from any sanction imposed for a failure to comply with any rule, order or direction must be—

(*a*) made promptly; and

(*b*) supported by evidence on affidavit.

(2) The court may grant relief only if it is satisfied that—

(*a*) the failure to comply was not intentional;

(*b*) there is a good explanation for the failure; and

(*c*) the party in default has generally complied with all other relevant rules, practice directions, orders and directions.

(3) In considering whether to grant relief, the court must have regard to—

(*a*) the effect which the granting of relief or not would have on each party;

(*b*) the interests of the administration of justice;

(*c*) whether the failure to comply has been or can be remedied within a reasonable time;

(*d*) whether the failure to comply was due to the party or the party's legal practitioner; and

(*e*) whether the trial date or any likely trial date can still be met if relief is granted.

(4) The court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

26.9 General power of court to rectify matters where there has been a procedural error

(1) This Rule applies only where the consequence of failure to comply with a rule, practice direction, court order or direction has not been specified by any rule, practice direction or court order.

(2) An error of procedure or failure to comply with a rule, practice direction, court order or direction does not invalidate any step taken in the proceedings, unless the court so orders.

(3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.

(4) The court may make such an order on or without an application by a party.

PART 27

Case Management Conferences – Procedure

27.1 Scope of this Part

This Part deals with the procedures by which the court will manage cases.

27.2 Fixed date claims – first hearing

(1) When a fixed date claim is issued the court must fix a date for the first hearing of the claim.

(2) On that hearing, in addition to any other powers that the court may have, the court shall have all the powers of a case management conference.

(3) The court may, however, treat the first hearing as the trial of the claim if it is not defended or it considers that the claim can be dealt with summarily.

(4) The general rule is that the court must give at least fourteen days' notice of any first hearing.

(5) The general rule is subject to any rule or statutory provision which specifies a different period.

(6) The court may on or without an application direct that shorter notice be given—

(*a*) if the parties agree; or

(*b*) in urgent cases.

(7) Unless the defendant files an acknowledgement of service the claimant must file evidence on affidavit of service of the claim form and the relevant documents specified in rule 5.2(3) at least seven days before the first hearing.

27.3 Case management conference

(1) The general rule is that the court office must fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim.

(2) If the defendant files a defence and also an admission of a specified sum of money, the case management conference is not to be fixed until the claimant gives notice under rule 14.7(3) that the claim is to continue.

(3) The case management conference must take place not less than 4 weeks nor more than 8 weeks after the defence is filed (or notice is given under rule 14.7(3)) unless any rule or practice direction prescribes a shorter or longer period or the case is urgent.

(4) Notwithstanding paragraph (3) a party may apply to the court to fix a case management conference before a defence is filed.

(5) The application may be without notice but must state the reasons for the application.

(6) The court office must give all parties not less than fourteen days' notice of the date, time and place of the case management conference.

(7) The court may with or without an application direct that shorter notice be given—

(*a*) if the parties agree; or

(*b*) in urgent cases.

27.4 Attendance at case management conference or pre-trial review

(1) If a party is represented by a legal practitioner, that legal practitioner or another legal practitioner who is authorised to negotiate on behalf of the client and competent to deal with the case must attend the case management conference and any pre-trial review.

(2) The general rule is that the party or a person who is in a position to represent the interests of the party (other than the legal practitioner) must attend the case management conference or pre-trial review.

(3) The court may dispense with the attendance of a party or representative (other than a legal practitioner).

(4) If the case management conference or pre-trial review is not attended by the legal practitioner and the party or a representative, the court may adjourn the case management conference or pre-trial review to a fixed date and may exercise any of its powers under Part 26 (case management – the court's powers) or Part 64 (costs – general).

27.5 Orders to be made at case management conference

(1) The general rule is that at a case management conference the court must consider whether to give directions for—

(*a*) service of experts' reports (if any);

(*b*) service of witness statements; and

(*c*) standard disclosure and inspection,

by dates fixed by the court.

(2) The court may also give directions for the preparation of an agreed statement—

(*a*) as to any relevant specialist area of law;

(*b*) of facts;

(*c*) of issues; and

(*d*) of the basic technical, scientific or medical matters in issue,

which statement does not bind the trial judge.

(3) The court must fix a date for a pre-trial review unless it is satisfied that having regard to the value, importance and complexity of the case it may be dealt with justly without a pre-trial review.

(4) The court must in any event fix the—

(*a*) date on which a listing questionnaire is to be sent by the court office to the parties; and

(*b*) period within which the trial is to commence; or

(*c*) trial date.

(5) The court office must serve an order containing the directions made on all parties and give notice of the—

(*a*) date of any pre-trial review;

(*b*) date on which the listing questionnaire is to be sent out by the court office; and

(*c*) trial date or trial period.

27.6 Dispensing with case management conference in simple or urgent proceedings

(1) The court may, of its own volition or on the application of a party, make an order dispensing with a case management conference if it is satisfied that the—

(*a*) case can be dealt with justly without a case management conference;

(*b*) case should be dealt with as a matter of urgency; or

(*c*) cost of a case management conference is disproportionate to the value of the proceedings or the benefits that might be achieved from a case management conference.

(2) If the court dispenses with a case management conference, it must at the same time—

(*a*) fix a trial date or the period within which the trial is to take place;

(*b*) give directions in writing about the preparation of the case; and

(*c*) set a timetable for the steps to be taken before the date of trial.

(3) If the court dispenses with a case management conference, it may—

(*a*) dispense with a listing questionnaire under rule 27.9;

(*b*) dispense with all or any of the requirements relating to the preparation and filing of bundles of documents under rule 39.1;

(*c*) dispense with a pre-trial review under Part 38; and

(*d*) give any other direction that will assist in the speedy and just trial of the claim, including any direction that might be given under Part 38.

27.7 Adjournment of case management conference

(1) The court may not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.

(2) If the court is satisfied that the parties are—

(*a*) attending, or have arranged to attend, a form of ADR procedure; or

(*b*) in the process of negotiating, or are likely to negotiate a settlement; the court may adjourn the case management conference to a suitable date, time and place to enable negotiations or the ADR procedure to continue.

(3) If the case management conference is adjourned under paragraph (2) each party must notify the court office promptly if the claim is settled.

(4) The court may give directions as to the preparation of the case for trial if the case management conference is adjourned.

(5) So far as practicable any adjourned case management conference and procedural application made prior to a pre-trial review must be heard and determined by the judge, master or registrar who conducted the first case management conference.

27.8 Variation of case management timetable

(1) A party must apply to the court if that party wishes to vary a date which the court has fixed for—

(*a*) a case management conference;

(*b*) a party to do something where the order specifies the consequences of failure to comply;

(*c*) a pre-trial review;

(*d*) the return of a listing questionnaire; or

(*e*) the trial date or trial period.

(2) Any date set by the court or these Rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

(3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the court, and the general rule is that the party must do so before that date.

Rule 42.7 deals with consent orders.

(4) A party who applies after that date must apply for—

(*a*) an extension of time; and

(*b*) relief from any sanction to which the party has become subject under these Rules or any court order.

Rule 26.8 provides for applications for relief from sanctions.

(5) The parties may agree to vary a date in the timetable other than one mentioned in paragraph (1) or (2).

(6) Where the parties so agree, they must—

(*a*) file a consent application for an order to that effect; and

(*b*) certify on that application that the variation agreed will not affect the date fixed for the trial or, if no date has been fixed, the period in which the trial is to commence,

and the timetable is accordingly varied unless the court directs otherwise.

27.9 Listing questionnaire

(1) The court office must send the parties a listing questionnaire in Form 10 on the date fixed under rule 27.5(4)(*a*).

(2) Each party must file the completed listing questionnaire at the court office within the period of twenty-one days after the date on which it is served on that party.

(3) If—

(*a*) a party fails to—

(i) give all the information requested by the listing questionnaire, or

(ii) return the completed questionnaire to the court office within the period of twenty-one days; or

(*b*) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete the preparation of the case,

the court office may fix a listing appointment and direct any or all of the parties to attend the listing hearing.

(4) The court office must give all parties at least seven days' notice of the date, time and place of the listing hearing.

(5) Any party at fault must attend the listing hearing.

(6) At the listing hearing the court must—

(*a*) give any directions which may be needed to complete the preparation of the case for trial without any adjournment of the trial; and

(*b*) if the listing appointment has been fixed under paragraph (3)(*a*) make a wasted costs order unless there is a special reason why it should not make such an order.

(7) Apart from the requirement to complete a listing questionnaire the court may at any time require the parties to answer a questionnaire to assist it in the management of the case.

27.10 Fixing trial date

(1) As soon as practicable after—

(*a*) each party has returned a completed listing questionnaire to the court office; or

(*b*) the court has held a listing hearing under rule 27.9(3),

the court office must fix the date of the trial (or, if it has already done so, confirm that date) and notify the parties.

(2) The general rule is that the court office must give the parties at least 8 weeks' notice of the date of the trial.

(3) The court may however give shorter notice—

(*a*) if the parties agree; or

(*b*) in urgent cases.

PART 28

Disclosure and Inspection of Documents

28.1 Scope of this Part

(1) This Part sets out rules about the disclosure and inspection of documents.

(2) In this Part—

"copy", in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly; and

"document" means anything on or in which information of any description is recorded.

(3) A party "discloses" a document by revealing that the document exists or has existed.

(4) For the purposes of this Part a document is "directly relevant" if—

(*a*) the party with control of the document intends to rely on it;

(*b*) it tends to adversely affect that party's case; or

(*c*) it tends to support another party's case, but

the rule of law known as "the rule in Peruvian Guano" does not apply.

28.2 Duty of disclosure limited to documents which are or have been in party's control

(1) A party's duty to disclose documents is limited to documents which are or have been in the control of that party.

(2) For this purpose a party has or has had control of a document if—

(*a*) it is or was in the physical possession of the party;

(*b*) the party has or has had a right to inspect or take copies of it; or

(*c*) the party has or has had a right to possession of it.

28.3 Disclosure of copies

(1) Except where required by paragraph (2), a party need not disclose more than one copy of a document.

(2) A party must however disclose a copy if it contains a modification, obliteration or other marking or feature which is not present in the original or any copy of the document which is being disclosed.

28.4 Standard disclosure

If a party is required by any direction of the court to give standard disclosure, that party must disclose all documents which are directly relevant to the matters in question in the proceedings.

28.5 Specific disclosure

(1) An order for specific disclosure is an order that a party must do one or more of the following things—

(*a*) disclose documents or classes of documents specified in the order;

(*b*) carry out a search for documents to the extent stated in the order;

(*c*) disclose any document located as a result of that search.

(2) An order for specific disclosure may be made on or without an application.

(3) An application for specific disclosure may be made without notice at a case management conference.

(4) An application for specific disclosure may identify documents—

(*a*) by describing the class to which they belong; or

(*b*) in any other manner.

(5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.

28.6 Criteria for ordering specific disclosure

(1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.

(2) The court must have regard to—

(*a*) the likely benefits of specific disclosure;

(*b*) the likely cost of specific disclosure; and

(*c*) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.

(3) If, having regard to paragraph (2)(*c*), the court would otherwise refuse to make an order for specific disclosure, it may nonetheless make such an order on terms that the party seeking the order must pay the other party's costs of such disclosure in any event.

(4) If the court makes an order under paragraph (3), it must assess the costs to be paid in accordance with rule 65.12.

(5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed.

28.7 Procedure for disclosure

(1) Paragraphs (2) to (5) set out the procedure for disclosure.

(2) Each party must make, and serve on every other party, a list of documents in Form 11.

(3) The list must identify the documents or categories of documents in a convenient order and manner and as concisely as possible.

(4) The list must state—

(*a*) what documents are no longer in the party's control;

(*b*) what has happened to those documents; and

(*c*) where each such document then is, to the best of the party's knowledge, information or belief.

(5) The list must include documents already disclosed.

(6) A list of documents served by a company, firm, association or other organisation must—

(*a*) state the name and position of the person responsible for identifying individuals who might be aware of any document which should be disclosed; and

(*b*) identify those individuals who have been asked whether they are aware of any such documents and state the position of those individuals.

28.8 Duty of legal practitioner

The legal practitioner for a party must—

(*a*) explain to the maker of the list of documents the—

(i) necessity of making full disclosure in accordance with the terms of the order for disclosure and these Rules, and

(ii) possible consequences of failing to do so; and

(*b*) certify on the list of documents under rule 28.7(2) that the explanation required by paragraph (*a*) has been given.

28.9 Requirement for maker to certify understanding of duty of disclosure

(1) The maker of the list of documents must certify in the list of documents that—

(*a*) the maker understands the duty of disclosure; and

(*b*) to the best of the knowledge of the maker the duty has been carried out.

(2) In the case of a list served on behalf of a company, firm, association or other organisation the certificate referred to in paragraph (1) must be made by the person identified in rule 28.7(6)(*a*).

(3) If it is impracticable for the maker of the list of documents to sign the certificate required by paragraph (1), it may be given by that person's legal practitioner.

(4) A certificate given by the legal practitioner must also certify—

(*a*) that the certificate is given on the instructions of the maker; and

(*b*) the reasons why it is impractical for the maker of the list of documents to give the certificate.

28.10 Disclosure in stages

The parties may agree in writing or the court may direct that disclosure or inspection or both may take place in stages.

28.11 Inspection and copying of listed documents

(1) When a party has served a list of documents on any other party, that party has a right to inspect any document on the list, except documents—

(*a*) for which a right to withhold from disclosure is claimed; or

(*b*) which are no longer in the physical possession of the party who served the list.

(2) The party wishing to inspect the documents must give the party who served the list written notice of the wish to inspect documents in the list.

(3) The party who is to give inspection must permit inspection not more than seven days after the date on which the notice is received.

(4) If the party giving the notice undertakes to pay the reasonable cost of copying, the party who served the list must supply the other with a copy of each document requested not more than seven days after the date on which the notice was received.

28.12 Duty of disclosure continuous during proceedings

(1) The duty of disclosure in accordance with any order for standard or specific disclosure continues until the proceedings are concluded.

(2) If documents to which that duty extends come to a party's notice at any time during the proceedings, that party must immediately notify every other party and serve a supplemental list of those documents.

(3) The supplemental list must be served not more than fourteen days after the documents to which that duty extends have come to the notice of the party required to serve it.

28.13 Consequence of failure to disclose documents under order for disclosure

(1) A party who fails to give disclosure by the date ordered, or to permit inspection, may not rely on or produce at the trial any document not so disclosed or made available for inspection.

(2) A party seeking to enforce an order for disclosure may apply to the court for an order that the other party's statement of case or some part of it be struck out.

(3) An application under paragraph (2) relating to an order for specific disclosure may be made without notice but must be supported by evidence on affidavit that the other party has not complied with the order.

(4) On an application under paragraph (2) the court may order that unless the party in default complies with the order for disclosure by a specific date that party's statement of case or some part of it be struck out.

Rule 11.16 deals with applications to set aside order made on application without notice.

Rule 26.5 deals with judgement without trial after striking out.

Rule 26.8 deals with relief from sanctions.

28.14 Claim of right to withhold disclosure or inspection of document

(1) A person who claims a right to withhold disclosure or inspection of a document or part of a document must—

(*a*) make such claim for the document; and

(*b*) state the grounds on which such a right is claimed,

in the list or otherwise in writing to the person wishing to inspect the document.

(2) A person may however apply to the court, without notice, for an order permitting that person not to disclose the existence of a document on the ground that disclosure of the existence of the document would damage the public interest.

(3) A person who applies under paragraph (2) must—

(*a*) identify the document, documents or parts thereof for which a right to withhold disclosure is claimed; and

(*b*) give evidence on affidavit showing—

(i) that the applicant has a right or duty to withhold disclosure, and

(ii) the grounds on which the right or duty is claimed.

(4) Unless the court orders otherwise, an order of the court under paragraph (2) is not to be—

(*a*) open for inspection by; nor

(*b*) served on,

any person.

(5) A person who does not agree with a claim of right to withhold inspection or disclosure of a document may apply to the court for an order that the document be disclosed or made available for inspection.

(6) On hearing such an application the court must make an order that the document be disclosed unless it is satisfied that there is a right to withhold disclosure.

(7) If a person—

(*a*) applies for an order permitting that person not to disclose the existence of a document or part of a document; or

(*b*) claims a right to withhold inspection,

the court may require the person to produce that document to the court to enable it to decide whether the claim is justified.

(8) On considering any application under this Rule, the court may invite any person to make representations on the question of whether the document ought to be withheld.

28.15 Restrictions on use of a privileged document inspection of which has been inadvertently allowed

If a party inadvertently allows a privileged document to be inspected, the party who has inspected it may use it only with the—

(*a*) agreement of the party disclosing the document; or

(*b*) permission of the court.

28.16 Documents referred to in statements of case, etc.

(1) A party may inspect and copy a document mentioned in—

(*a*) an affidavit;

(*b*) an expert's report;

(*c*) a statement of case;

(*d*) a witness statement or summary; or

(*e*) the claim form.

(2) A party who wishes to inspect and copy such a document must give written notice to the party who, or whose witness, mentioned the document.

(3) The party to whom the notice is given must comply with the notice not more than seven days after the date on which the notice is served.

28.17 Subsequent use of disclosed documents

(1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, unless—

(*a*) the document has been read to or by the court, or referred to, in open court; or

(*b*) (i)the party disclosing the document and the person to whom the document belongs, or

(ii) the court,

gives permission.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to in open court.

(3) An application for such an order may be made by any—

(*a*) party; or

(*b*) person to whom the document belongs.

28.18 Notice to prove document

(1) A party shall be deemed to admit the authenticity of any document disclosed to that party under this Part unless that party serves notice that the documents must be proved at trial.

(2) A notice to prove a document must be served not less than forty-two days before the trial.

PART 29

Evidence

29.1 Power of court to control evidence

The court may control the evidence to be given at any trial or hearing by giving appropriate directions, at a case management conference or by other means, as to the—

(*a*) issues on which it requires evidence; and

(*b*) way in which any matter is to be proved.

29.2 Evidence at trial – general rule

(1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved at—

(*a*) trial – by their oral evidence given in public; and

(*b*) any other hearing – by affidavit.

(2) The general rule is subject to any—

(*a*) order of the court; and

(*b*) provision to the contrary contained in these Rules or elsewhere.

(3) Any evidence taken at the trial or other hearing of any proceedings may be used subsequently in those proceedings.

Part 30 deals with affidavits.

29.3 Evidence by video link or other means

The court may allow a witness to give evidence without being present in the courtroom, through a video link or by any other means.

29.4 Requirement to serve witness statements

(1) The court may order a party to serve on any other party a statement of the evidence of any witness upon which the first party intends to rely in relation to any issue of fact to be decided at the trial.

(2) A statement of the evidence referred to in paragraph (1) is known as a "witness statement"**.**

(3) A party's obligation to serve a witness statement is independent of any other party's obligation to serve such a statement.

Rule 29.7 provides a procedure that may be adopted when one party does not serve witness statements by the date directed.

(4) The court may give directions as to—

(*a*) the order in which witness statements are to be served; and

(*b*) when they are to be filed.

29.5 Form of witness statements

(1) A witness statement must—

(*a*) be dated;

(*b*) be signed or otherwise authenticated by the intended witness;

(*c*) give the name, address and occupation of the witness;

(*d*) include a statement by the intended witness that he or she believes the statements of fact in it to be true;

(*e*) not include any matters of information or belief which are not admissible or, where admissible, must state the source of any matters of information or belief;

(*f*) so far as reasonably practicable, be in the intended witness' own words; and

(*g*) sufficiently identify any document to which the statement refers without repeating its contents unless this is necessary in order to identify the document.

(2) The court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.

29.6 Witness summaries

(1) A party who is required to provide and is not able to obtain a witness statement may serve a witness summary instead.

(2) The party who serves a witness summary must certify on the witness summary the reason why a witness statement could not be obtained.

(3) A "witness summary" is a summary of the—

(*a*) evidence, so far as is known, which would otherwise be included in a witness statement; or

(*b*) matters about which the party serving the witness summary proposes to question the witness, if the evidence is not known.

(4) Unless the court orders otherwise, a witness summary must include the name and address of the intended witness or other sufficient means of identifying the intended witness.

(5) A witness summary must be served within the period in which a witness statement would have had to be served.

(6) Where a party provides a witness summary, so far as practicable, rules 29.4 (requirement to serve witness statements), 29.7 (procedure where one party does not serve witness statements by date directed), 29.8 (witness to give evidence unless court otherwise orders) and 29.9 (amplifying witness statements at trial) apply to the witness summary.

29.7 Procedure where one party does not serve witness statement by date directed

(1) This Rule applies where—

(*a*) one party (the "first party") is able and prepared to comply with the order to serve witness statements; and

(*b*) the other party fails to make reasonable arrangements to exchange statements.

(2) The first party may comply with the requirements of this Part by—

(*a*) filing the witness statements in a sealed envelope at the court office by the date directed; and

(*b*) giving notice to all other parties that the witness statements have been filed.

(3) Statements filed pursuant to paragraph (2) must not be disclosed to the other party until the other party certifies that the witness statements or summaries in respect of all witnesses upon whose evidence the other party intends to rely have been served.

29.8 Witness to give evidence unless court otherwise orders

(1) If a party—

(*a*) has served a witness statement or summary; and

(*b*) wishes to rely on the evidence of that witness,

that party must call the witness to give evidence unless the court orders otherwise.

(2) If a party—

(*a*) has served a witness statement or summary; and

(*b*) does not intend to call that witness at the trial,

that party must give notice to that effect to the other parties not less than twenty-eight days before the trial.

29.9 Amplifying witness statements at trial

A witness giving oral evidence may with the permission of the court—

(*a*) amplify the evidence as set out in his or her witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;

(*b*) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties; or

(*c*) comment on evidence given by other witnesses.

29.10 Cross-examination on witness statement

If a witness is called to give evidence at trial, that witness may be cross-examined on the evidence as set out in his or her witness statement, whether or not the statement or any part of it was referred to during the witness' evidence in chief.

29.11 Consequence of failure to serve witness statement or summary

(1) If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, the witness may not be called unless the court permits.

(2) The court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8.

29.12 Use of witness statement for other purposes

(1) Except as provided by this Rule, a witness statement may be used only for the purpose of the proceedings in which it is served.

(2) Paragraph (1) does not apply if and to the extent that the—

(*a*) court gives permission for some other use of it;

(*b*) witness gives consent in writing to some other use of it; or

(*c*) witness statement has been put in evidence.

29.13 Notice to admit facts

(1) A party may serve notice on another party requiring that other party to admit the facts or the part of the first party's case specified in the notice.

(2) A notice to admit facts must be served no later than forty-two days before the trial.

(3) If the other party makes any admission in response to the notice to admit facts, the admission may be used against that party only—

(*a*) by the party who served the notice; and

(*b*) in the proceedings in which the notice is served.

(4) If the party served with the notice to admit does not admit the facts set out in the notice within twenty-one days of service of the notice upon that party, the court may assess the costs incurred by the party serving the notice in proving such facts and order the party served with the notice to pay such costs.

Rule 65.11 deals with assessment of costs.

PART 30

Affidavits

30.1 Affidavit evidence

(1) The court may require evidence to be given by affidavit instead of, or in addition to oral evidence.

(2) In this Part "deponent" means the maker of an affidavit.

(3) Whenever an affidavit is to be used in evidence, any party may apply to the court for an order requiring the deponent to attend to be cross-examined.

(4) Such an application must be made not less than in the case of—

(*a*) a trial – twenty-one days; or

(*b*) any other hearing – seven days,

before the date of the hearing at which it is intended to cross-examine the deponent.

(5) If the deponent does not attend as required by the court order, the affidavit may not be used as evidence unless the court permits.

(6) The general rule is that an affidavit must be filed before it may be used in any proceedings.

(7) In a case of urgency the court may make an order on an affidavit which has not been filed if the party tendering it undertakes to file it.

30.2 Form of affidavits

Every affidavit must—

(*a*) be headed with the title of the proceedings;

(*b*) be divided into paragraphs numbered consecutively;

(*c*) be in the first person and state the name, address and occupation of the deponent and, if more than one, of each of them;

(*d*) be marked on the top right hand corner of the affidavit (and of the backsheet) with—

(i) the name of the party on whose behalf it is filed,

(ii) the initials and surname of the deponent,

(iii) (where the deponent swears more than one affidavit in any proceedings), the number of the affidavit in relation to the deponent,

(iv) the identifying reference of each exhibit referred to in the affidavit,

(v) the date when sworn, and

(vi) the date when filed;

(Example "Claimant: N. Berridge: 2nd: NB 3 and 4:1.10.98: 3.10.98.") and

(*e*) state if any deponent is employed by a party to the proceedings.

30.3 Contents of affidavits

(1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.

(2) An affidavit may contain statements of information and belief—

(*a*) if any of these Rules so allows; and

(*b*) if the affidavit is for use in an application for summary judgement under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates—

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief, and

(ii) the source of any matters of information and belief.

(3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.

(4) An affidavit containing any alteration may not be used in evidence unless all such alterations have been initialled both by the deponent and the person before whom the affidavit is sworn.

30.4 Documents to be used in conjunction with affidavits

(1) Any document to be used in conjunction with an affidavit must be exhibited with it.

(2) If there is more than one such document those documents may be included in a bundle which is arranged chronologically or in some other convenient order and is properly paginated.

(3) Clearly legible photocopies of original documents may be exhibited, provided that the originals are made available for inspection by the other parties before the hearing and by the court at the hearing.

(4) Each exhibit or bundle of exhibits must be—

(*a*) produced to and verified by the deponent;

(*b*) accurately identified by an endorsement on the exhibit or on a certificate attached to it signed by the person before whom the affidavit is sworn or affirmed; and

(*c*) marked in accordance with rule 30.2(*d*).

30.5 Making of affidavits

(1) An affidavit must—

(*a*) be signed by all deponents;

(*b*) be sworn or affirmed by each deponent;

(*c*) be completed and signed by the person before whom the affidavit is sworn or affirmed; and

(*d*) contain the full name, address and qualifications of the person before whom it is sworn or affirmed.

(2) The statement authenticating the affidavit ("the *jurat*") must follow immediately from the text and not be on a separate page.

(3) An affidavit may not be admitted into evidence if sworn or affirmed before the legal practitioner of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such legal practitioner.

(4) If it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed must certify in the *jurat* that the—

(*a*) affidavit was read to the deponent by him or her in his or her presence;

(*b*) deponent appeared to understand it; and

(*c*) deponent signed or made his or her mark in his or her presence.

(5) A person may make an affidavit outside the jurisdiction in accordance with—

(*a*) the law of the place where the affidavit is made; or

(*b*) this Part.

(6) Any affidavit which purports to have been sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn.

30.6 Service of affidavits

(1) The general rule is that a party who is giving evidence by affidavit must serve a copy of the affidavit on every other party.

(2) The general rule applies whether the affidavit was made in the proceedings or in some other proceedings.

(3) The general rule does not apply if the affidavit is being used in support of an application that may be made without notice.

PART 31

Miscellaneous Rules about Evidence

31.1 Use of plans, photographs, etc. as evidence

(1) A party who intends to rely at a trial on evidence which is not—

(*a*) to be given orally; and

(*b*) contained in a witness statement, affidavit or expert report; must disclose that intention to the other parties in accordance with this Rule.

(2) If a party fails to disclose the intention to rely on the evidence as required by this Rule, the evidence may not be given.

(3) Subject to paragraphs (4) and (5) a party who intends to use the evidence referred to in paragraph (1) to prove any fact must disclose such intention not later than the latest date for serving witness statements.

(4) If—

(*a*) there is no order for service of witness statements; or

(*b*) a party intends to put in the evidence referred to in paragraph (1) solely in order to disprove an allegation made in a witness statement,

that party must disclose the evidence at least twenty-one days before the hearing at which it is proposed to put in the evidence.

(5) If the evidence referred to in paragraph (1) forms part of expert evidence, the intention to put in the evidence must be disclosed when the expert's report is served on the other party.

(6) If a party has disclosed the intention to put in the evidence referred to in paragraph (1), that party must give every other party an opportunity to inspect the evidence and to agree to its admission without proof.

31.2 Evidence on questions of foreign law

(1) This Rule sets out the procedure which must be followed by a party who intends to adduce evidence on a question of foreign law.

(2) A party who intends to adduce evidence on a question of foreign law must first give every other party notice of that intention.

(3) Notice under paragraph (2) must be given not less than forty-two days before the hearing at which the party proposes to adduce the evidence.

(4) The notice must—

(*a*) have attached a document which forms the basis of the evidence; and

(*b*) specify the question on which the evidence is to be adduced.

31.3 Evidence of consent of trustee to act

A document purporting to contain the written consent of a person to act as trustee and to bear that person's signature verified by some other person is evidence of such consent.

PART 32

Experts and Assessors

32.1 Scope of this Part

(1) This Part deals with the provision of expert evidence to assist the court.

(2) In this Part "expert witness" means an expert who has been instructed to prepare or give evidence for the purpose of court proceedings.

32.2 General duty of court and of parties

Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.

32.3 Expert's overriding duty to court

(1) It is the duty of an expert witness to help the court impartially on the matters relevant to his or her expertise.

(2) This duty overrides any obligation to the person by whom he or she is instructed or paid.

32.4 Way in which expert's duty to court is to be carried out

(1) Expert evidence presented to the court must be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the demands of the litigation.

(2) An expert witness must provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within the witness' expertise.

(3) An expert witness must state the facts or assumptions upon which his or her opinion is based, and must consider and include any material fact which could detract from his or her conclusion.

(4) An expert witness must state if a particular matter or issue falls outside his or her expertise.

(5) If the opinion of an expert witness is not properly researched then this must be stated with an indication that the opinion is no more than a provisional one.

(6) If an expert witness cannot assert that his or her report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.

(7) If after service of a report, an expert witness changes his or her opinion on a material matter, that change of opinion must be communicated to all parties.

32.5 Expert's right to apply to court for directions

(1) An expert witness may apply in writing to the court for directions to assist him or her in carrying out his or her functions and duty to the court as an expert witness.

(2) An expert witness who applies for directions under paragraph (1) need not give notice of the application to any party.

(3) The court may direct that—

(*a*) notice of an application under paragraph (1) be given to any party; or

(*b*) a copy of the application and any directions given be sent to any party.

32.6 Court's power to restrict expert evidence

(1) A party may not call an expert witness or put in the report of an expert witness without the court's permission.

(2) The general rule is that the court's permission is to be given at a case management conference.

(3) When a party applies for permission under this Rule—

(*a*) that party must name the expert witness and identify the nature of his or her expertise; and

(*b*) any permission granted shall be in relation to that expert witness only.

(4) The oral or written expert witness' evidence may not be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert witness intends to give.

(5) The court must direct by what date the report must be served.

(6) The court may direct that part only of an expert witness' report be disclosed.

32.7 General requirement for expert evidence to be given in written report

(1) Expert evidence is to be given in a written report unless the court directs otherwise.

(2) This Rule is subject to any enactment restricting the use of "hearsay evidence".

32.8 Written questions to experts

(1) A party may put written questions to an expert witness instructed by another party or jointly about his or her report.

(2) Written questions under paragraph (1)—

(*a*) may be put once only;

(*b*) must be put within twenty-eight days of service of that expert witness' report; and

(*c*) must only be in order to clarify the report,

unless—

(i) the court permits, or

(ii) the other party agrees.

(3) An expert witness' answers to questions under this Rule must be treated as part of that expert witness' report.

(4) If a party has put a written question to an expert witness instructed by another party in accordance with this Rule and the expert witness does not answer the question, the court may make one or more of the following orders in relation to the party who instructed the expert, namely that—

(*a*) that party may not recover the fees and expenses of the expert witness from any other party;

(*b*) that party may not rely on the evidence of the expert witness;

(*c*) the party asking the questions may seek to obtain answers from another expert.

(5) This Rule also applies where evidence from a single expert witness is to be used under rule 32.9.

32.9 Court's power to direct evidence by single expert

(1) If two or more parties wish to submit expert evidence on a particular issue, the court may direct that expert evidence be given by one expert witness.

(2) The parties referred to in paragraph (1) are known as "the instructing parties".

(3) If the instructing parties cannot agree who should be the expert witness, the court may—

(*a*) select the expert witness from a list prepared or identified by the instructing parties; or

(*b*) direct that the expert witness be selected in such other manner as the court may direct.

(4) The court may vary a direction given under this Rule.

(5) The court may appoint a single expert witness instead of the parties instructing their own expert witnesses or may replace expert witnesses instructed by the parties.

32.10 Cross-examination of court appointed expert

If an expert appointed by the court under rule 32.9(5) gives oral evidence, the expert may be cross-examined by any party.

32.11 Instructions to single expert

(1) If the court gives directions under rule 32.9 for a single expert witness to be used, each instructing party may give instructions to the expert witness.

(2) When an instructing party gives instructions to the expert witness that party must, at the same time, send a copy of the instructions to the other instructing parties.

(3) The court may give directions about the arrangements for—

(*a*) any inspection, examination or experiment which the expert witness wishes to carry out; and

(*b*) the payment of the expert witness' fees and expenses.

(4) The court may, before an expert witness is instructed—

(*a*) limit the amount that can be paid by way of fees and expenses to the expert witness; and

(*b*) direct that the instructing parties pay that amount into court in such proportions as may be directed.

(5) Unless the court directs otherwise, the instructing parties are jointly and severally liable for the payment of the expert witness' fees and expenses.

32.12 Power of court to direct party to provide expert report

(1) If a party has access to information which is not reasonably available to the other party, the court may order that party—

(*a*) to arrange for an expert witness to prepare a report on any matter;

(*b*) if appropriate, to arrange for an examination to be carried out in relation to that matter; and

(*c*) to file the report and serve a copy on any other party.

(2) The court's powers under this Rule may be exercised only on the application of a party.

32.13 Expert's reports to be addressed to court

An expert witness must address his or her report to the court and not to any person from whom the expert witness has received instructions.

32.14 Contents of report

(1) An expert witness' report must—

(*a*) give details of the expert witness' qualifications;

(*b*) give details of any literature or other material which the expert witness has used in making the report;

(*c*) say who carried out any test or experiment which the expert witness has used for the report;

(*d*) give details of the qualifications of the person who carried out any such test or experiment;

(*e*) If there is a range of opinion on the matters dealt with in the report—

(i) summarise the range of opinion, and

(ii) give reasons for his or her opinion; and

(*f*) contain a summary of the conclusions reached.

(2) At the end of an expert witness' report there must be a statement that the expert witness—

(*a*) understands his or her duty to the court as set out in rules 32.3 and 32.4;

(*b*) has complied with that duty;

(*c*) has included in the report all matters within the expert witness' knowledge and area of expertise relevant to the issue on which the expert evidence is given; and

(*d*) has given details in the report of any matter which to his or her knowledge might affect the validity of the report.

(3) There must also be attached to an expert witness' report copies of—

(*a*) all written instructions given to the expert witness;

(*b*) any supplemental instructions given to the expert witness since the original instructions were given; and

(*c*) a note of any oral instruction given to the expert witness,

and the expert must certify that no other instruction than those disclosed have been received by him or her from the party instructing the expert, the party's legal practitioner or any other person acting on behalf of the party.

(4) If a report refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the service of the report.

(5) If it is not practicable to provide a copy of the documents referred to in paragraph (4), those documents must be made available for inspection by the other party or any expert witness instructed by that party within seven days of a request to do so.

32.15 Meeting of experts

(1) The court may direct a meeting of expert witnesses of like speciality.

(2) The court may specify the issues which the expert witnesses must discuss.

(3) The contents of the discussion between the expert witnesses must not be referred to at the trial unless the parties agree.

(4) The meeting may take place personally, over the telephone or by any other suitable means.

(5) After the meeting, the expert witnesses must prepare for the court a statement of any issue within their expertise on which they—

(*a*) agree; and

(*b*) disagree, with their reasons for disagreeing.

(6) Instead of, or in addition to such statement the court may direct that the expert witnesses prepare an agreed statement of the basic 'science' which applies to the matters relevant to their expertise.

(7) The statement referred to in paragraph (6) must be as short as practicable.

32.16 Consequence of failure to disclose expert's report

(1) A party who fails to comply with a direction to disclose an expert witness' report may not use the report at the trial or call the expert witness unless the court gives permission.

(2) The court may not give permission at the trial unless the party asking for permission can show that it was not reasonably practicable to have applied for relief at an earlier stage.

Rule 26.8 deals with relief from sanctions.

32.17 Appointment of assessor

(1) The court may appoint an assessor to—

(*a*) advise the judge at the trial with regard to evidence of expert witnesses called by the parties;

(*b*) assist the court in understanding technical evidence; or

(*c*) provide a written report.

(2) On making an order under paragraph (1), the court must decide—

(*a*) what fee is to be paid to the assessor; and

(*b*) by whom.

(3) Notwithstanding paragraph (2), the court may ultimately order any party to pay the fee of the assessor.

(4) All communications apart from written instructions between the court and an assessor must be in open court.

(5) Before requesting a written report or opinion from an assessor the court must allow the parties to make submissions in respect of the form and content of the questions to be asked.

(6) Before giving judgement the court must provide the parties with the questions asked of, and any opinion given by the assessor and give them an opportunity to make submissions.

PART 33

Court Attendance by Witnesses and Depositions

33.1 Scope of this Part

(1) This Part provides—

(*a*) for a party to obtain evidence prior to a hearing; and

(*b*) for the circumstances in which a person may be required to attend court to give evidence or to produce a document.

(2) In this Part, reference to a hearing includes a reference to the trial.

33.2 Witness summonses

(1) A witness summons is a document issued by the court requiring a witness to attend court—

(*a*) to give evidence; or

(*b*) to produce documents to the court.

(2) A witness summons must be in Form 12.

(3) There must be a separate witness summons for each witness.

(4) A witness summons may require a witness to produce documents to the court either on—

(*a*) the date fixed for the trial or the hearing of any application in the proceedings; or

(*b*) any other date the court may direct.

33.3 Issue of witness summons

(1) A witness summons is issued on the date entered on the summons by the court office.

(2) A party must obtain permission from the court when that party wishes to have—

(*a*) a witness summons issued less than twenty-one days before the date of the hearing; or

(*b*) a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial or the hearing of any application.

(3) An application for permission under paragraph (2) may be without notice but must be supported by evidence on affidavit.

(4) The court may set aside or vary a witness summons.

33.4 Witness summons in aid of inferior court or tribunal

(1) The court may issue a witness summons in aid of an inferior court or of a tribunal.

(2) The court may set aside a witness summons issued under this Rule.

(3) In this Rule "inferior court or tribunal" means any court or tribunal which does not have power to issue a witness summons in relation to proceedings before it.

33.5 Time for serving witness summons

(1) The general rule is that a witness summons is binding only if it is served at least fourteen days before the date on which the witness is required to attend before the court or tribunal.

(2) The court may direct that a witness summons shall be binding although it will be served less than fourteen days before the date on which the witness is required to attend before the court or tribunal.

(3) An application under paragraph (2) may be made without notice but must be supported by evidence on affidavit.

(4) A witness summons which—

(*a*) is served in accordance with this Rule; and

(*b*) requires the witness to attend court to give evidence,

is binding until the conclusion of the hearing at which the attendance of the witness is required.

33.6 Compensation for loss of time

At the time of service of a witness summons the witness must be offered or paid—

(*a*) a sum reasonably sufficient to cover his or her subsistence and expenses in travelling to and from the court; and

(*b*) such sum by way of compensation for loss of time as may be specified in a practice direction.

33.7 Evidence by deposition before examiner

(1) A party may apply for an order for a person to be examined before the trial or the hearing of any application in the proceedings.

(2) In this Rule "deponent" means a person from whom evidence is to be obtained following any order under this Rule, and "deposition" means the evidence given by a deponent.

(3) An order under this Rule shall be for a deponent to be examined on oath before—

(*a*) a judge;

(*b*) a legal practitioner who has practised for at least 5 years;

(*c*) a magistrate;

(*d*) a master;

(*e*) a registrar; or

(*f*) the Chief Registrar.

(4) A person listed in paragraph (3) is referred to as an "examiner".

(5) The order must state—

(*a*) the date, time and place of the examination; and

(*b*) the name of the examiner.

(6) The order may require the production of any document which the court considers may be necessary for the purposes of the examination.

(7) Rule 2.7 applies to an examination under this Rule.

(8) At the time of service of the order the deponent must be offered or paid travelling expenses and compensation for loss of time in accordance with rule 33.6.

(9) An application may be made by any party whether or not that party would otherwise call the witness.

(10) If the application is made by the party who would call the witness to give evidence, the court may order that party to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

> Part 29 contains general rules about witness statements and witness summaries.

33.8 Conduct of examination

(1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.

(2) If all the parties are present, the examiner may, with the consent of the parties, conduct the examination of a person not named in the order for examination.

(3) The examiner may conduct the examination in private if he or she considers it appropriate to do so.

(4) The examiner must ensure that a full record is taken of the evidence given by the witness.

(5) If any person being examined objects to answer any question put to him or her, the ground of the objection and the answer to any such question must be set out in the deposition or in a statement annexed to the deposition.

(6) The examiner must send the original deposition to the court office and a copy of the deposition to—

(*a*) every party to the proceedings; and

(*b*) the deponent.

(7) If the witness or any legal practitioner present at the hearing is of the opinion that the deposition does not accurately represent the evidence, he or she may—

(*a*) endorse on the copy deposition the corrections which in his or her opinion should be made;

(*b*) file the endorsed copy deposition; and

(*c*) serve a copy of it on all other parties.

33.9 Evidence without examiner being present

(1) With the consent of the parties, the court may order that the evidence of a witness be taken as if before an examiner, but without an examiner being appointed or present.

(2) Where such an order is made then, subject to any directions that may be contained in the order—

(*a*) a legal practitioner for any party may administer the oath to a witness;

(*b*) any person transcribing evidence given need not be sworn but must certify as correct the transcript of the evidence and deliver it to the legal practitioner for the party whose witness was examined;

(*c*) the legal practitioner for the party whose witness was examined must file the original transcript and deliver a true copy to all other parties and to the witness who was examined;

(*d*) the party whose witness is to be examined must provide a means of recording the evidence of the witness; and

(*e*) if the witness or any legal practitioner present at the hearing is of the opinion that the transcript does not accurately represent any evidence given, he or she may—

(i) endorse on the copy transcript the corrections which in his or her opinion should be made,

(ii) file the endorsed copy transcript, and

(iii) serve a copy of it on all other parties.

33.10 Enforcing attendance of witness

(1) If a person served with a witness summons to attend before an examiner—

(*a*) fails to attend;

(*b*) refuses to answer any lawful question or produce any document at the examination; or

(*c*) refuses to be sworn or to affirm for the purpose of the examination; the party requiring the deposition may file a certificate signed by the examiner of such failure or refusal.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring the person to attend, to be sworn, to affirm or to answer any question or produce any document, as the case may be.

(3) An application for an order under this Rule may be made without notice.

(4) Any order made by the court must be served personally on the person served with the witness summons and be endorsed with a notice in the first form given in rule 53.3(*b*).

(5) The court may order the person against whom an order is made under this Rule to pay any costs resulting from the—

(*a*) failure to attend before a referee;

(*b*) refusal to answer any lawful question or produce any document at the inquiry; or

(*c*) refusal to be sworn or to affirm for the purpose of the inquiry.

Part 53 deals with the procedure relating to committal for contempt of court.

33.11 Special report

The examiner may make a special report to the court with regard to the—

(*a*) absence of any person; or

(*b*) conduct of any person present,

when the deposition was taken.

33.12 Fees and expenses of examiner

(1) On appointing an examiner the court must fix the fee to be paid to the examiner for carrying out the examination.

(2) If an examination is carried out by a person other than a legal practitioner, the fee must be paid into the court office.

(3) The party who obtained the order must also pay the fee and all reasonable travelling and other expenses including charges for a room (other than the examiner's own chambers or office) where the examination takes place.

(4) Notwithstanding paragraphs (1) and (3), the court may ultimately order any party to bear the costs of the examination.

33.13 Order for payment of examiner's fees

(1) The examiner may report to the court the fact that any fees or expenses due to him or her have not been paid and the court may make an order that the party who obtained the order for the examination should pay such fees and expenses.

(2) An order under paragraph (1) may be enforced as a money judgement.

33.14 Use of deposition at hearing

(1) A deposition ordered under rule 33.7 or 33.9 maybe given in evidence at the trial unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must serve notice of such intention on every other party at least twenty-one days before the day fixed for the hearing.

(3) The court may require a deponent to attend the hearing and give oral evidence.

33.15 Where person to be examined is out of the jurisdiction – letter of request

(1) If a party wishes to take a deposition from a party outside the jurisdiction, the court may direct the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(2) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(3) If the government of the country to which the letter is sent allows a person appointed by the court to examine a person in that country, the court may make an order appointing an examiner for that purpose.

(4) A person may be examined under this Rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(5) If the court makes an order for the issue of a letter of request, the party who sought the order must file—

(*a*) the following documents and, except where paragraph (6) applies, a translation of them—

(i) a draft letter of request,

(ii) a list of questions or the subject matter of questions to be put to the person to be examined, and

(iii) a statement of the issues relevant to the proceedings; and

(*b*) an undertaking to be responsible for the expenses of the minister with responsibility for foreign affairs in relation to the request.

(6) There is no need to file a translation if English is one of the official languages of the country where the examination is to take place.

33.16 Early appointment to produce documents

(1) The court may permit a party to issue a witness summons requiring any person to attend at a date, time or place specified in the summons prior to the date of the trial for the purpose of producing one or more documents.

(2) The only type of document that a summons under this Rule can require a person to produce is a document which that person could be compelled to produce at the trial.

PART 34

Requests for Information

34.1 Right of parties to obtain information

(1) This Part enables a party to obtain from any other party information about any matter which is in dispute in the proceedings.

(2) To obtain the information referred to in paragraph (1), the party must serve on the other party a request identifying the information sought.

34.2 Orders compelling reply to request for information

(1) If a party does not, within a reasonable time, give information which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party to do so.

(2) An order may not be made under this Rule unless it is necessary in order to dispose fairly of the claim or to save costs.

(3) When considering whether to make an order, the court must have regard to—

(*a*) the likely benefit which will result if the information is given;

(*b*) the likely cost of giving it; and

(*c*) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.

34.3 Information obtained under Part 34 not to be used in other proceedings

A party may use information obtained—

(*a*) in compliance with an order under rule 34.2; or

(*b*) in response to a request under rule 34.1,

only in the proceedings in which the request or order was made.

34.4 Certificate of truth

Any information provided under this Part must be verified by a certificate of truth in accordance with rule 3.12.

PART 35

Offers to Settle

35.1 Scope of this Part

(1) This Part contains rules about—

(*a*) offers to settle which a party may make to another party; and

(*b*) the consequences of such offers.

(2) This Part does not limit a party's right to make an offer to settle otherwise than in accordance with this Part.

(3) The Rules in this Part are subject to rule 23.12 (compromise, etc., on behalf of a minor or patient).

Part 36 deals with payments into court.

35.2 Introductory

(1) An offer to settle may be made in any proceedings whether or not there is a claim for money.

(2) The party who makes the offer is called the "offeror".

(3) The party to whom the offer is made is called the "offeree".

(4) An offer to settle is made when it is served on the offeree.

35.3 Making offer to settle

(1) A party may make an offer to another party which is expressed to be "without prejudice" and in which the offeror reserves the right to make the terms of the offer known to the court after judgement is given with regard to—

(*a*) the allocation of the costs of the proceedings; and

(*b*) (in the case of an offer by the claimant) the question of interest on damages.

(2) The offer may relate to the whole of the proceedings or to part of them or to any issue that arises in them.

35.4 Time when offer to settle may be made

A party may make an offer to settle under this Part at any time before the beginning of the trial.

35.5 Procedure for making offer to settle

(1) An offer to settle must be in writing.

(2) The offer or must serve the offer on the offered and a copy on all other parties.

(3) Neither the fact nor the amount of the offer or any payment into court in support of the offer must be communicated to the court before all questions of liability and the amount of money to be awarded (other than costs and interest) have been decided.

(4) Paragraph (3) does not apply to an offer which has been accepted or where a defence of tender before claim has been pleaded.

35.6 Extent to which offer to settle covers interest, costs or counterclaim

(1) An offer to settle a claim for damages must state whether or not the amount offered includes interest or costs.

(2) If the offer covers interest or costs it must state the amount which is included for each.

(3) If there is a counterclaim as well as a claim, the offer must state in the case of an offer by the—

(*a*) claimant – whether or not it takes into account the counterclaim; or

(*b*) defendant – whether or not it takes into account the claim,

and in each case in what amount.

35.7 Offer to settle made after interim payment

If an interim payment has been made, whether voluntarily or under an order under Part 17, any subsequent offer to settle must state whether it is in addition to the interim payment or whether it is intended to replace it.

35.8 Offer to settle part of claim

(1) An offer to settle must state whether or not it covers the whole or part of the claim.

(2) If it does not state that it covers part of the claim, it is to be taken to cover the whole claim.

(3) If the offer covers only part or parts of the claim it must—

(*a*) identify the part or parts of the claim in respect of which it is made; and

(*b*) if more than one, state what is offered in respect of each part covered by the offer.

35.9 Time limit for accepting offer to settle

(1) The offeror may state in the offer that it is open for acceptance until a specified date.

(2) The offer shall have no effect on any decision that the court makes as to the consequences of the offer unless it is open for acceptance for at least twenty-one days.

(3) Acceptance of the offer after the beginning of the trial shall have no effect on any decision that the court makes as to the consequences of such acceptance.

(4) The court may permit an offeree to accept an offer after the specified date on such terms as the court considers just.

35.10 Procedure for acceptance

(1) To accept an offer a party must—

(*a*) serve written notice of acceptance on the offeror; and

(*b*) send a copy of the notice to any other party.

(2) The offeree accepts the offer when notice of acceptance is served on the offeror.

(3) If an offer or payment into court under Part 36 is made in proceedings to which rule 23.12 applies—

(*a*) the offer or payment may be accepted only with the permission of the court; and

(*b*) no payment out of any sum paid into court may be made without a court order.

Rule 23.12 deals with compromises, etc., by or on behalf of a minor or patient.

35.11 Effect of acceptance – generally

(1) If the offeree accepts an offer which is not limited in accordance with rule 35.8, the claim is stayed upon the terms of the offer.

(2) If the offer covers a claim and a counterclaim, both the claim and the counterclaim are stayed on the terms of the offer.

(3) In any other case, the proceedings are stayed to the extent that they are covered by the terms of the offer.

(4) If the court's approval is required for the settlement of the proceedings, any stay arising on the acceptance of the offer has effect only when the court gives its approval.

Rule 23.12 deals with the settlement of proceedings involving minors and patients.

(5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.

(6) If money has been paid into court in support of an offer, a stay arising out of the acceptance of the offer does not affect any proceedings to obtain payment out of court.

Part 36 deals with payments into court.

(7) If an offer is accepted and its terms are not complied with, any stay arising on acceptance ceases to have effect and—

(*a*) the proceedings or the part which was stayed may continue; and

(*b*) either party may apply to the court to enforce those terms.

(8) If a party claims damages for breach of contract arising from an alleged failure of another party to carry out the terms of an agreed offer, that party may do so by applying to the court without the need to commence new proceedings unless the court orders otherwise.

35.12 Effect of acceptance – more than two parties

(1) If there is more than one defendant whom the claimant claims are jointly and severally, or severally, liable and the claimant—

(*a*) agrees to settle the claim as against one or more, but not all of them; and

(*b*) discontinues the claim against any other defendant,

the claimant is liable to pay the costs of that defendant unless the court otherwise orders.

Part 37 deals with discontinuance.

(2) If a claimant accepts an offer made by one of a number of joint defendants—

(*a*) paragraph (1) does not apply; and

(*b*) the defendant who made the offer is liable for the costs of the other joint defendants.

(3) If—

(*a*) there is more than one claimant; and

(*b*) one or more, but not all, of them agree to settle,

the other claimants may continue the proceedings.

35.13 Costs of offeror and offeree where offer is accepted – defendant's offer

(1) If the—

(*a*) defendant makes an offer to settle; and

(*b*) claimant accepts the offer within any period stated for accepting it and before the beginning of the trial,

the claimant is entitled to the costs of the proceedings up to the date of acceptance of the offer.

(2) If the defendant permits a claimant to accept an offer after the time stated for accepting it, the general rule is that the—

(*a*) claimant is entitled to costs to the end of the period stated for accepting the offer; and

(*b*) defendant is entitled to any costs incurred between the end of the period stated for accepting the offer and the date when the offeree accepts the offer,

unless the court orders otherwise.

(3) If the settlement relates only to part of the proceedings and the remaining part or parts of the proceedings continue—

(*a*) the claimant is entitled under this Rule only to the costs relating to that part of the proceedings which has been settled; and

(*b*) unless the court orders otherwise or the defendant agrees, the claimant may not recover any such costs, nor have them quantified, until the conclusion of the rest of the proceedings, when the court can deal with the costs of the whole of the proceedings including any costs relating to those parts of the proceedings that were not settled.

35.14 Costs of offeror and offeree where offer is accepted – claimant's offer

If the claimant makes an offer which is accepted by the defendant, the claimant is entitled to costs up to the time when notice of acceptance of the offer is served.

35.15 Costs where offer not accepted – general rules

(1) The general rule for defendants' offers is that, if the defendant makes an offer to settle which is not accepted and in—

(*a*) the case of an offer to settle a claim for damages – the court awards less than 85% of the amount of the defendant's offer;

(*b*) any other case – the court considers that the claimant acted unreasonably in not accepting the defendant's offer,

the claimant must pay any costs incurred by the defendant after the latest date on which the offer could have been accepted without the court's permission.

(2) If a claimant makes an offer to settle and in—

(*a*) the case of an offer to settle a claim for damages – the court awards an amount which is equal to or more than the amount of the offer;

(*b*) any other case – the court considers that the defendant acted unreasonably in not accepting the claimant's offer,

the court may, in exercising its discretion as to interest take into account the rates set out in the following table:

Net amount of damages	**Rate of interest**
not exceeding EC$100,000	15% per annum
for the next EC$150,000	12% per annum
for the next EC$500,000	10% per annum
in excess of EC$800,000	8% per annum

where "net" means the amount of damages on the claim less the amount (if any) awarded on any counterclaim.

(Example)

One year since the offer. Damages – EC$400,000;

The court might award—

15% on the first $100,000 for one year ($15,000);

plus 12% interest on the next $150,000 for one year ($18,000);

plus 10% interest on the remaining $150,000 for one year ($15,000);

a total of EC$48,000 interest on damages.

(3) The court may decide that the general rule under paragraph (1) is not to apply in a particular case.

(4) In deciding whether the general rule should not apply and in considering the exercise of its discretion under paragraph (2), the court may take into account the—

(*a*) conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated;

(*b*) information available to the offeror and the offeree at the time that the offer was made;

(*c*) stage in the proceedings at which the offer was made; and

(*d*) terms of any offer.

(5) This Rule applies to offers to settle at any time, including before proceedings were started.

35.16 How costs are to be dealt with

(1) If an offer to settle is accepted, the parties may agree the amount of costs that are due to be paid under this Part.

(2) If the amount of costs falls to be quantified by the court, then the general rule is that, unless an order has been made for budgeted costs under rule 65.8, the costs are to be determined in accordance with the scale of prescribed costs contained in Part 65, Appendices B and C.

(3) If an offer to settle—

(*a*) is accepted after the time originally stated for accepting it under rule 35.10(2); or

(*b*) deals only with part of the case in accordance with rule 35.13(3),

the amount of costs to be paid to the party entitled to such costs must be assessed by the court and in assessing the costs the court must take into account the scale of prescribed costs or the amount of the budgeted costs as the case may be.

(4) In determining the appropriate amount of costs to be paid where an order has been made under rule 65.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

PART 36

Payments into Court to Support Offers under Part 35 and under Court Order

36.1 Scope of this Part

(1) This Part deals with payments into court made—

(*a*) in accordance with an order of court;

(*b*) to support a defence of tender; and

(*c*) to support an offer of payment under Part 35.

(2) A defendant is not obliged to make a payment into court to support an offer under Part 35.

(3) With the—

(*a*) agreement of the claimant; or

(*b*) permission of the court,

a defendant may pay money in support of an offer of payment into an interest bearing account on such terms as to the—

(i) names of the account holders, and

(ii) terms on which money may be paid out of the account,

as may be ordered by the court or agreed between the parties.

36.2 Payments into court to support offers to settle

(1) A defendant who offers to settle the whole or part of a claim may pay money into court in support of the offer.

(2) A defendant may not pay money into court unless the—

(*a*) defendant certifies that such payment is in support of an offer to settle;

(*b*) payment is made to support a defence of tender; or

(*c*) payment is made under a court order.

(3) A payment into court may not be made until a claim is issued.

(4) A payment into court to support an offer may be made—

(*a*) when the offer is made; or

(*b*) at any time while the offer is outstanding.

(5) A defendant who pays money into court must—

(*a*) serve notice of payment on the claimant; and

(*b*) file a copy of the notice with a statement of the date (if any) by which the offer is open for acceptance under rule 35.9(1).

36.3 Right to payment out on acceptance of offer

(1) The general rule is that a claimant who accepts an offer to settle—

(*a*) within the period stated; or

(*b*) where no period is stated,

for accepting it in the defendant's offer is entitled to payment of the sum which the defendant paid into court to support the offer, without needing a court order.

(2) To obtain payment, the claimant must file a request for payment certifying that the offer has been accepted in accordance with paragraph (1)(*a*) or (*b*).

(3) The general rule is qualified by rule 36.4.

36.4 Cases where payment out requires court order

(1) If a claimant accepts money paid into court—

(*a*) after the end of the period stated for accepting it;

(*b*) by one or more, but not all, of a number of defendants;

(*c*) to settle a claim to which—

(i) Part 23 (claims by minors and patients), or

(ii) rule 36.7 (proceedings under Fatal Accidents Acts) apply; or

(*d*) with a defence of tender before claim,

the money in court may only be paid out under an order of the court.

(2) An order under paragraph (1)(*c*) may not be made by consent.

(3) If—

(*a*) a claimant accepts money paid into court after the trial has begun; and

(*b*) all further proceedings on the claim or that part of it to which the acceptance relates are stayed,

the money in court may only be paid out under a court order.

(4) An order under this Rule must deal with the costs of the proceedings which have been stayed.

36.5 Money paid into court under order

(1) When a party makes a payment into court under a court order that party must give notice of the payment to every other party.

(2) Money paid into court under a court order may not be paid out unless the court gives permission.

(3) Paragraph (2) does not apply where—

(*a*) the money is paid into court by a defendant;

(*b*) in accordance with rule 36.6(2) that defendant chooses to treat the money paid into court as if it were payment into court in support of an offer to settle; and

(*c*) the claimant accepts the offer to settle.

36.6 Money paid into court as condition for permission to defend or to continue to defend

(1) This Rule applies where the court makes an order permitting a defendant to—

(*a*) continue to defend; or

(*b*) defend,

on condition that the defendant makes a payment into court.

(2) If—

(*a*) a defendant makes such a payment into court; and

(*b*) makes an offer to settle (whether before or after the order to pay money into court),

the defendant may choose to treat the whole or any part of the money paid into court as if it were a payment into court made in support of the offer to settle.

(3) To do this the defendant must—

(*a*) file a notice that the defendant so chooses; and

(*b*) serve a copy of it on every other party to the proceedings.

36.7 Proceedings under Fatal Accidents Acts

(1) If a single sum of money is paid into court in satisfaction of proceedings arising under a Fatal Accidents Act and that sum is accepted, the court must apportion that sum between the different causes of action when—

(*a*) giving directions under rule 23.13; or

(*b*) authorising its payment out of court.

(2) If in proceedings arising under a Fatal Accidents Act a claim is made by more than one person and a single sum of money is paid into or apportioned by the court to the cause of action under the Act and is accepted by such persons, the court must apportion the payment between those persons.

PART 37

Discontinuance

37.1 Scope of this Part

(1) The Rules in this Part set out the procedure by which a claimant may discontinue all or any part of a claim.

(2) A claimant who—

(*a*) claims more than one remedy; and

(*b*) subsequently abandons a claim to one or more remedies but continues with the claim for the other remedies,

is not treated as discontinuing part of a claim for the purposes of this Part.

Rule 42.7 deals with consent orders which may include orders bringing a claim to an end by way of a consent judgement or otherwise.

37.2 Right to discontinue claim

(1) The general rule is that a claimant may discontinue all or part of a claim without the permission of the court.

(2) However—

(*a*) a claimant needs permission from the court to discontinue all or part of a claim in relation to which—

(i) any party has given an undertaking to the court, or

(ii) the court has granted an interim injunction;

(*b*) a claimant who has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 17) may discontinue only if the—

(i) court gives permission, or

(ii) defendant who made the payment consents in writing;

(*c*) if there is more than one claimant, a claimant may not discontinue unless—

(i) every other claimant consents in writing, or

(ii) the court gives permission.

(3) If there is more than one defendant the claimant may discontinue all or part of the claim against all or any of the defendants.

37.3 Procedure for discontinuing

(1) To discontinue a claim or any part of a claim a claimant must—

(*a*) serve a notice of discontinuance on every other party to the claim; and

(*b*) file a copy of it.

(2) The claimant must certify on the filed copy that notice of discontinuance has been served on every other party to the claim.

(3) If the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the filed copy of the notice of discontinuance.

(4) If the claimant needs permission from the court, the notice of discontinuance must contain details of the order by which the court gave permission.

(5) If there is more than one defendant, the notice of discontinuance must specify against which defendant or defendants the claim is discontinued.

37.4 Right to apply to have notice of discontinuance set aside

(1) If the claimant discontinues without the consent of the defendant or the permission of the court, any defendant who has not consented may apply to have the notice of discontinuance set aside.

(2) A defendant may not apply under this Rule more than twenty-eight days after the date when the notice of discontinuance was served on that defendant.

37.5 Effect of discontinuance

(1) Discontinuance against any defendant takes effect on the date when the notice of discontinuance is served on that defendant under rule 37.3(1)(*a*).

(2) A claim or the relevant part of a claim is brought to an end as against that defendant on that date.

(3) However, this does not affect—

(*a*) any proceedings relating to costs; or

(*b*) the right of the defendant under rule 37.4 to apply to have the notice of discontinuance set aside.

37.6 Liability for costs

(1) Unless the—

(*a*) parties agree; or

(*b*) court orders otherwise,

a claimant who discontinues is liable for the costs incurred by the defendant against whom the claim is discontinued, on or before the date on which notice of discontinuance was served.

(2) If a claim is only partly discontinued—

(*a*) the claimant is only liable for the costs relating to that part of the claim which is discontinued; and

(*b*) unless the court orders otherwise, the costs which the claimant is liable to pay are not to be quantified until the conclusion of the rest of the claim.

37.7 Quantification of costs

(1) The general rule is that, unless an order has been made for budgeted costs under rule 65.8, the costs are to be determined in accordance with the scale of prescribed costs contained in Part 65, Appendices B and C.

(2) If the claimant discontinues part of the case only, the amount of costs must be assessed by the court when the remainder of the claim is resolved.

(3) In determining the appropriate amount of costs to be paid where an order has been made under rule 65.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

37.8 Discontinuance and subsequent proceedings

If the claimant—

(*a*) discontinues a claim after the defendant against whom the claim is discontinued has filed a defence;

(*b*) makes a subsequent claim against the same defendant arising out of facts which are the same or substantially the same as those relating to the discontinued claim; and

(*c*) has not paid the defendant's costs of the discontinued claim,

the court may stay the subsequent claim until the costs of the discontinued claim are paid.

PART 38

Pre-Trial Review

38.1 Scope of this Part

This Part deals with the pre-trial review which is to be held shortly before trial if the court so orders.

38.2 Direction for pre-trial review

(1) At any case management conference and at any subsequent hearing in the claim other than the trial, the court must consider whether a pre-trial review should be held to enable the court to deal justly with the claim.

(2) A party may apply for a direction that a pre-trial review be held.

(3) An application for a pre-trial review must be made at least sixty days before the trial date or the beginning of any trial period fixed under rule 27.5(3).

(4) The court office must give each party at least fourteen days' notice of the date, time and place for the pre-trial review.

38.3 Rules relating to case management conference to apply

Parts 25 and 26, where appropriate, apply to a pre-trial review as they do to a case management conference.

38.4 Who is to conduct pre-trial review

Wherever practicable the pre-trial review is to be conducted by the trial judge.

38.5 Parties to prepare pre-trial memorandum

(1) The parties must seek to agree on and file at the court office a pre-trial memorandum not less than seven days before the pre-trial review.

(2) If the parties are not able to agree on a memorandum, each party must file its own memorandum and serve a copy on all other parties not less than three days before the date fixed for the pre-trial review.

(3) A pre-trial memorandum must contain—

(*a*) a concise statement of the nature of the proceedings;

(*b*) a statement of the issues to be determined at the trial;

(*c*) details of any admissions made; and

(*d*) the factual and legal contentions of the party or parties filing it.

38.6 Directions at pre-trial review

(1) At the pre-trial review the judge must give directions as to the conduct of the trial in order to ensure the fair, expeditious and economic trial of the issues.

(2) In particular, the court may—

(*a*) decide on the total time to be allowed for the trial;

(*b*) direct either party to provide further information to the other;

(*c*) direct how that time shall be allocated between the parties;

(*d*) direct the parties jointly to prepare one or more of—

(i) a core bundle of documents (that is, a bundle containing only the documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial),

(ii) an agreed statement of facts,

(iii) an agreed statement of the basic technical, scientific or medical matters in issue,

(iv) an agreed statement as to any relevant specialist area of law, which statement shall not be binding on the trial judge;

(*e*) direct when and by whom the documents should be filed at the court;

(*f*) direct whether or not there are to be any opening or closing addresses and the time to be allocated to each;

(*g*) give directions as to the extent to which evidence may be given in written form;

(*h*) give directions as to the procedure to be followed at the trial; and

(*i*) give directions for the filing by each party and service on all other parties of one or more of the following—

(i) a chronology of relevant events,

(ii) a list of authorities which it is proposed to cite in support of those propositions,

(iii) a skeleton argument, and

(iv) a summary of any legal propositions to be relied on at the trial.

PART 39

Trial

39.1 Documents for use at trial

(1) At least twenty-one days before the date fixed for the trial, all parties must inform the claimant of the documents that they wish to have included in the bundle of documents to be used at the trial.

(2) The claimant must prepare a bundle including all the documents which any party wishes to make use of at the trial.

(3) The bundle of documents should separate those which are agreed and those which are not agreed.

(4) The claimant must paginate and index the bundle of documents.

(5) At least ten days before the date fixed for the trial the claimant must file at the court office—

(*a*) a bundle comprising copies of—

(i) all statements of case,

(ii) any document which the parties were ordered to file under rule 38.6(2)(*b*),

(iii) any requests for information and the replies,

(iv) the claim form, and

(v) the pre-trial memorandum or memoranda;

(*b*) a second bundle comprising copies of—

(i) all expert reports,

(ii) all witness statements, and

(iii) any agreed statements under rule 38.6(2)(*d*)(ii)-(iv);

(*c*) a third bundle comprising the documents referred to in paragraph (2); and

(*d*) where the bundles exceed 100 pages of documents in total, a core bundle (that is, a bundle containing only the documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial).

(6) There must be excluded from the bundles prepared under this Rule any—

(*a*) application or order relating to interim payments under Part 17; and

(*b*) offer to settle under Part 35 or notice of payment into court under Part 36,

and any reference to any such payment or offer must be excised from any document contained in the bundles.

(7) If only a counterclaim is to be tried, references in this Rule to the "claimant" should be construed as references to the defendant.

Rule 27.6 allows the court to dispense with all or some of the requirements of this Rule in simple and urgent cases.

39.2 Cross-examination

The court may limit examination, cross-examination or re-examination of any witness.

39.3 Written submissions

(1) The parties may, with the consent of the judge, file written submissions instead of or in addition to closing speeches.

(2) Such written submissions must be filed within seven days of the conclusion of the trial or such shorter period as the judge directs.

39.4 Failure of party to attend trial

If the judge is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these Rules—

(*a*) if any party does not appear at the trial, the judge may strike out the claim;

(*b*) if one or more but not all parties appear, the judge may proceed in the absence of the parties who do not appear.

39.5 Applications to set aside judgement given in party's absence

(1) A party who was not present at a trial at which judgement was given or an order made may apply to set aside that judgement or order.

(2) The application must be made within fourteen days after the date on which the judgement or order was served on the applicant.

(3) The application to set aside the judgement or order must be supported by evidence on affidavit showing—

(*a*) a good reason for failing to attend the hearing; and

(*b*) that it is likely that had the applicant attended, some other judgement or order might have been given or made.

39.6 Adjournment of trial

(1) The judge may adjourn a trial on such terms as the judge thinks just.

(2) The judge may only adjourn a trial to a date and time fixed by the judge or to be fixed by the court office.

39.7 Inspection

The judge trying a claim may inspect any place or thing that may be relevant to any issue in the claim.

PART 40

Appointment of Referee to Inquire and Report

40.1 Power to order trial before referee

If the—

(*a*) court considers that the claim requires—

(i) prolonged examination of documents, or

(ii) scientific or local investigation which cannot conveniently be carried out by the court;

(*b*) matters in dispute are wholly or mainly a matter of account; or

(*c*) parties agree,

then subject to rule 40.7, then the court may order the claim or any issue or allegation to be tried by a referee.

40.2 Reference to referee to inquire and report

The court may refer to a referee for inquiry and report any question or issue of fact arising in a claim.

40.3 Appointment of referee

(1) The general rule is that a referee must be appointed at a case management conference or pre-trial review.

(2) The referee must be a person agreed on by the parties or, if they fail to agree, a person selected by the court in accordance with paragraph (3).

(3) If the parties cannot agree who should be the referee, the court may—

(*a*) select the referee from a list prepared or identified by the parties; or

(*b*) direct that the referee be selected in such other manner as the court directs.

(4) The court must identify the question or issue upon which the referee is to report.

(5) The court must decide what fee is to be paid to the referee and by whom.

(6) Notwithstanding paragraph (5), the court may ultimately order any party to pay the fee of the referee.

40.4 Conduct of reference

(1) For the purpose of the inquiry, the referee has the same powers as the court other than the power to commit for contempt of court.

(2) Unless the court otherwise orders, the referee must adopt the simplest, least expensive and most expeditious method of conducting the reference.

(3) The referee may hold the trial or conduct the inquiry at any place and at any time which appears to the referee to be convenient to the parties.

(4) If a person served with a witness summons to appear before a referee—

(*a*) fails to attend;

(*b*) refuses to answer any lawful question or produce any document at the inquiry; or

(*c*) refuses to be sworn or affirm for the purposes of the inquiry,

the referee must sign and file a certificate of such failure or refusal.

(5) Any party may apply to the court for an order requiring the person served with the witness summons to appear before a referee to attend, be sworn or affirmed, or answer any question or produce any document, as the case may be.

(6) An application for an order under paragraph (5) may be made without notice but must be supported by evidence on affidavit.

(7) In the case of non-attendance, the affidavit must prove—

(*a*) service of the witness summons; and

(*b*) that the person served with the witness summons was paid or offered the payments required by rule 33.6.

(8) An order under this Rule must be served personally on the person served with the witness summons and be endorsed with a notice in accordance with the first form in rule 53.3(*b*).

(9) A person who wilfully disobeys an order made against that person under this Rule commits contempt of court.

(10) The court may order the person against whom an order is made under this Rule to pay any costs resulting from the—

(*a*) failure to attend before a referee;

(*b*) refusal to answer any lawful question or produce any document at the inquiry; or

(*c*) refusal to be sworn or to affirm for the purpose of the inquiry.

Part 53 deals with the procedure to apply to commit a person for contempt of court.

40.5 Report following reference

(1) The report of the referee is to be made to the court.

(2) The referee must supply a copy of the report to each party.

(3) The referee may in the report—

(*a*) make a special statement of facts from which the court may draw inferences; or

(*b*) submit any question for the decision of the court.

40.6 Consideration of report by court

(1) Upon receipt of the report of the referee, the court office must fix a date, time and place for consideration of the report by the court.

(2) The court office must give fourteen days' notice to the parties of such consideration.

(3) The court may—

(*a*) adopt the report in whole or in part;

(*b*) ask the referee to explain any part of the report;

(*c*) decide the question or issue on the evidence taken by the referee;

(*d*) direct that additional evidence be given to the court;

(*e*) remit any question or issue for further consideration; or

(*f*) vary the report.

40.7 Restrictions on appointment of referee in a claim by or against Crown

In a claim by or against the Crown an appointment of a referee may not be made without the consent of the relevant Attorney-General.

PART 41

Accounts and Inquiries

41.1 Scope of this Part

(1) This Part deals with claims—

(*a*) for an account; or

(*b*) for some other relief which requires the taking of an account.

(2) A claim for an account must be made by fixed date claim supported by evidence on affidavit.

Rule 8.1 deals with the issue of a fixed date claim.

Rule 27.2 deals with the first hearing of such a claim.

41.2 Directions for account

(1) If a claim or counterclaim is made for an account or requires the taking of an account, an application for directions relating to the taking of the account must be made at the case management conference or first hearing.

(2) The court may—

(*a*) direct that any preliminary issue of fact be tried;

(*b*) order an account to be taken;

(*c*) order inquiries be made; or

(*d*) order that any amount shown to be due to a party on the account be paid by a date specified in the order.

(3) Every direction that an account be taken must be so numbered that each distinct account and inquiry can be designated by that number.

(4) On directing that an account be taken, or subsequently, the court must direct how it is to be taken or vouched.

(5) The court may direct that any relevant books of account shall be evidence of the matters contained in them, subject to any objection that any party may take.

41.3 Verification of account

(1) When there has been a direction for an account to be taken the accounting party must make out its account and verify it by affidavit exhibiting the account.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the court otherwise orders, the accounting party must file the affidavit and the account and serve a copy on all other parties.

41.4 Notice of omissions

Any party who claims that there are omissions or challenges any item in the account must give notice to the accounting party with the—

(*a*) best particulars that the party who so claims can give of the omission or error; and

(*b*) grounds for alleging it.

41.5 Allowances

In taking any account all just allowances must be made.

41.6 Delay

If there is undue delay in taking the account, the court may—

(*a*) require the accounting party, or any other party, to explain the delay;

(*b*) give directions to expedite the taking of the account;

(*c*) direct any other party to take over the taking of the account; and

(*d*) make such order for costs as is just.

41.7 Distribution before entitlement ascertained

(1) This Rule applies where some, but not all, of the persons entitled to share in a fund are ascertained and there is likely to be delay in determining the existence or entitlement of the other persons.

(2) The court may order immediate payment of their shares to the persons who have been ascertained.

(3) The court need not reserve any part of those shares for the purpose of meeting any subsequent costs of determining the existence or entitlement of the other persons.

PART 42

Judgements and Orders

42.1 Scope of this Part

(1) This Part contains rules about judgements and orders made by the court.

(2) This Part does not apply to the extent that any other rule makes a different provision in relation to the judgement or order in question.

42.2 Parties present when order made or notified of terms to be bound

A party who is—

(*a*) notified of the terms of the judgement or order by telephone, fax or otherwise; or

(*b*) present whether in person or by legal practitioner when the judgement was given or order was made,

is bound by the terms of a judgement or order whether or not the judgement or order is served.

42.3 Practice forms to be used where available

If there is a practice form for a judgement or order of any description, a judgement or order of that description must be in that form.

42.4 Standard requirements

(1) Every judgement or order must state the name and judicial title of the person who made it, unless it is a—

(*a*) consent order under rule 42.7;

(*b*) default judgement under Part 12; or

(*c*) judgement entered on an admission or following a court order under Rule 14.6, 14.7, 14.8, 14.10 or 14.11.

(2) Every judgement or order must—

(*a*) be sealed by the court;

(*b*) bear the date on which it is given or made; and

(*c*) be signed by the registrar.

42.5 Drawing of judgements and orders

(1) Every judgement or order must be drawn by the court, unless—

(*a*) a party with the permission of the court agrees to draft it;

(*b*) it is a consent order under rule 42.7;

(*c*) the court directs a party to draft it; or

(*d*) the court dispenses with the need to do so.

(2) If a draft of an order is directed it must be filed no later than seven days from the date on which the direction was given so that the court office can seal the order.

(3) If a party fails to file a draft of an order within seven days after the direction was given any other party may draw and file the order.

(4) A party who drafts an order must file sufficient copies for service on all parties who are to be served.

42.6 Service of orders

(1) Unless the court otherwise directs the court office must serve every judgement or order on—

(*a*) any person on whom the court orders it to be served; and

(*b*) every party to the claim in which the judgement or order is made.

Part 6 deals with service.

(2) If a party is acting by a legal practitioner, the court may direct that any judgement or order be served on the party in person as well as on the legal representative.

42.7 Consent judgements and orders

(1) Subject to paragraphs (2) to (5), a consent order or judgement must be—

(*a*) drawn in the terms agreed;

(*b*) expressed as being "By Consent";

(*c*) signed by the legal practitioner acting for each party to whom the order relates; and

(*d*) filed at the court office for sealing.

(2) This Rule applies where—

(*a*) all relevant parties agree to the terms in which judgement should be given or an order made; and

(*b*) none of these Rules prevents the parties agreeing to vary the terms of any court order.

(3) Except as provided by paragraphs (4) and (5), this Rule applies to the following kinds of judgements or orders—

(*a*) a judgement for—

(i) costs,

(ii) the delivery up of goods with or without the option of paying the value of the goods to be assessed or the agreed value, and

(iii) the payment of a debt or damages (including a judgement or order for damages or the value of goods to be assessed);

(*b*) an order for the—

(i) discharge from liability of any party,

(ii) dismissal of any claim, wholly or in part,

(iii) payment, assessment or waiver of costs, or such other provision for costs as may be agreed,

(iv) payment out of money which has been paid into court,

(v) setting aside of a default judgement under Part 13,

(vi) stay of enforcement of a judgement, either unconditionally or on condition that the money due under the judgement is payable on a stated date or by instalments specified in the order, and

(vii) stay of proceedings on terms which are attached as a schedule to the order but which are not otherwise part of it (a "Tomlin Order"); and

(*c*) any procedural order other than one falling within rule 26.7(3) or rule 27.8(1) and (2).

(4) This Rule does not apply—

(*a*) in Admiralty proceedings;

(*b*) where any party is a litigant in person;

(*c*) where any party is a minor or patient; or

(*d*) where the court's approval is required by these Rules or any enactment before an agreed order can be made.

(5) This Rule does not allow the making of a consent order by which any hearing date fixed by the court is to be adjourned.

42.8 Time when judgement or order takes effect

A judgement or order takes effect from the day it is given or made, unless the court specifies that it is to take effect on a different date.

42.9 Time for complying with judgement or order

A party must comply with a judgement or order immediately, unless the—

(*a*) claimant, on requesting judgement in default under Part 12 or judgement on an admission under Part 14, specifies a different time for compliance;

(*b*) court varies the time for compliance including specifying payment by instalments; or

(*c*) judgement or order specifies some other date for compliance.

42.10 Correction of errors in judgements or orders

(1) The court may at any time (without an appeal) correct a clerical mistake in a judgement or order, or an error arising in a judgement or order from any accidental slip or omission.

(2) A party may apply for a correction without notice.

42.11 Cases where court gives judgement both on claim and counterclaim

(1) This Rule applies where the court gives judgement for specified amounts both for the claimant on the claim and the defendant on the counterclaim.

(2) If there is a balance in favour of one of the parties, the court may order the party whose judgement is for the lesser amount to pay the balance.

(3) In a case to which this Rule applies, the court may make against the claimant and the defendant (whether or not it makes an order under paragraph (2)) a separate order as to—

(*a*) costs; or

(*b*) damages.

42.12 Service of copy order on person not a party

(1) If in any claim an order is made which might affect the rights of persons who are not parties to the claim, the court may at any time direct that a copy of any judgement or order be served on any such person.

(2) Service must be effected in accordance with Part 5 and the court may direct which party is to be responsible for service.

(3) The copy order must be endorsed with a notice in Form 13.

(4) The court may dispense with service of the copy order or judgement if it appears impracticable to serve that person.

(5) Any person so served, or on whom service is dispensed with—

(*a*) is bound by the terms of the judgement or order; and

(*b*) may take part in any proceedings under the judgement or order.

(6) Notwithstanding paragraph (5), any person to whom that paragraph applies may apply within twenty-eight days to discharge, vary or add to the judgement or order.

PART 43

Enforcement – General Provisions

43.1 Scope of this Part

(1) This Part deals generally with the enforcement of judgements and orders.

(2) In this Part and in Parts 44 to 53—

"judgement creditor" means the person who is entitled to enforce a judgement or order; and

"judgement debtor" means the person who is liable to enforcement under the judgement or order, even though the judgement or order is not a money judgement.

43.2 Procedure for beginning enforcement

(1) The general rule is that, once a judgement or order has become enforceable, the court must issue an enforcement order if the judgement creditor files the appropriate request.

(2) If any of these Rules requires permission to begin enforcement proceedings the judgement creditor must first obtain that permission.

43.3 Judgement subject to condition

(1) A person who has a judgement or order subject to the fulfilment of a condition may not enforce the judgement or order unless the—

(*a*) condition is fulfilled; or

(*b*) court gives permission for the judgement or order to be enforced.

(2) If a person has the benefit of a judgement or order subject to fulfilment of a condition and there is a failure to fulfil that condition, then unless the court otherwise orders—

(*a*) that person loses the benefit of the judgement or order; and

(*b*) any other person interested under the judgement or order may take any step which—

(i) is warranted by the judgement or order, or

(ii) might have been taken if the judgement or order had not been given.

43.4 Separate enforcement for costs

A judgement creditor who has judgement with costs may enforce the judgement and the costs separately.

43.5 Effect of order setting aside judgement or order

(1) The general rule is that if the court sets aside a judgement or order, any order made for the purpose of enforcing it ceases to have effect.

(2) The court may however direct that an order remains in force.

43.6 Court's powers where person ordered to do act fails to comply

(1) If—

(*a*) the court orders a party to do an act; and

(*b*) that party does not do it,

the judgement creditor may apply for an order that—

(i) the judgement creditor, or

(ii) some person appointed by the court,

may do the act.

(2) The court may order the judgement debtor to pay the costs and expenses of the person who does the act.

(3) If the court makes an order under paragraph (2), it must assess the costs under rule 65.11 and determine the amount of expenses to be allowed.

Part 53 deals with contempt proceedings.

43.7 Judgement for sum in foreign currency

If the court gives judgement for a sum expressed in a currency of a country other than that in use in the Member State or Territory in which the judgement is to be enforced, the judgement creditor must, when commencing enforcement proceedings, file a certificate stating the exchange rate current in the Member State or Territory where enforcement is to be carried out (for the purpose of the unit of foreign currency in which the judgement is expressed) at the close of business on the previous business day.

43.8 Enforcement by or against person who is not a party

(1) A judgement or order in favour of a person who is not a party may be enforced in the same way as a judgement or order in favour of a party.

(2) A judgement or order against a person who is not a party may be enforced in the same way as a judgement or order against a party.

43.9 Enforcement against partnership

(1) This Rule has effect where the court gives a judgement or makes an order against a firm or partnership.

(2) A judgement creditor may enforce the judgement or order against—

(*a*) any of the firm's property; or

(*b*) any person who—

(i) has acknowledged service as a partner in the firm,

(ii) has admitted in a statement of case to being a partner in the firm,

(iii) was adjudged by the court to be a partner,

(iv) was served with the claim form as a partner within the jurisdiction or, with leave of the court under Part 7, out of the jurisdiction, or

(v) in Saint Lucia, is registered as a partner in the firm under article 20 of the Commercial Code, Chapter 243.

(3) In a case to which paragraph (2) does not apply the judgement creditor may issue enforcement proceedings against a person whom it claims to be a partner if it has the court's permission to do so.

(4) Notice of an application for permission must be served on the person against whom the judgement creditor seeks to enforce judgement and must be supported by evidence on affidavit.

(5) A judgement or order given or made on a claim by—

(*a*) or against a firm against or by a member of the firm; or

(*b*) another firm against a firm where the two firms have one or more partners in common,

may not be enforced without the permission of the court.

43.10 Enforcement of awards, etc., made by outside bodies

(1) This Rule has effect as to the—

(*a*) enforcement of an award not made by the court but which is enforceable by virtue of a statutory provision as if it were an order of the court; and

(*b*) registration of such an award so that it may be enforceable as if it were an order of the court.

(2) In this Rule—

"award" means the award, order or decision which it is sought to enforce; and

"outside body" means any authority other than the court.

(3) The general rule is that an application—

(*a*) for permission to enforce an award; or

(*b*) to register an award,

may be made without notice but must be supported by evidence on affidavit.

(4) The general rule does not apply where a rule or statutory provision requires notice to be given.

(5) The applicant must—

(*a*) exhibit to the affidavit the award or a copy of it;

(*b*) give an address for service on the person against whom the applicant seeks to enforce the award; and

(*c*) (if the award is for the payment of money), certify the amount remaining due to the applicant.

PART 44

Oral Examination in Aid of Enforcement

44.1 Scope of this Part

This Part deals with the examination of a judgement debtor to obtain information to assist in enforcing a judgement. Such an examination is called an "oral examination".

44.2 Who may be orally examined

(1) The following persons may be ordered to attend an oral examination—

(*a*) the judgement debtor; or

(*b*) an officer or former officer of a judgement debtor which is a body corporate.

(2) A person referred to in paragraph (1) is called "the examinee".

44.3 Procedure to obtain order for oral examination, etc.

(1) Where permission is not required to enforce the judgment, a request for an order that a person attend an oral examination may be made, by filing a request as specified in Form 29 or 30 of the Appendix, as the case requires, which contains the information required by the relevant practice direction.

(2) Where permission is required to enforce the judgement, an application for an order that a person attend an oral examination must be made, and a copy of the permission must be attached to the application. An application under this paragraph may be made without notice.

(3) Where a request or an application for the order is against an officer or a body corporate, the request or the application must be supported by evidence on affidavit, showing that the person to be orally examined is such an officer.

44.4 Order for oral examination

(1) The order, in Form 14, must state the date, time and place of the examination.

(2) The judgement creditor must serve the order personally on the examinee at least seven days before the date fixed for the examination.

(3) The judgement creditor must file an affidavit of service not less than three days before the date fixed for the examination.

44.5 Conduct of oral examination

(1) The examination may take place before the registrar or an officer of the court authorised by the Chief Justice.

(2) A person referred to in paragraph (1) is called "the examiner".

(3) The examination must be on oath or affirmation.

(4) The statement made by the examinee must be taken down and read to the examinee who must then be asked to sign it.

(5) If the examinee refuses to sign the statement it must be signed by the examiner and certified to be a true record of the examination.

(6) If the examinee—

(*a*) fails to attend;

(*b*) refuses to be sworn or affirm; or

(*c*) refuses to answer any question,

the examiner may adjourn the examination to a judge.

(7) The notice of the adjourned hearing must be in Form 15.

(8) The judgement creditor must—

(*a*) serve the examinee personally with the notice of the adjourned hearing endorsed with the first form of notice set out in rule 53.3(*b*) at least seven days before the adjourned examination; and

(*b*) file an affidavit proving service of Form 15 and that the examinee was offered his or her travelling expenses to and from the court.

44.6 Order for payment by instalments

If the parties agree that the judgement debt should be paid by instalments or at some future date, the court office may draw an order to that effect.

44.7 Financial position notice

(1) If the judgement to be enforced is a money judgement, the judgement creditor may serve, in addition to or in place of an order for an oral examination, a financial position notice in Form 16 requiring a judgement debtor to complete a statement of the judgement debtor's financial position in the practice form and serve it on the judgement creditor within fourteen days of service.

(2) The judgement creditor may notify the court if satisfied with the information provided by the judgement debtor.

(3) The court office must then notify the person to be examined that he or she need not attend the examination.

(4) If the judgement debtor is a body corporate, the financial position notice must require an officer of the body corporate to comply with paragraph (1).

How Judgements may be Enforced

45.1 Scope of this Part

This Part sets out the ways in which judgements may be enforced. It has effect subject to any enactment as to enforcement of judgements in force for the time being in any Member State or Territory.

45.2 How money judgements may be enforced

A judgement or order for payment of a sum of money other than an order for payment of money into court may be enforced by—

(*a*) a charging order under Part 48;

(*b*) a garnishee order under Part 50;

(*c*) (subject to the restrictions of any relevant Debtors Act) a Judgement Summons under Part 52;

(*d*) on order for the seizure and sale of goods under Part 46; or

(*e*) the appointment of a receiver under Part 51.

45.3 Enforcement of orders for payment of money into court

(1) An order for the payment of money into court may be enforced by—

(*a*) a committal order under Part 53;

(*b*) an order for sequestration of assets under Part 53; or

(*c*) the appointment of a receiver under Part 51.

(2) An order for committal or sequestration of assets under paragraph (*a*) or (*b*) may be made only if the order requires payment to be made within a specified time or by a specified date.

45.4 Enforcement of judgements and orders for possession of land

(1) A judgement or order for the possession of land may be enforced by—

(*a*) a committal order under Part 53;

(*b*) a sequestration of assets order under Part 53; or

(*c*) a writ of possession of land.

(2) An order for committal or sequestration of assets under paragraph (*a*) or (*b*) may be made only if the court has given a judgement or made an order requiring possession of land to be given within a specified time or by a specified date.

45.5 Enforcement of judgements and orders for delivery of goods

(1) The ways in which an order for delivery of goods may be enforced depend on whether or not the judgement or order gives the judgement debtor the choice of paying the assessed value of the goods.

(2) If it gives the judgement debtor the choice, the means of enforcement are a writ of—

(*a*) delivery to recover the goods or their assessed value under Part 46; or

(*b*) specific delivery for the recovery of specified goods under Part 46.

(3) A judgement creditor may only obtain a writ of specific delivery under paragraph (2)(*b*) if the court gives permission under rule 46.9.

(4) If the judgement or order gives the judgement debtor the choice of paying the assessed value of the goods, that judgement or order may not be enforced by order of committal under Part 53.

(5) However on the application of the judgement creditor the court may make an order requiring the judgement debtor to deliver the goods to the judgement creditor within a specified time or by a specified date, and if the judgement debtor does not comply, that order may be enforced by an order for committal under Part 53.

(6) If the judgement or order does not give the judgement debtor the choice of paying the assessed value of the goods, or an order is made under rule 46.9, the means of enforcing the order are by orders for—

(*a*) committal under Part 53;

(*b*) recovery of specified goods under Part 46; or

(*c*) sequestration of assets under Part 53.

(7) The judgement creditor may obtain an order for sequestration of assets or committal under paragraph (5) or (6) only if the court has given a judgement or made an order requiring delivery within a specified time.

45.6 Enforcement of judgements and orders requiring person to do act within specified time or not to do act

A judgement or order which requires a person to—

(*a*) abstain from doing an act; or

(*b*) do an act within a specified time or by a specified date; may be enforced by an order under Part 53 for—

(i) committal, or

(ii) sequestration of assets.

45.7 Enforcement of judgements and orders requiring body corporate to do act within specified time or not to do act

(1) If the court gives a judgement or makes an order under rule 45.6 which requires a body corporate to do or abstain from that act it may make an order under Part 53 for—

(i) committal or for sequestration of assets against an appropriate person, or

(ii) sequestration of assets of the body corporate.

(2) In this Rule "appropriate person" means a director or other officer of the body corporate.

PART 46

General Rules about Writs of Execution

46.1 Meaning of "writ of execution"

In these Rules a "writ of execution" means any of the following—

(*a*) an order for the sale of land (or, in Saint Lucia, a writ for the seizure and sale of immovable property);

(*b*) an order for the seizure and sale of goods a writ of *fieri facias* (or, in Saint Lucia, a writ for the seizure and sale of moveable property);

(*c*) an order for sequestration of assets;

(*d*) a writ of delivery, being either an order for—

(i) recovery of specified goods, or

(ii) the recovery of goods or their assessed value; and

(*e*) a writ of possession.

Part 53 deals with enforcement by an order for sequestration of assets.

46.2 Permission required to enforce in certain cases

A writ of execution may not be issued without permission if—

(*a*) any party against whom a judgement or order was liable to be enforced is no longer liable to have it enforced against it;

(*b*) any statutory provision requires the permission of the court to be obtained before judgement is enforced;

(*c*) 6 years have elapsed since the judgement was entered;

(*d*) the goods against which it is wished to enforce the judgement or order are in the hands of a receiver or confiscator appointed by the court;

(*e*) the judgement creditor is no longer entitled to enforce the order;

(*f*) the judgement debtor has died and the judgement creditor wishes to enforce against assets of the deceased person which have passed to that person's personal representatives since the date of the order; or

(*g*) the judgement was made subject to conditions.

46.3 Application for permission to enforce

(1) An application for permission may be made without notice unless the court otherwise directs but must be supported by evidence on affidavit.

(2) On an application for leave the applicant must satisfy the court that it is entitled to proceed to enforce the judgement or order, and, in particular must satisfy the court—

(*a*) if the judgement is a money judgement – as to the amount—

(i) originally due, and

(ii) due together with interest at the date of the application;

(*b*) if rule 46.2(*c*) applies – as to the reasons for the delay;

(*c*) if rule 46.2(*a*) or (*e*) applies – as to the change that has taken place;

(*d*) if rule 46.2(*d*) or (*f*) applies – that a demand to satisfy the judgement or order has been made on the person holding the assets and that that person has refused or failed to do so;

(*e*) that the applicant is entitled to enforce the judgement; and

(*f*) that the person against whom enforcement is sought is liable to satisfy the judgement.

46.4 Amount to be recovered on enforcement

(1) A judgement creditor may recover on a writ of execution—

(*a*) fixed costs in accordance with rule 65.4;

(*b*) interest on a money judgement; and

(*c*) the balance of any money judgement.

(2) The rate of interest payable on a judgement debt is the statutory rate of interest unless the court has directed that some other rate shall apply.

(3) Unless the court otherwise orders, the amount for which a writ of execution may be issued may include the unpaid fixed costs and fees of any previous enforcement proceedings on the same judgement.

46.5 Enforcement of judgement or order requiring the judgement debtor to do two or more different things

If a judgement or order requires the judgement debtor to do two or more different things, the judgement creditor may obtain—

(*a*) a single writ of execution to enforce every part of the judgement or order; or

(*b*) separate writs of execution to enforce one or more parts of it.

46.6 No writ of execution against Crown

A writ of execution may not be issued where the judgement debtor is the Crown.

46.7 Enforcement of judgement for payment by instalments

(1) This Rule has effect where the court has made an order for payment by instalments of—

(*a*) a sum of money; or

(*b*) the value of goods assessed,

after the court has made an order for the recovery of goods or their assessed value and the judgement debtor has failed to pay one or more instalments.

(2) The judgement creditor may issue an order for the seizure and sale of the goods for the purpose of recovering the whole of the amount recoverable under the judgement and not merely the instalment(s) in arrears.

46.8 No writ of execution for goods or payment of assessed value unless court has assessed value

A judgement creditor may not issue a writ of delivery for the recovery of goods or payment of their assessed value unless that value has previously been assessed by the court or an order has been made under rule 46.9.

46.9 Order for specific delivery

(1) If the court makes an order for delivery of goods or payment of their assessed value, the judgement creditor may apply to the court for permission to issue an order for delivery of specified goods without the alternative of payment of the assessed value.

(2) An application for permission must be served on the defendant whether or not that defendant has filed an acknowledgment of service.

46.10 Period for which writ of execution is valid

(1) A writ of execution is valid for a period of 12 months beginning with the date of its issue.

(2) After that period the judgement creditor may not take any step under the writ unless the court has renewed it.

46.11 Renewal of writ of execution

(1) The judgement creditor may apply for the renewal of a writ of execution.

(2) The general rule is that an application for renewal must be made within the period for which the writ is valid.

(3) If the judgement creditor applies for renewal after the end of that period, the court may renew the writ only if it is satisfied that the judgement creditor has—

(*a*) taken all reasonable steps to execute the writ or some part of it; and

(*b*) been unable to do so.

(4) An application for renewal may be made without notice but must be supported by evidence on affidavit.

(5) The judgement creditor must state in the affidavit under paragraph (4) whether or not the judgement creditor is aware of any other judgement creditor and, if so, give such details of which the judgement creditor is aware as to the money due from the judgement debtor to each such judgement creditor.

(6) On such an application the court must have regard to the interests of any other judgement creditor of whose existence it is aware.

46.12 Period for which court may renew writ of execution

On an application for renewal of a writ of execution the court may renew it for a period of not more than 6 months.

46.13 Effective date of renewed writ unchanged

(1) The renewal of a writ of execution does not change its effective date.

(2) The effective date is therefore still that of the writ as originally issued.

(3) The priority of the renewed writ and of any other writ of execution must be determined accordingly.

46.14 Claims to goods seized under writ of execution

If—

(*a*) goods are seized under a writ of execution; and

(*b*) some person other than the judgement creditor or judgement debtor subsequently claims any of them,

the validity of the writ of execution is extended until the end of 12 months from the conclusion of interpleader proceedings on that claim.

Part 54 deals with interpleader proceedings.

46.15 Suspension of writ of execution at request of judgement creditor

(1) The judgement creditor may ask the sheriff to suspend execution.

(2) If the judgement creditor does so, neither the judgement creditor nor the sheriff may take any further step under the writ of execution unless the court first renews it.

46.16 Return to writ of execution

(1) A judgement creditor who has issued a writ of execution may serve a notice on the sheriff requiring the sheriff to make a return of the manner in which it has been executed.

(2) If the sheriff fails to comply with the notice within fourteen days the judgement creditor may apply to the court for an order directing the sheriff to comply.

PART 47

Variation of Terms of Judgements and Suspension of Writs

47.1 Scope of this Part

This Part deals with—

(*a*) variation of the terms of a judgement for payment of a specified sum of money as to the time and method of payment; and

(*b*) suspension of orders for the seizure and sale of goods and writs of delivery.

47.2 Applications to vary time and method of payment or to suspend order for seizure and sale of goods or writ of delivery

(1) This Rule applies to—

(*a*) judgements for payment of a sum of money;

(*b*) judgements for the delivery of goods or payment of their value;

(*c*) orders for seizure and sale of goods; and

(*d*) writs of delivery where the defendant has the alternative of paying the assessed value.

(2) An application by the judgement debtor to vary the terms of the judgement as to the time or method of payment or to suspend a writ of execution under this Rule must be supported by evidence in the appropriate practice form.

47.3 Where no objection except as to terms – procedure

(1) The court must serve the application to vary or suspend on the judgement creditor.

(2) The judgement creditor may file and serve on the judgement debtor objections to the application.

(3) If the judgement creditor does not do so before the end of fourteen days from the date of service of the application, the court may make an order according to the terms which the judgement debtor asks.

(4) If the judgement creditor objects only to the rate and time of any payment proposed by the judgement debtor, the court—

(*a*) may decide the rate and time of payments; and

(*b*) may make an order suspending the writ of execution on those terms.

(5) The court may make this decision without a hearing.

(6) The court office must serve a copy of the order made under paragraph (3) or (4) on the judgement creditor and judgement debtor.

47.4 Application for redetermination of court's decision

(1) The judgement creditor or the judgement debtor may apply to the court to re-determine the decision.

(2) The application may not be made more than fourteen days after the date of service of the court's order under rule 47.3(6).

(3) The court office must fix a hearing and give the judgement creditor and judgement debtor at least seven days' notice of the date, time and place of the hearing.

47.5 Where judgement creditor objects to variation or suspension

If the judgement creditor gives the court notice that it does not agree to any variation as to the time or method of payment or suspension of the writ of execution on any terms, the court office must fix a hearing and give the judgement creditor and judgement debtor at least seven days' notice of the date, time and place of the hearing.

47.6 Pre-suspension costs

If the court hears an application to vary the judgement or suspend a writ of execution it may add to the judgement debt—

(*a*) any costs or fees incurred by the judgement creditor in connection with any writ of execution; and

(*b*) the costs of the application for variation or suspension,

and such costs must be assessed by the court.

Rule 65.11 deals with assessed costs.

47.7 Judgement creditor's right to re-issue writ of execution

(1) A judgement creditor may re-issue a writ of execution if—

(*a*) execution has been suspended on terms; and

(*b*) the judgement debtor has not complied with those terms.

(2) The re-issued order has the same priority as the original order.

PART 48

Charging Orders

48.1 Scope of this Part and definitions

(1) This Part deals with the enforcement of a judgement debt by charging—

(*a*) stock (including stock held in court); and

(*b*) other personal property.

(2) In this Part—

"proper officer" means the court officer who is responsible for the custody of funds in court; and

"stock" includes securities, shares and dividends arising therefrom.

48.2 How to apply for charging order

(1) An application for a charging order must be made on the appropriate practice form.

(2) The application is to be made without notice but must be supported by evidence on affidavit.

(3) An application for a charging order relating to stock may incorporate an application for an order for sale of such stock under rule 48.11.

48.3 Evidence in support of application for charging order

(1) This Rule sets out the evidence required to support an application for a charging order.

(2) The affidavit must—

(*a*) certify the amount remaining due under the judgement;

(*b*) identify the judgement or order to be enforced;

(*c*) state that the applicant is entitled to enforce the judgement;

(*d*) state that to the best of the deponent's information and belief the debtor is beneficially entitled to the stock or personal property as the case may be;

(*e*) state the name and address of every person who is believed to be an unsecured creditor of the judgement debtor;

(*f*) state the name and address of the judgement debtor;

(*g*) where the application relates to stock—

(i) identify the company and the stock of that company to be charged,

(ii) identify any person who has responsibility for keeping a register of the stock,

(iii) state whether any person other than the judgement debtor is believed to have an interest in that stock whether as a beneficiary, a joint owner or trustee, and

(iv) if so, give the names and addresses of such persons and details of their interest; and

(*h*) in the case of any other personal property—

(i) identify that property, and

(ii) state whether any other person is believed to have an interest in the property.

48.4 Single charging order for more than one judgement debt

A judgement creditor may apply for a single charging order in respect of more than one judgement or order against a judgement debtor.

48.5 Procedure for making provisional charging order

(1) In the first instance the court must deal with an application for a charging order without a hearing and may make a provisional charging order.

(2) On the application of the judgement creditor the court may grant an injunction to secure the provisional charging order.

(3) An application for an injunction may be made without notice and may remain in force until seven days after the making of an order under rule 48.8(4).

48.6 Interested persons

(1) In this Part "interested persons" means the persons specified in paragraph (2) as well as the judgement creditor and the judgement debtor.

(2) The interested persons are—

(*a*) any person who is responsible for keeping the register of stock for that company;

(*b*) any person who owns the stock to be charged jointly with the judgement debtor;

(*c*) any unsecured creditor;

(*d*) if the stock is held in court, the proper officer;

(*e*) the company whose stock is to be charged;

(*f*) if the stock is held by the judgement debtor as a trustee – such of the other trustees and beneficiaries as the court may direct;

(*g*) if the stock is held under a trust – the trustees or such of them as the court may direct; and

(*h*) any other person who has an interest in the personal property to be charged.

48.7 Service of provisional charging orders and of copies

(1) If the court makes a provisional charging order, the judgement creditor must serve on the judgement debtor in accordance with Part 5—

(*a*) a copy of the affidavit in support of the application for the order; and

(*b*) the order.

(2) The judgement creditor must also serve a copy of the order on the interested persons listed in the affidavit filed in support of the application.

(3) Any interested person other than the company and the person responsible for keeping the register must be served personally.

(4) The provisional charging order must state the date, time and place when the court will consider making a final charging order.

(5) The order and copy orders must be served at least twenty-eight days before the hearing.

(6) The judgement creditor must file an affidavit of service not less than seven days before the hearing.

48.8 Making of final charging order

(1) This Rule deals with the—

(*a*) filing of objections to a provisional charging order; and

(*b*) making of a final charging order.

(2) The following persons may file objections to a provisional charging order—

(*a*) any interested person;

(*b*) the judgement creditor; and

(*c*) the judgement debtor.

(3) The objection must be filed not less than fourteen days before the hearing.

(4) At the hearing, if satisfied that the provisional charging order has been served on the judgement debtor, the court has power to—

(*a*) discharge the provisional charging order;

(*b*) give directions for the resolution of any objection that cannot be fairly resolved summarily; or

(*c*) make a final charging order.

(5) If the court makes an order under paragraph (4)(*b*), it may continue any injunction made under rule 48.5 until seven days after the application is finally determined.

(6) A copy of the charging order must be served by the court office on—

(*a*) any interested person who has filed an objection;

(*b*) the judgement creditor;

(*c*) the judgement debtor; and

(*d*) in the case of stock—

(i) any person who has responsibility for keeping a register of the stock, and

(ii) the company.

(7) Every copy of the charging order served on—

(*a*) any person who has responsibility for keeping a register of the stock; and

(*b*) the company,

must contain a stop notice.

Part 49 deals with the effect of a stop notice.

48.9 Effect of provisional or final charging order

(1) A disposition by a judgement debtor of an interest in property subject to a provisional or final charging order is not valid against the judgement creditor.

(2) Any person or body on whom an order was served under rule 48.6(2)(*a*) or (*e*) must not permit the transfer of any stock specified in the order or pay any interest or dividend payable out of the stock to any person while the order remains in force.

(3) If after service of the order the person or body listed in rule 48.6(2)(*a*) or (*e*) makes a transfer or payment prohibited by paragraph (2), that person or body is liable to pay the judgement creditor an amount equivalent to the value of the stock transferred or payment made or as much of it as is necessary to satisfy the judgement debt and costs.

48.10 Discharge or variation of final charging order

(1) An application to discharge or vary a final charging order may be made by—

(*a*) any interested person;

(*b*) the judgement creditor; or

(*c*) the judgement debtor.

(2) Notice of application must be served on the—

(*a*) judgement creditor and judgement debtor, if made by an interested person;

(*b*) judgement creditor, if made by the judgement debtor; or

(*c*) judgement debtor, if made by the judgement creditor.

(3) Any order must be served on every person on whom the final charging order was served.

48.11 Enforcement of charging order by sale

(1) If a judgement creditor wishes to enforce a charging order of stock or personal property by sale, the judgement creditor may apply to the court for an order for sale of the stock or personal property.

(2) The application must be supported by evidence on affidavit.

(3) Notice must be served on the judgement debtor.

(4) The court may give such directions as seem appropriate to secure the expeditious sale of the stock or property charged at a price that is fair to both judgement creditor and judgement debtor.

PART 49

Stop Notices and Stop Orders

49.1 Scope of this Part

(1) This Part enables a person by obtaining a—

(*a*) stop notice – to be notified of proposed dealings relating to stock;

(*b*) stop order – to prevent certain specified steps being taken with regard to stock or funds in court.

(2) In this Part—

"proper officer" means the officer of the court who is responsible for the custody of funds in court;

"specified steps" means—

(*a*) in the case of stock or funds in court – the transfer, sale or other dealing with the stock or funds or the payment out of the income thereof;

(*b*) the making of any payment by way of dividend, interest or otherwise in respect of the stock;

(*c*) the registration of any transfer of the stock;

"stop notice" means a notice requiring any person or body on whom it is served to refrain from taking, in respect of any of the stock specified in the notice, any of the specified steps without first notifying the person by whom, or on whose behalf, the notice was served; and

"stop order" means an order of the court prohibiting the taking, in respect of any of the stock or funds in court specified in the order, any of the specified steps.

49.2 Right to apply for stop notice

Any person who claims to be beneficially entitled to an interest in stock may apply for a stop notice.

49.3 Procedure for obtaining stop notice

(1) Anyone who wants the court office to issue a stop notice may obtain one by filing a notice in the practice form.

(2) The applicant must also file an affidavit which—

(*a*) gives an address for service for the applicant;

(*b*) identifies the stock; and

(*c*) identifies the applicant's interest in it.

(3) The court office must then issue a stop notice.

(4) Anyone who applies to the court to issue a stop notice is referred to as the "applicant".

49.4 Service

(1) The applicant must serve a copy of the—

(*a*) affidavit; and

(*b*) stop notice,

on the company and any keeper of the register on whom the applicant would have had to serve a charging order relating to the stock in accordance with rule 48.7.

(2) After that, so long as the stop notice is in force, neither the company nor the keeper of the register may register any transfer of the stock or take any step mentioned in the stop notice until fourteen days after sending a notification of the proposed registration or other step to the applicant.

49.5 Amendment of stop notice

(1) If a stop notice describes any stock incorrectly, the applicant may ask the court office to issue an amended notice.

(2) The application may be made without notice.

Rule 49.4 applies to an amended notice as it applies to the original notice.

49.6 Withdrawal or discharge of stop notice

(1) The person on whose behalf the court office issued a stop notice may withdraw it by serving a notification of withdrawal on the court and on every person on whom the stop notice was served.

(2) On the application of any person claiming to be beneficially interested in the stock to which a stop notice relates, the court may by order discharge or vary the notice.

(3) An application for such an order must be served on the person on whose behalf the court originally issued the stop notice.

(4) The application must be supported by evidence on affidavit.

49.7 Stop orders

(1) The court may make a stop order relating to—

(*a*) funds in court; or

(*b*) stock.

(2) The stop order may prohibit the taking of any of the specified steps.

49.8 Procedure on application for stop order

(1) Any person claiming to be beneficially entitled to stock may apply for a stop order.

(2) In the case of money in court any person—

(i) who has a mortgage or charge on the interest of any person in funds in court,

(ii) to whom that interest has been assigned, or

(iii) who is a judgement creditor of the person entitled to that interest; may apply for a stop order.

(3) Notice of an application for a stop order must be served by the applicant at least seven days before the hearing on any person whose interest may be affected by the order and, in the case of funds in court, on the proper officer.

49.9 Power to vary or discharge stop order

The court may vary or discharge a stop order on the application of any person claiming to be entitled to any interest in the stock to which the order relates.

PART 50

Attachment of Debts

50.1 Scope of this Part

(1) This Part provides a procedure under which a judgement creditor can obtain payment of all or part of a judgement debt from a person who owes the judgement debtor money.

(2) In this Part—

"attachment of debts order" means the order served on a garnishee attaching a debt in the garnishee's hands;

"garnishee" means a debtor in whose hands a debt has been attached; and

"proper officer" means the officer of the court who is responsible for the custody of funds in court.

(3) The attachment of debts order may require the garnishee to pay enough to satisfy the fixed costs of the attachment of debt proceedings as well as the judgement debt.

Part 65, Appendix A sets out the fixed costs.

50.2 Circumstances in which court may make order for attachment of debts

(1) The attachment of debts procedure may not be used if the order is to pay money into court.

(2) An attachment of debts order can be made only against a garnishee who is within the jurisdiction.

(3) An attachment of debts order may not be made to attach debts due from the Crown.

Rule 59.7(3) provides an alternative procedure in this situation.

(4) A debt may be attached if it—

(*a*) is due or accruing to the judgement debtor from the garnishee on the date that the provisional order under rule 50.3 is served on the garnishee; or

(*b*) becomes due or accrues due to the judgement debtor at any time between the service of the provisional order under rule 50.3 and the date of the hearing.

50.3 Procedure – making of provisional order

(1) An application by a judgement creditor for an attachment of debts order must be in the appropriate practice form.

(2) The application may be made without notice but must be supported by evidence on affidavit.

(3) If the court considers that on the evidence submitted the judgement creditor is entitled to an attachment of debts order, it must make a provisional order.

(4) The court must do this without a hearing.

(5) The court office must state in the provisional order the date, time and place of the hearing.

50.4 Money in bank accounts, etc.

(1) An attachment of debts order may be made in respect of any type of debt but includes money standing to the credit of any account of the judgement debtor with a bank or other financial institution.

(2) An attachment of debts order must not require a payment that would reduce below EC$50 the amount standing in the name of a judgement debtor in an account with a bank or other financial institution.

50.5 Joint funds

(1) This Rule applies where an application is made to attach a fund which is owned jointly by the judgement debtor and another person or persons.

(2) The evidence in support of the application must state—

(*a*) details of the joint fund;

(*b*) the names and addresses of the person or persons who own the fund jointly with the judgement debtor; and

(*c*) if the applicant claims that the judgement debtor is entitled to more than an equal share in the fund – the grounds for that claim.

(3) Each owner of the fund must be served with the provisional attachment of debts order and the evidence in support.

50.6 Presumption of equal shares in joint funds

(1) The general rule is that a fund held jointly by the judgement debtor and another person or persons is to be presumed to be owned in equal shares.

(2) Any person served under rule 50.5(3) may apply to the court to determine the actual beneficial entitlement of each owner of the joint fund.

50.7 Attachment of debts owed by firm

(1) This Rule applies to the attachment of debts due or accruing due from a firm carrying on business within the jurisdiction.

(2) Such debts may be attached even if one or more members of the firm is resident outside the jurisdiction.

(3) A provisional order under rule 50.3 must be served on—

(*a*) a member of the firm; or

(*b*) some other person having the control or management of the partnership business;

in the jurisdiction.

(4) Any member of the garnishee may attend a hearing of an application for an attachment of debts order.

50.8 Service of provisional order

(1) The judgement creditor must serve the provisional attachment of debts order.

(2) It must be served first on the garnishee at least twenty-one days before the hearing. It must be served personally on the garnishee unless the garnishee is a body corporate.

(3) If the garnishee is a bank or other financial institution, the provisional attachment of debts order must be served at its principal or registered office and also the branch at which the judgement debtor's account is kept, if that address is known to the judgement creditor.

(4) Secondly, the order must be served on the judgement debtor.

(5) It must be served on the judgement debtor at least seven days after it has been served on the garnishee and not less than seven days before the hearing.

50.9 Effect of provisional order

(1) This Rule sets out the effect of a provisional attachment of debts order.

(2) The order becomes binding on the garnishee as soon as it is served on the garnishee.

(3) The garnishee does not then have to pay the judgement creditor anything except to the extent that the garnishee's debt to the judgement debtor is greater than the amount of the attachment of debts order.

(4) However, if the garnishee pays anyone but the judgement creditor the garnishee may have to make further payment to the judgement creditor in accordance with the terms of any final attachment of debts order that the court may make.

50.10 Hearing to consider making final order

At the hearing fixed by the provisional order the court, if satisfied that the order has been properly served, may—

(*a*) discharge the provisional order;

(*b*) give directions for the resolution of any dispute; or

(*c*) make a final attachment of debts order.

50.11 Cl**a**im to a debt by person other than judgement debtor

(1) This Rule has effect where the court is aware from information supplied by the garnishee or from any other source that someone other than the judgement debtor—

(*a*) is or claims to be entitled to the debt; or

(*b*) has or claims to have a charge or lien on it.

(2) In this Rule—

"lien" means a right to retain possession of goods to protect a debt.

(3) Where this Rule has effect, the court may require the judgement creditor to serve notice of—

(*a*) any hearing fixed by the court; and

(*b*) the application for an attachment of debts order,

on any person who may have such an interest as is set out in paragraph (1).

(4) The notice must be served personally unless the person is a body corporate.

(5) Notice must also be served on the—

(*a*) garnishee; and

(*b*) judgement debtor.

(6) A notice under this Rule must contain a warning to every person on whom it is served that, if that person does not attend court, the court may proceed to decide the issue in that person's absence.

50.12 Enforcement against garnishee

If a garnishee does not fulfil the terms of an attachment of debts order, the judgement creditor may issue enforcement proceedings against the garnishee.

50.13 Discharge of garnishee's debt to judgement debtor

(1) This Rule has effect where—

(*a*) an attachment of debts order is enforced against the garnishee; or

(*b*) the garnishee pays money to the judgement creditor in compliance with an attachment of debts order.

(2) The garnishee's liability to the judgement debtor is then discharged to the extent of the amount paid by, or recovered from the garnishee.

(3) This Rule has effect even if the court later sets aside the attachment of debts order or the original judgement or order.

50.14 Costs of attachment of debts proceedings

(1) This Rule contains general provisions about the costs of attachment of debts proceedings.

(2) The judgement creditor's costs are those fixed by Part 65, Appendix A unless the court makes some other order in which case it must assess the costs.

(3) The judgement creditor may retain the costs out of the money recovered through the attachment of debts order.

(4) The costs are to be taken to have been paid to the judgement creditor before any payment in respect of the judgement debt.

(5) A garnishee who appears at attachment of debts proceedings may deduct the garnishee's costs before paying any sum over to the judgement creditor in pursuance of the attachment of debts order.

(6) Costs payable under paragraph (5) must be assessed under rule 65.11 if not agreed.

50.15 Money in court

(1) An attachment of debts order may not be made in respect of money in court standing to the credit of the judgement debtor.

(2) The judgement creditor may however apply for an order that a sufficient amount of the money in court to satisfy the judgement and the fixed costs of the application be paid to the judgement creditor.

(3) Notice of the application must be given to the proper officer and any person who has an interest in the fund.

(4) Until hearing of the application the money to which it relates must not be paid out of court.

Part 65, Appendix A sets out the fixed costs.

PART 51

Appointment of Receiver

51.1 Scope of this Part

This Part deals with the appointment of a receiver and includes an application to appoint a receiver to obtain payment of the judgement debt from the income or capital assets of the judgement debtor.

51.2 Application for appointment of receiver and injunction

(1) An application for the appointment of a receiver must be supported by evidence on affidavit.

(2) The applicant may also apply for an injunction to restrain the judgement debtor or other respondent from assigning, charging or otherwise dealing with any property identified in the application.

(3) If an application for an immediate injunction is made, the application for the appointment of a receiver and for an injunction may be made without notice.

Rules 17.3 and 17.4 deal with applications for interim injunctions.

51.3 Conditions for appointment of receiver

In deciding whether to appoint a receiver to recover a judgement debt the court must have regard to the—

(*a*) amount likely to be obtained by the receiver;

(*b*) amount of the judgement debt; and

(*c*) probable cost of appointing and remunerating the receiver.

51.4 Giving of security by receiver

(1) The general rule is that a person may not be appointed receiver until that person has given security.

(2) The court may however dispense with security.

(3) The order appointing the receiver must state the amount of the security.

(4) The security must be by guarantee unless the court allows some other form of security.

(5) The guarantee or other security must be filed at the court.

51.5 Remuneration of receiver

The receiver may be allowed such remuneration as the court directs.

51.6 Receiver's powers

A receiver's powers operate to the exclusion of the powers of the judgement debtor for the duration of the receiver's appointment.

51.7 Accounts of receiver

(1) The order appointing a receiver must direct on what dates the receiver must file accounts.

(2) Unless the court orders otherwise the account must be verified by affidavit.

(3) The receiver must serve a copy of the account on the applicant.

(4) The applicant must obtain an appointment to pass the account.

(5) The passing of the account must be verified by a registrar.

51.8 Payment of balance into court

The receiver must pay into court any balance shown on the accounts under rule 51.7 as due from the receiver within seven days of the passing of any account.

51.9 Default by receiver

(1) This Rule applies if the receiver fails to—

(*a*) attend for the passing of any account;

(*b*) pay into court any balance shown on the account as due from the receiver; or

(*c*) submit an account by the date ordered.

(2) The applicant must ask the court office to fix a hearing for the receiver to show cause for the receiver's failure.

(3) The court office must issue a notice stating the date, time and place of the hearing to show cause.

(4) The applicant must serve the notice on the receiver at least seven days before the hearing.

(5) At the hearing the court may do any of the following—

(*a*) give directions to remedy the default;

(*b*) give directions for the discharge of the receiver;

(*c*) appoint another receiver;

(*d*) disallow any remuneration claimed by the receiver;

(*e*) order the receiver to—

(i) pay the costs of the applicant as assessed by the court, and

(ii) pay interest at the statutory rate on any monies which may appear from a subsequent account to be due from the receiver.

PART 52

Judgement Summonses

52.1 Scope of this Part

This Part deals with applications to commit a judgement debtor for non-payment of a debt where this is not prohibited by any relevant enactment.

52.2 Issue of judgement summons

(1) An application to commit a judgement debtor for failing to pay all or part of the judgement debt must be made by way of judgement summons in Form 21 and must state—

(*a*) any payment that has been made by the judgement debtor;

(*b*) the date and details of the judgement or order requiring payment of the debt; and

(*c*) the amount of interest claimed to the date of the application and the daily rate thereafter.

(2) The court order must—

(*a*) fix a date for hearing of the judgement summons;

(*b*) seal the judgement summons; and

(*c*) return the order to the judgement creditor for service.

52.3 Service of judgement summons

(1) The judgement creditor must serve the judgement debtor with the judgement summons in accordance with Part 5 not less than seven days before the date fixed for the hearing of the application to commit.

(2) The judgement creditor must file an affidavit of service not less than seven days before the hearing.

52.4 Hearing of judgement summons

At the hearing of the judgement summons, the court may—

(*a*) if satisfied that all reasonable efforts have been made to serve the judgement debtor and the—

(i) judgement debtor is wilfully evading service, or

(ii) summons has come to the knowledge of the judgement debtor,

proceed in the absence of the judgement debtor as if the judgement debtor had been personally served;

(*b*) receive evidence as to the means of the debtor in any manner that it thinks fit; and

(*c*) if satisfied that all statutory requirements have been met—

(i) adjourn the hearing of the summons to a fixed date,

(ii) commit the judgement debtor for such fixed term as is permitted by law,

(iii) suspend such committal upon payment of the judgement debt on such dates and by such instalments as the court may order,

(iv) dismiss the judgement summons, or

(v) make an order for payment of the judgement debt by a particular date or by specified instalments and adjourn the hearing of the judgement summons to a date to be fixed on the application of the judgement creditor.

52.5 Failure to comply with instalment order

If the judgement debtor fails to comply with the terms of the judgement summons, the judgement creditor may—

(*a*) issue a further judgement summons;

(*b*) if a suspended committal order has been made – apply to commit the judgement debtor in accordance with the provisions of Part 53 (committal orders); or

(*c*) if an order has been made under rule 52.4(*c*)(v) – apply to the court in writing to restore the judgement summons.

52.6 Restored hearing of judgement summons

(1) The judgement creditor must—

(*a*) serve the notice of the restored hearing of a judgement summons in accordance with Part 5 at least seven days before the date fixed for hearing; and

(*b*) file an affidavit of service at least three days before the hearing.

(2) At the restored hearing the court may exercise any of its powers under rule 52.4.

PART 53

Committal and Sequestration

53.1 Scope of this Part

This Part deals with the power of the court to commit a person to prison or to make a sequestration order for failure to comply with an—

(*a*) order requiring that person to do; or

(*b*) undertaking by that person to do,

an act within a specified time or by a specified date or not to do an act.

53.2 Order specifying time for act to be done

(1) If a judgement or order specifies the time or date by which an act must be done the court may by order specify another time or date by which the act must be done.

(2) If a judgement or order does not specify the time or date by which an act must be done, the court may by order specify a time or date by which it must be done.

(3) The time by which the act must be done may be specified by reference to the day on which the order is served on the judgement debtor.

(4) An application for an order under this Rule may be made without notice but the court may direct that notice be given to the judgement debtor.

(5) Any order made under this Rule must be served in the manner required by rule 53.3 (enforcement against an individual judgement debtor) or 53.4 (enforcement against an officer of a body corporate).

53.3 When committal order or sequestration order may be made

Subject to rule 53.5, the court may not make a committal order or a sequestration order unless—

(*a*) the order requiring the judgement debtor to do an act within a specified time or not to do an act has been served personally on the judgement debtor;

(*b*) at the time the order was served it was endorsed with a notice in the following terms—

> "NOTICE: If you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned."; or,

in the case of an order served on a body corporate, in the following terms—

> "NOTICE: If you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court."; and

(*c*) if the order requires the judgement debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgement debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

53.4 Committal order or sequestration order against officer of body corporate

Subject to rule 53.5, the court may not make a committal order or a sequestration order against an officer of a body corporate unless—

(*a*) a copy of the order requiring the judgement debtor to do an act within a specified time or not to do an act has been served personally on the officer against whom the order is sought;

(*b*) at the time the order was served it was endorsed with a notice in the following terms—

> "NOTICE: If [name of body corporate] fails to comply with the terms of this order proceedings may be commenced for contempt of court and you [name of officer] may be liable to be imprisoned or to have an order of sequestration made in respect of your property."; and

(*c*) if the order required the judgement debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgement debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

53.5 Making committal order or sequestration order when judgement or order not served

(1) This Rule applies where the judgement or order has not been served.

(2) If the order requires the judgement debtor not to do an act, the court may make a committal order or sequestration order only if it is satisfied that the person against whom the order is to be enforced has had notice of the terms of the order by being—

(*a*) notified of the terms of the order by post, telephone, fax or otherwise; or

(*b*) present when the order was made.

(3) The court may make an order dispensing with service of the judgement or order under rule 53.3 or 53.4 if it thinks it just to do so.

53.6 Undertakings

An undertaking given to the court must, if practicable, be given in writing in the appropriate practice form and a copy of this form endorsed with a notice in accordance with rule 53.3(*b*) or 53.4(*b*) must, if practicable, be served on the person giving the undertaking.

53.7 Application for committal order or sequestration order

(1) The application must specify the—

(*a*) exact nature of the alleged breach or breaches of the order or undertaking by the judgement debtor; and

(*b*) precise term of the order or undertaking which it is alleged that the judgement debtor has disobeyed or broken.

(2) The application must be verified by affidavit.

(3) The applicant must prove—

(*a*) service of the order endorsed with the appropriate notice under rule 53.3(*b*) or rule 54.3(*b*); and

(*b*) that the person against whom it is sought to enforce the order had notice of the terms of the order under rule 53.5 if the order required the judgement debtor not to do an act; or

(*c*) that it would be just for the court to dispense with service.

53.8 Service of notice of hearing

(1) The judgement creditor must serve on the judgement debtor or, in the case of a body corporate, the officer against whom it is sought to make a committal order or sequestration order, notice of the application for the order at least seven days before the date fixed for hearing.

(2) If the notice of application is served on the judgement debtor less than seven days before the hearing, the court may direct that in all the circumstances of the case sufficient notice has been given and may accordingly deal with the application.

(3) The notice of application must be served in accordance with Part 5.

(4) A copy of the application and of the evidence in support must be served with the notice.

53.9 Powers of the court

If satisfied that the notice of application has been duly served, the court may—

(*a*) accept an undertaking from the judgement debtor or an officer of a body corporate who is present in court and adjourn the application generally;

(*b*) adjourn the hearing of the application to a fixed date;

(*c*) dismiss the application and make such order as to assessed costs under rule 65.11 as it considers to be just;

(*d*) make a committal order against a judgement debtor who is an individual;

(*e*) make a committal order against an officer of a judgement debtor which is a body corporate;

(*f*) make a sequestration order against a judgement debtor who is an individual or a body corporate;

(*g*) make a sequestration order against an officer of a judgement debtor which is a body corporate; or

(*h*) make a suspended committal order or sequestration order on such terms as court considers just.

53.10 Registration of adjourned hearing

(1) If an application for a committal order or a sequestration order has been adjourned under rule 53.9(*b*), the court office may fix a date for the adjourned hearing.

(2) An application for a date to be fixed—

(*a*) may be made without notice; but

(*b*) must be supported by evidence on affidavit specifying—

(i) the exact nature of the alleged breach or breaches of the undertaking by the judgement debtor; and

(ii) the precise term or terms of the undertaking which it is alleged that the judgement debtor has disobeyed.

(3) The notice of the restored hearing must—

(*a*) state the date, time and place of the restored hearing; and

(*b*) be served on the judgement debtor or the officer of a body corporate personally at least three days before the adjourned hearing.

(4) A copy of the evidence under paragraph (2) must be served with the notice.

53.11 Application for enforcement of suspended committal order or order for sequestration

(1) If the court has imposed terms under rule 53.9(*h*) and the judgement creditor alleges that the judgement debtor has failed to comply with the terms imposed, the judgement creditor may apply for the suspended order to be enforced.

(2) The application must specify the—

(*a*) precise term or terms of the suspended order which it is alleged that the judgement debtor has disobeyed; and

(*b*) exact nature of the alleged breach or breaches of the terms of the suspended order by the judgement debtor.

(3) The application must be verified by affidavit.

(4) The court office must fix a hearing of the application.

(5) The notice of hearing must be served on the judgement creditor or the officer of a body corporate personally at least three days before the adjourned hearing.

(6) A copy of the evidence under paragraph (2) must be served with the application.

53.12 Special provisions relating to order for sequestration order

(1) The judgement creditor may not sell any property seized under a sequestration order without the permission of the court.

(2) An application for permission must be supported by evidence on affidavit.

PART 54

Interpleader

54.1 Scope of this Part

(1) This Part deals with the situation where a—

(*a*) claim is made to any money, goods or chattels seized or intended to be seized by the sheriff or the proceeds or value of such goods or chattels; or

(*b*) person is under a liability in respect of a debt or in respect of any money, goods or chattels and a claim is made or is likely to be made against that person, by two or more persons making adverse claims in respect of the debt, money, goods or chattels.

(2) The person under a liability under paragraph (1)(*b*) or the sheriff may apply for relief.

(3) That procedure is called an "interpleader".

54.2 Claim to goods taken in execution

(1) A person who makes a claim against any money, goods or chattels seized or about to be seized by the sheriff must give written notice to the sheriff.

(2) The notice must—

(*a*) give that person's name and address for service;

(*b*) identify the money, goods or chattels claimed; and

(*c*) set out the grounds of the claim.

(3) Forthwith on receipt of the claim the sheriff must give written notice to the judgement creditor.

(4) Within seven days after receiving the notice the judgement creditor must give notice to the sheriff admitting or disputing the claim.

(5) If the judgement creditor gives notice admitting the claim, the—

(*a*) judgement creditor is liable only for the fees and expenses of the sheriff incurred before the sheriff receives the notice;

(*b*) sheriff must withdraw from possession of the money, goods or chattels; and

(*c*) sheriff may apply to the court for an order restraining any claim being brought in respect of having taken possession of the money, goods or chattels.

(6) If the judgement creditor gives notice disputing the claim, or fails to give notice and the claim is not withdrawn, the sheriff may apply to the court for relief under this Part.

54.3 How to interplead

(1) A person interpleads by filing an application for relief by way of interpleader.

(2) The application must be filed—

(*a*) in the court office out of which the writ of execution was issued;

(*b*) if a writ of execution has not been issued but there are proceedings in respect of the money, goods or chattels – in the court office in which such proceedings are being conducted; or

(*c*) if there are no such proceedings – in any court office.

(3) An application other than by the sheriff must be supported by evidence on affidavit 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 dispose of it as the court directs.

54.4 Service of Interpleader application

(1) An application by the sheriff must be served on the judgement creditor and on the person claiming the money, goods or chattels.

(2) An application by any other person must be served on all persons making a claim to the money, goods or chattels.

(3) The application must be served not less than fourteen days before the date fixed for hearing of the application.

54.5 Powers of the court

(1) On an application by the sheriff the court may, unless any claimant objects, summarily determine the question in issue between the parties.

(2) On any other application the court may order that—

(*a*) any person claiming the money, goods or chattels be made a defendant in any pending claim relating to such money, goods or chattels either in addition to, or in substitution for, the applicant for relief; or

(*b*) the issue between two or more persons claiming the money, goods or chattels be tried, and may direct which person claiming is to be the claimant in those proceedings and which the defendant.

(3) If a person making a claim to any money, goods or chattels who has been served with the application—

(*a*) fails to attend the hearing; or

(*b*) fails to comply with any order made by the court,

the court may make an order barring that person and any person claiming under that person forever from prosecuting any claim to the money, goods or chattels as against the applicant and any person claiming under the applicant.

(4) An order under paragraph (3) does not affect the rights as between the persons claiming the money, goods or chattels.

54.6 Power to order sale of goods taken in execution

On an application by a sheriff who has seized any goods or chattels where a person claims to be entitled to such goods or chattels by way of security, the court may order that all or part of such goods or chattels be sold and the proceeds applied in accordance with the order.

PART 55

Sale of Land by Order of Court

55.1 Scope of this Part

(1) This Part deals with the sale of land—

(*a*) under any enactment which authorises the court to order a sale; and

(*b*) when it appears to the court to be necessary or expedient that the land should be sold.

(2) In this Part—

"land" includes any interest in, or right over, land.

55.2 Application for order for sale

(1) An application for an order for sale must be supported by affidavit evidence.

(2) The evidence under paragraph (1) must—

(*a*) exhibit a current valuation of the land by a qualified land valuer or surveyor;

(*b*) identify the land in question; and

(*c*) state—

(i) any restriction or condition that should be imposed on the sale for the benefit of any adjoining land of the judgement debtor or otherwise,

(ii) the full names and addresses of all persons who to the knowledge or belief of the applicant have an interest in the land,

(iii) the nature and extent of each such interest,

(iv) the grounds on which the court should order a sale of the land,

(v) the proposed method of sale and why such method will prove most advantageous,

(vi) the reason for seeking an order for sale, and

(vii) whom it is proposed should have conduct of the sale.

(3) The application and copies of the evidence in support must be served in accordance with Part 5 on the judgement debtor and every person who has an interest in the land.

55.3 Hearing of application

The court on hearing the application may—

(*a*) direct that notice be given to any person who appears to have an interest in the land but has not been served with the application and adjourn the application to a fixed date;

(*b*) order the sale of the land or a specified part of the land;

(*c*) direct who shall have conduct of the sale;

(*d*) order that any person in—

(i) possession, or

(ii) receipt of the rents or profits,

of the land or any part of the land do deliver up possession of the land or receipt of the rents and profits to such person and on such date as the court directs;

(*e*) suspend any such order on such terms as the court thinks fit; or

(*f*) dismiss the application.

55.4 Order for sale

On making an order for sale, the court may—

(*a*) direct the manner in which the land is to be sold; or

(*b*) permit the person having conduct of the sale to sell the land in such manner as that person thinks fit.

55.5 Directions

The court may give directions for the purpose of the sale, including—

(*a*) fixing any reserve or minimum price for the sale;

(*b*) obtaining further evidence as to the valuation of the land;

(*c*) settling the particulars and conditions of sale;

(*d*) fixing the remuneration of the auctioneer or estate agent dealing with the sale;

(*e*) requiring payment of the net proceeds of sale into court or otherwise;

(*f*) an inquiry into what interests any interested persons may have in the land and the extent of such interests in the net proceeds of sale;

(*g*) how the net proceeds of sale should be applied; and

(*h*) certification of the result of the sale.

55.6 Further directions

Any party or the person having the conduct of the sale may apply to the court to vary the directions or to make further directions.

PART 56

Administrative Law

56.1 Scope of this Part

(1) This Part deals with applications—

(*a*) by way of originating motion or otherwise for relief under the Constitution of any Member State or Territory;

(*b*) for a declaration in which a party is the State, a court, a tribunal or any other public body;

(*c*) for judicial review; and

(*d*) where the court has power by virtue of any enactment or at common law to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister or government department or any action on the part of a minister or government department.

(2) In this Part—

such applications are referred to generally as "applications for an administrative order".

(3) The term "judicial review" includes the remedies (whether by way of writ or order) of—

(*a*) *certiorari*, for quashing unlawful acts;

(*b*) *mandamus*, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case; and

(*c*) prohibition, for prohibiting unlawful acts.

(4) In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings, grant—

(*a*) an injunction;

(*b*) an order for the return of any property, real or personal; or

(*c*) restitution or damages.

56.2 Who may apply for judicial review

(1) An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.

(2) This includes—

(*a*) any person who has been adversely affected by the decision which is the subject of the application;

(*b*) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (*a*);

(*c*) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;

(*d*) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application;

(*e*) any statutory body where the subject matters falls within its statutory limit; or

(*f*) any other person or body who has a right to be heard under the terms of any relevant enactment or Constitution.

56.3 Judicial review – application for leave

(1) A person wishing to apply for judicial review must first obtain leave.

(2) An application for leave may be made without notice.

(3) The application must state—

(*a*) the name, address and description of the applicant and respondent;

(*b*) the relief, including in particular details of any interim relief sought;

(*c*) the grounds on which such relief is sought;

(*d*) the applicant's address for service;

(*e*) whether an alternative form of redress exists and, if so, why judicial review is more appropriate or why the alternative has not been pursued;

(*f*) details of any consideration which the applicant knows the respondent has given to the matter in question in response to a complaint made by or on behalf of the applicant;

(*g*) whether any time limit for making the application has been exceeded and, if so, why;

(*h*) whether the applicant is personally or directly affected by the decision about which complaint is made;

(*i*) if the applicant is not personally or directly affected – what public or other interest the applicant has in the matter;

(*j*) the name and address of the applicant's legal practitioner (if applicable); and

(*k*) the applicant's address for service.

(4) The application must be verified by evidence on affidavit which must include a short statement of all the facts relied on.

56.4 Judicial review – hearing of application for leave

(1) An application for leave to make a claim for judicial review must be considered forthwith by a judge of the High Court.

(2) The judge may give leave without hearing the applicant.

(3) However, if—

(*a*) it appears that a hearing is desirable in the interests of justice;

(*b*) the application includes a claim for immediate interim relief; or

(*c*) the judge is minded to refuse the application,

the judge must direct that a hearing in open court be fixed.

(4) The judge may direct that notice of the hearing be given to the respondent or the Attorney-General of the relevant Member State or Territory.

(5) Where the application relates to any judgement, order, conviction or other proceedings which are subject to appeal, the judge may adjourn consideration of the application to a date after the appeal has been determined.

(6) The judge may allow the application to be amended.

(7) The judge may grant leave on such conditions or terms as he or she considers just.

(8) Where the application is for an order (or writ) of prohibition or *certiorari* the judge must direct whether or not the grant of leave operates as a stay of the proceedings.

(9) The judge may grant such interim relief as appears just.

(10) On granting leave the judge must direct when the first hearing or, in case of urgency, the full hearing of the claim for judicial review should take place.

(11) Leave must be conditional on the applicant making a claim for judicial review within fourteen days of receipt of the order granting leave.

56.5 Delay

(1) In addition to any time limit imposed by any enactment, the judge may refuse leave or to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.

(2) When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to—

(*a*) be detrimental to good administration; or

(*b*) cause substantial hardship to or substantially prejudice the rights of any person.

56.6 Proceedings by way of claim which should be application for administrative order

(1) This Rule applies where a claimant issues a claim for damages or other relief other than an administrative order but where the facts supporting the claim are such that the only or main relief is an administrative order.

(2) The court may at any stage direct that the claim is to proceed by way of an application for an administrative order.

(3) If the appropriate administrative order would be for judicial review, the court may give leave for the matter to proceed as if an application had been made under rule 56.3.

(4) If the court makes an order under paragraph (2), it must give such directions as are necessary to enable the claim to proceed under this Part.

56.7 How to make application for administrative order

(1) An application for an administrative order must be made by a fixed date claim in Form 2 identifying whether the application is for—

(*a*) a declaration;

(*b*) judicial review;

(*c*) relief under the relevant Constitution; or

(*d*) for some other administrative order (naming it),

and must identify the nature of any relief sought.

(2) The claim form in an application under a relevant Constitution requiring an application to be made by originating motion should be headed ‘Originating Motion’.

(3) The claimant must file with the claim form evidence on affidavit.

(4) The affidavit must state—

(*a*) the name, address and description of the claimant and the defendant;

(*b*) the nature of the relief sought identifying—

(i) any interim relief sought; and

(ii) whether the claimant seeks damages, restitution, recovery of any sum due or alleged to be due or an order for the return of property, setting out the facts on which such claim is based and, where practicable, specifying the amount of any money claimed;

(*c*) in the case of a claim under the relevant Constitution – the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached;

(*d*) the grounds on which such relief is sought;

(*e*) the facts on which the claim is based;

(*f*) the claimant's address for service; and

(*g*) the names and addresses of all defendants to the claim.

(5) The general rule is that the affidavit must be made by the claimant or, if the claimant is not an individual, by an appropriate officer of the body making the claim.

(6) If the claimant is unable to make the affidavit it may be made by some person on the claimant's behalf but must state why the claimant is unable to do so.

(7) On issuing the claim form the court office must fix a date for a first hearing which must be endorsed on the claim form.

(8) The general rule is that the first hearing must take place no later than 4 weeks after the date of issue of the claim.

(9) Notwithstanding paragraph (8), any party may apply to a judge in chambers for that date to be brought forward or for an early date to be fixed for the hearing of the application for an administrative order.

(10) The application may be made without notice but must be supported by evidence on affidavit.

56.8 Joinder of claims for other relief

(1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that—

(*a*) arises out of; or

(*b*) is related or connected to,

the subject matter of an application for an administrative order.

(2) In particular the court may, on a claim for judicial review or for relief under the Constitution award—

(*a*) damages;

(*b*) restitution; or

(*c*) an order for return of property to the claimant,

if the—

(i) claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates, or

(ii) facts set out in the claimant's affidavit or statement of case justify the granting of such remedy or relief, and

(iii) court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy.

(3) The court may however at any stage—

(*a*) direct that any claim for other relief be dealt with separately from the claim for an administrative order; or

(*b*) direct that the whole application be dealt with as a claim and give appropriate directions under Parts 26 and 27; and

(*c*) in either case, make any order it considers just as to costs that have been wasted because of the unreasonable use of the procedure under this Part.

56.9 Service of claim form for administrative order

(1) The claim form and the affidavit in support must be served on the defendants not less than fourteen days before the date fixed for the first hearing.

(2) A claim form relating to an application for relief under a relevant Constitution must be served on the Attorney-General of the Member State or Territory concerned.

(3) If leave has been given to make a claim for judicial review, the claimant must also serve a copy of the—

(*a*) application for leave;

(*b*) affidavit in support; and

(*c*) order giving leave.

(4) The claimant must file at the court office not less than seven days before the date fixed for the first hearing an affidavit which—

(*a*) gives the names and addresses of all defendants who have been served with the claim;

(*b*) states the date and place of service on each defendant;

(*c*) where applicable, states when the claim form was served on the Attorney-General; and

(*d*) if any defendant has not been served, states that fact and the reason for not doing so.

(5) If the judge considers that any person who should have been served has not been served, the judge may adjourn the first hearing to a fixed date and give directions for service.

- Part 5 deals generally with the service of claims.

56.10 Evidence in answer

Any evidence filed in answer to a claim for an administrative order must be by affidavit but the provisions of Part 10 (defence) apply to such affidavit.

56.11 First hearing

(1) At the first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply.

(2) In particular the judge may—

(*a*) allow any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim form;

(*b*) direct whether any person or body having such interest—

(i) is to make submissions by way of written brief, or

(ii) may make oral submissions at the hearing;

(*c*) allow the claimant to—

(i) add or substitute a claim for relief other than an administrative order,

(ii) amend any claim for an administrative order, or

(iii) substitute another form of application for that originally made;

(*d*) direct that claims by one or more persons or bodies or against one or more persons in respect of the same office made on the same grounds be consolidated or heard together; and

(*e*) make orders for—

(i) witness statements or affidavits to be served,

(ii) cross-examination of witnesses, and

(iii) disclosure of documents.

56.12 Procedural applications

Wherever practicable any procedural application during a claim for an administrative order must be made to the judge who dealt with the first hearing unless that judge orders otherwise.

56.13 Hearing of application for administrative order

(1) At the hearing of the application the judge may allow any person or body which appears to have a sufficient interest in the subject matter of the claim to make submissions whether or not served with the claim form.

(2) Such a person or body must make submissions by way of a written brief unless the judge orders otherwise.

(3) The judge may grant any relief that appears to be justified by the facts proved before the judge, whether or not such relief should have been sought by an application for an administrative order.

(4) The judge may, however, make such orders as to costs as appear to the judge to be just including a wasted costs order.

(5) If the judge makes any order as to costs the judge must assess them.

- Rules 65.11 and 65.12 deal with the assessment of costs.

(6) The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.

Part 64 deals with the court's general discretion as to the award of costs.

56.14 Special provisions relating to orders for judicial review

(1) If the claimant seeks an order or writ of *certiorari* to remove any proceedings for the purpose of quashing them, the claimant may not question the validity of any order, warrant, commitment, conviction or record unless—

(*a*) before the trial the claimant has lodged with the court office a copy of the order, etc., verified by affidavit; or

(*b*) the claimant can account for the failure to do so to the satisfaction of the court.

(2) If the claim is for an order or writ of *certiorari*, the judge may if satisfied that there are reasons for quashing the decision to which the claim relates—

(*a*) direct that the proceedings be quashed on their removal to the High Court; and

(*b*) may in addition remit the matter to the court, tribunal or authority concerned with a direction to reconsider it in accordance with the findings of the High Court.

PART 57

Habeas Corpus

57.1 Scope of this Part

This Part deals with applications for the issue of a writ of *Habeas Corpus* and proceedings upon such a writ.

57.2 Application for issue of writ of *Habeas Corpus*

(1) An application for the issue of a writ of *Habeas Corpus ad subjiciendum* must be made to the court.

(2) An application under paragraph (1) may be made without notice but must be supported by evidence on affidavit.

(3) Such evidence must be given by the person restrained stating how that person is restrained.

(4) If the person restrained is not able to make the affidavit it may be made by another person on that person's behalf and must state why the person restrained is not able to make the affidavit.

(5) The application must be heard in open court unless it is made on behalf of a minor when it must be heard in chambers.

57.3 Power of court

(1) The court may—

(*a*) adjourn the application and give directions for notice to be given to—

(i) the person against whom the issue of the writ is sought, and

(ii) any other person as the judge may direct; or

(*b*) forthwith make an order for the writ in Form 22 to issue.

(2) The court may also order that the person restrained be released.

(3) An order under paragraph (2) is sufficient warrant to any person for the release of the person under restraint.

(4) On making an order for the writ to issue the court must give directions as to the date, time and place of hearing.

57.4 Service of writ

(1) The general rule is that the writ must be served personally on the person to whom it is directed.

(2) If it is not possible to serve that person personally or if that person is the keeper of a prison or other public official, the writ may instead be served personally on a servant or agent of the person to whom it is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person it must be served on the person first named and copies served on each of the other persons named in accordance with paragraph (1) or (2).

(4) Each person served must also be served with a—

(i) copy of the evidence filed under rule 57.2(2), and

(ii) notice in the form included in Form 22 of the date, time and place at which the person restrained is to be brought and containing a warning that in default of compliance with the writ proceedings for committal may be taken.

57.5 Return to writ

(1) Each person served must endorse on or annex to the writ a return stating each cause of detention of the person restrained.

(2) The return may be amended or another substituted with the permission of the court.

57.6 Powers of court on hearing writ

On the date fixed for the person detained to be brought before the court, the court must make such orders as are just and, in particular, may give directions as to the manner in which any claim for compensation is to be dealt with by the court without requiring the issue of any further process.

57.7 Bringing up prisoner to give evidence, etc.

An application for—

(*a*) a writ of *Habeas Corpus ad respondendum*;

(*b*) a writ of *Habeas Corpus ad testificandum*; or

(*c*) an order to bring up a prisoner to give evidence otherwise than by writ of *Habeas Corpus*,

may be made without notice to a judge in chambers but must be supported by evidence on affidavit.

PART 58

Bail Applications

58.1 Scope of this Part

(1) This Part deals with applications to the court to review a decision by a magistrate about bail.

(2) In this Part—

"Commissioner" means the Commissioner of Prisons or other person responsible for the administration of prisons in the Member State or Territory concerned; and

"magistrate" includes a Justice of the Peace.

58.2 How to apply to the court

(1) An application under this Part must be in the appropriate practice form.

(2) If the applicant is in custody and is not represented by a legal practitioner, the application must be lodged with the Commissioner.

(3) The Commissioner must forthwith file the application at the court office.

(4) If the applicant is—

(*a*) not in custody; or

(*b*) represented by a legal practitioner,

the applicant must file the application at the court office.

(5) The court office must immediately—

(*a*) send a copy of the application to the Director of Public Prosecutions;

(*b*) fix a date, time and place to hear the application; and

(*c*) give notice of the date, time and place to—

(i) the applicant,

(ii) the Director of Public Prosecutions, and

(iii) (if the applicant is in custody) the Commissioner.

58.3 Hearing of application

(1) The court may confirm, modify or reverse the decision of the magistrate.

(2) The court office must serve a copy of any order on the—

(*a*) Chief Magistrate (if any);

(*b*) Commissioner; and

(*c*) magistrate who made the decision under review.

PART 59

Proceedings by and against the Crown

59.1 Scope of this Part

(1) This Part deals with claims to which the Crown or the State is a party.

(2) In this Part—

"Act" means in—

(*a*) Anguilla – the Crown Proceedings Ordinance (Chapter 22);

(*b*) Antigua and Barbuda – the Crown Proceedings Act (Chapter 121);

(*c*) Dominica – the State Proceedings Act (Chapter 7.80);

(*d*) Grenada – the Crown Proceedings Act (Chapter 74);

(*e*) Montserrat – the Crown Proceedings Ordinance (Chapter 22);

(*f*) Saint Christopher and Nevis – the Crown Proceedings Act (Chapter 22);

(*g*) Saint Lucia – the Crown Proceedings Act (Chapter 13);

(*h*) Saint Vincent and the Grenadines – the Crown Proceedings Act (Chapter 85); and

(*i*) the British Virgin Islands – the Crown Proceedings Ordinance (Chapter 21);

"Crown" means, for the purpose of Dominica, the State; and

"Dominica" means the Commonwealth of Dominica.

(3) References in these Rules to a claim for possession of land are to be construed as including references to a claim against the Crown for an order declaring that the claimant is entitled as against the Crown to the land or to possession of the land.

59.2 Service of claim form

(1) Part 5 (service of claim form) and Part 6 (service of other documents) do not apply in civil proceedings against the Crown.

(2) Service of any document including a claim form on the Crown must be effected in accordance with the relevant Act.

59.3 Claimant's duty to give particulars

(1) If a claim is made against the Crown, the claim form or statement of claim must contain reasonable information as to the circumstances in which it is alleged that the

liability of the Crown has arisen and as to the government department and officers of the Crown involved.

(2) At any time during the period for entering an acknowledgment of service under rule 9.3(1) the defendant may request information under Part 34.1.

(3) The defendant's time for filing an acknowledgment of service is then extended until seven days after the—

(*a*) court on the application of the claimant decides that no further information is reasonably required; or

(*b*) defendant gives notice in writing to the claimant that it is satisfied with the information supplied,

whichever first occurs.

(4) The defendant's time for filing a defence is extended to twenty-one days after the earlier event in paragraph (3).

59.4 Applications in certain revenue matters

(1) This Rule applies to applications under section 11 of the Acts of Dominica and Grenada and section 12 of the Act of Saint Vincent and the Grenadines only.

(2) An application must be made by fixed date claim in Form 2.

(3) The person from whom an account or information is claimed or by whom any books are required to be produced must be made defendant to the claim.

(4) The claim form or the statement of claim must—

(*a*) refer to the enactment under which the account or information or payment or the production of books is claimed; and

(*b*) where information is claimed must show (by appropriate questions or otherwise) what information is required.

(5) An affidavit by a duly authorised officer of the government department concerned setting out the facts on which the application is based and stating the deponent's belief in such facts is evidence of the facts so set out.

(6) If the defendant files evidence disputing any fact the Crown may file further evidence.

(7) The court may order that the deponents or any of them attend to be cross-examined.

(8) The court may—

(*a*) decide the matter upon the affidavit evidence after any cross-examination that may be ordered; or

(*b*) direct that it be decided by oral evidence in court.

(9) If the court makes an order in favour of the Crown, it must specify a date by which the defendant is to comply with each of the terms of the order.

Rules 8.1(5) and 27.2 deal with the procedure relating to fixed date claims.

59.5 Proceedings relating to postal packets

(1) This Rule deals with applications under the Act for leave to bring a claim in the name of a sender or addressee of a postal packet or that person's personal representative.

(2) An application must be by fixed date claim in Form 2.

(3) The defendants to the claim must be the Attorney-General and the person in whose name the applicant seeks to bring the claim.

(4) No acknowledgment of service need be entered to the claim.

Rules 8.1(5) and 27.2 deal with the procedure relating to fixed date claims.

59.6 Applications under s. 24(2) or s. 25(2) of the Act

An application under s. 24(2) of the Act of Saint Lucia or s. 25(2) of the Acts relating to other Member States and Territories may be made in accordance with Part 11.

59.7 Enforcement against Crown

(1) Parts 44 to 53 do not apply to any order against, or money due or accruing due, or alleged to be due or accruing due from the Crown.

(2) Any application under the Act for a direction that a separate certificate be issued with respect to costs (if any) ordered to be paid to the applicant may be made without notice.

(3) Every application for an order under the Act restraining any person from receiving money payable to that person by the Crown and directing payment to the applicant or some other person must be served on the Crown at least fourteen days before the date of hearing and, unless the court otherwise orders, on the person to be restrained.

(4) Every application under paragraph (3) must be supported by evidence on affidavit—

(*a*) identifying the particular debt from the Crown in respect of which it is made; and

(*b*) of the facts giving rise to it.

PART 60

Appeals to the High Court

60.1 Scope of this Part

(1) This Part deals with appeals to the High Court from any tribunal or person under any enactment other than an appeal by way of case stated.

(2) In this Part—

"clerk to the tribunal" means the clerk, secretary or other person responsible for the administration of the tribunal;

"decision" means the award, decision, determination or order appealed against; and

"tribunal" means any tribunal other than a court of law established under an enactment.

(3) This Part takes effect subject to any provisions in the relevant enactment.

60.2 How to appeal to the court

(1) An appeal to the court is made by issuing a fixed date claim form in Form 2 to which must be annexed the grounds of appeal.

(2) The appellant's grounds of appeal must state the—

(*a*) decision against which the appeal is made;

(*b*) enactment enabling an appeal to be made to the Court;

(*c*) name of the tribunal or person whose decision is being appealed;

(*d*) facts found by that tribunal or person; and

(*e*) grounds of the appeal, identifying any finding of—

(i) fact, and

(ii) law,

which the claimant seeks to challenge.

(3) The date for the first hearing must not be less than twenty-eight, nor more than fifty-six, days after issue of the claim form.

Rules 8.1(5) and 27.2 deal with the procedure relating to fixed date claims.

Part 56 deals with applications to quash a decision by way of *certiorari*.

60.3 Effect of appeal

The making of an appeal does not operate as a stay of proceedings on the decision against which the appeal is brought unless the—

(*a*) court; or

(*b*) tribunal or person whose decision is being appealed,

so orders.

60.4 Persons on whom claim form must be served

The claimant must serve the claim form and grounds of appeal on—

(*a*) every party to the proceedings in which the decision was made; and

(*b*) the clerk to the tribunal, minister or other person by whom the decision appealed against was made.

60.5 Time within which claim form must be served

The claim form and grounds of appeal must be served within twenty-eight days of the date on which notice of the decision was given to the claimant.

60.6 Amendment of statement of case

(1) The appellant may amend the grounds of appeal without permission not less than seven days before the first hearing.

(2) Permission to amend the grounds of appeal may be given at the first hearing.

(3) The court may not give permission to amend the grounds of appeal after the first hearing unless the appellant satisfies the court that the change is necessary because of some change in circumstance which became known after the first hearing.

60.7 First hearing

(1) The appellant must file at the court office a signed copy of any note made by the person presiding at the proceedings in which the decision was made not less than seven days before the first hearing.

(2) If the court does not hear the appeal at the first hearing it must fix a date, time and place for the full hearing.

60.8 Hearing of appeal

(1) Unless an enactment otherwise provides, the appeal is to be by way of rehearing.

(2) The court may receive further evidence on matters of fact.

(3) The court may draw any inferences of fact which might have been drawn in the proceedings in which the decision was made.

(4) The court may—

(*a*) give any decision or make any order which ought to have been given or made by the tribunal or person whose decision is appealed; and

(*b*) make such further or other order as the case requires; or

(*c*) remit the matter with the opinion of the court for rehearing and determination by the tribunal or person.

(5) The court is not bound to allow an appeal because of—

(*a*) a misdirection; or

(*b*) the improper admission or rejection of evidence,

unless it considers that a substantial wrong or a miscarriage of justice has been caused.

60.9 Right of minister to be heard

A minister is entitled to be heard on any appeal against a decision made by that minister.

PART 61

Appeals to the Court by way of Case Stated

61.1 Scope of this Part

(1) This Part deals with the way in which the High Court or the Court of Appeal determines a—

(*a*) (i)case stated, or

(ii) question of law,

referred to it, by a minister, magistrate, judge of a tribunal, a tribunal or other person; or

(*b*) an application for an order directing a minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person to refer a question of law to the court by way of case stated, where under any enactment the High Court or the Court of Appeal has power to determine such matters.

(2) In this Part—

"case" includes a special case;

"clerk to the tribunal" means the clerk, secretary or other person responsible for the administration of the tribunal;

"court" means the High Court or the Court of Appeal as required by the particular enactment;

"enactment" includes the Constitution of the relevant Member State or Territory; and

"tribunal" means in relation to—

(*a*) proceedings brought under the Constitution – a court other than the High Court, the Court of Appeal or a court martial;

(*b*) any other proceedings – any tribunal other than a court of law constituted by or under any enactment.

61.2 Application for order to state a case

(1) An application to the court—

(*a*) for an order directing a minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person to state a case for determination by the court; or

(*b*) to refer a question of law to the court by way of case stated; is made by a fixed date claim in Form 2 which must—

(i) identify the question of law upon which it is sought to have a case stated,

(ii) set out any reasons given by the minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person for the refusal to state a case, and

(iii) state the grounds of the application.

(2) The court office must fix a date for a hearing of the application and endorse on the claim form the date, time and place of that hearing.

(3) The claimant must file at the court office a copy of the proceedings to which the claim relates not less than seven days before the date fixed for the hearing.

61.3 Persons on whom claim form must be served

The claimant must serve the claim form—

(*a*) if the application relates to a claim brought under the relevant Constitution – on—

(i) the Attorney-General,

(ii) the clerk to the tribunal, and

(iii) every other party to the proceedings to which the application relates;

(*b*) in any other claim – on—

(i) the clerk to the tribunal,

(ii) the minister or other person whose decision is questioned, and

(iii) every other party to the proceedings to which the application relates.

Rule 6.9 deals with service on the Attorney-General.

Rule 59.2 deals with service on the Crown or State.

61.4 Time within which claim form must be served

The claimant must serve the claim form within fourteen days of the date on which notice of refusal to state a case was given to the claimant.

61.5 Signing and service of case

(1) A case stated by a tribunal must be signed by the magistrate, judge, chairman or president of the tribunal.

(2) A case stated by any other person must be signed by that person.

(3) The case must be served, if it relates to—

(*a*) a claim brought under the relevant Constitution – on the Attorney-General and on all parties to the proceedings to which the case relates;

(*b*) any other claim – on all parties to the claim to which the case relates.

61.6 How to commence proceedings to determine a case

(1) Proceedings to determine a case must be commenced by issuing a fixed date claim in Form 2.

(2) The claim form may be issued by—

(*a*) any party on whom a case was served under rule 61.5(3); or

(*b*) if a minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person is entitled by any enactment to state a case or to refer a question of law by way of case stated to the court – that person or tribunal.

(3) The claim form must have the case stated annexed.

(4) The claim form, or a statement of claim issued and served with it, must set out the claimant's contentions on the question of law to which the case relates.

(5) The contentions may be in the form of a skeleton argument.

(6) The court office must fix a date, time and place for the determination of the case.

(7) The claim form must be served on the persons set out in rule 61.5(3).

(8) It must be served within fourteen days after the service of the case stated.

61.7 Determination of case

(1) Not less than seven days before the date fixed to determine the case, the claimant must file a copy of the proceedings to which the case relates.

(2) The court may amend the case or order it to be returned to the person or tribunal stating the case for amendment.

(3) The court may draw inferences of fact from the facts stated in the case.

(4) A minister is entitled to be heard on any case stated by that minister.

PART 62

Appeals to the Court of Appeal

62.1 Scope of this Part

(1) This Part deals with appeals to the Court of Appeal from—

(*a*) the High Court;

(*b*) a magistrate's or district court; or

(*c*) a tribunal, not being—

(i) appeals or applications to the court for which other provision is made, by these Rules or any other law, or

(ii) appeals by way of case stated on a question of law for determination by the courts.

• Part 60 deals with appeals to the High Court and cases stated are dealt with in Part 61.

(2) In this Part—

"appellant" means the party who first files a notice of appeal;

"core bundle" means a bundle containing only such documents listed in rule 62.12 which the court will need to pre-read or to which it will be necessary to refer repeatedly at the appeal;

"court" means the Court of Appeal;

"court below" means the court or tribunal from which the appeal is brought;

"interlocutory appeal" means an appeal from an interlocutory judgement or an interlocutory order.

"respondent" means any party to the appeal other than the appellant, whether or not the respondent files a counter-notice.

(3) In this Part—

(*a*) a determination whether an order or judgement is final or interlocutory is made on the "application test";

(*b*) an order or judgement is final, if it would be determinative of the issues that raise on a claim, whichever way the application could have been decided; and

(*c*) an order on an application for disclosure against a person who is not a party, is a final order.

62.2 How to obtain leave to appeal

(1) Where an appeal may be made only with the leave of the court below or the court, a party wishing to appeal, must apply for leave within 14 days of the order against which leave to appeal is sought.

(1A) Where an application for leave has been refused by the court below, an application for leave may be made to the court within 7 days of such refusal.

(2) The application for leave of appeal must be made in writing, and set out concisely the grounds of the proposed appeal.

(3) An application for leave to appeal made to the court, may be considered by a single judge of the court.

(4) The judge considering an application under rule 62.2(3), may give leave without hearing the applicant.

(6) However, if the judge considering an application under rule 62.2(3) is minded to refuse leave, he or she must direct—

(*a*) that a hearing be fixed; and

(*b*) whether that hearing is to be by a single judge or the court.

- Rule 2.7 deals with how, when and where the court may deal with cases.

62.3 How to appeal

(1) An appeal is made in the case of an appeal from the High Court by filing a notice of appeal at the court office where the judgement was entered.

(2) An appeal is made in the case of an appeal from—

(*a*) Magistrate's or District Court; or

(*b*) tribunal,

by filing a notice of appeal at the court office.

(3) A notice of appeal takes effect on the day that it is received at the appropriate court office.

62.4 Contents of notice of appeal

(1) A notice of appeal must be in Form 23 and must give details of—

(*a*) any power which the appellant wishes the court to exercise;

(*b*) the decision which is being appealed, identifying so far as practicable any finding of—

(i) fact, and

(ii) law,

which the appellant seeks to challenge;

(*c*) the grounds of the appeal; and

(*d*) the order the appellant seeks.

(2) A copy of the judgement or order which is the subject of the appeal must wherever practicable be attached to the notice of appeal.

(3) Where leave to appeal is required a copy of the order giving leave to appeal must be attached to the notice of appeal.

(4) The notice of appeal must—

(*a*) be signed by the appellant or the appellant's legal practitioner;

(*b*) give the details required by rule 3.11; and

(*c*) state the names and addresses and the legal practitioners and their addresses for service of all other parties affected by the appeal.

(5) The grounds of appeal under paragraph (1)(*c*) must set out—

(*a*) concisely;

(*b*) in consecutively numbered paragraphs; and

(*c*) under distinct heads,

the grounds on which the appellant relies, without any argument or narrative.

(6) The court may, on or without an application, strike out any ground which—

(*a*) discloses no reasonable ground of appeal; or

(*b*) is vague and general in terms.

(7) The appellant may, except on an interlocutory appeal, amend the grounds of appeals once, without permission, at any time within 28 days from receiving notice under rule 62.9(1) (*a*), (*b*) or (*c*), that a transcript of the evidence and the judgement have been prepared.

(8) The appellant may not rely on any ground not mentioned in the notice of appeal without the permission of the court.

(9) The court is not confined to the grounds set out in the notice of appeal, but may not make its decision on any ground not set out in the notice of appeal unless the respondent has had sufficient opportunity to contest such ground.

62.5 Time for filing notice of appeal

(1) The notice of appeal must be filed at the appropriate court office—

(*a*) in the case of an interlocutory appeal where leave is not required, within 21 days of the date the decision appealed against was made;

(*b*) in an interlocutory appeal where leave is required, within 21 days of the date when such leave was granted; or

(*c*) in the case of any other appeal, within 42 days of the date when judgement is delivered or the order is made, whichever is earlier.

(2) The court below making the interlocutory decision in respect of which a party intends to appeal, may extend any of the time in this Rule on application made orally at the time the decision is made.

(3) The court may extend any of the time limits in this Rule, on an application made under Part 11, and any such application may be determined without a hearing.

62.6 Summary appeal

(1) This Rule applies to any appeal in which the appellant files with the notice of appeal—

(*a*) a certificate that the—

(i) appeal is of exceptional urgency,

(ii) appeal relates to specific issues of law and can be heard justly without the production of the full record, or

(iii) circumstances of the appellant and/or the respondent are such that the cost of preparing the record would impede that party's ability to prosecute the appeal and that the appeal can be heard justly without production of the full record; and

(*b*) evidence of the parties' agreement that the appeal should proceed as a summary appeal.

(2) The court office must immediately refer the notice of appeal to the Chief Registrar.

(3) The Chief Justice must assign the matter to a single judge of the court to determine whether the appeal should be dealt with summarily, and if the judge so determines, the judge must give such directions as are appropriate to enable the appeal to be dealt with summarily, including dispensing with any procedural requirements in this Part with regard to an appeal proceeding under this Rule.

62.7 Service of notice of appeal

(1) The notice of appeal must be served on—

(*a*) all parties to the proceedings; and

(*b*) any other person if the court directs, or if required by law.

(2) The notice of appeal or amended notice of appeal must be served within 14 days, or within such period as prescribed by law, or order, after the notice has been filed.

62.8 Counter notice

(1) Any party upon whom a notice of appeal is served may file a counter-notice.

(2) The counter-notice must comply with rule 62.4.

(3) The counter-notice must be filed at the appropriate court office in accordance with rule 62.3 within fourteen days of service of the notice of appeal.

(4) The party filing a counter-notice, must serve a copy on all other parties to the proceedings within 7 days of filing.

62.9 Action to be taken on receipt of notice of appeal

(1) Upon the notice of appeal being filed, (unless Rule 62.6 applies) the court below must forthwith, if the appeal is—

(*a*) from the High Court—

(i) arrange for the transcript of the proceedings, and

(ii) when these are prepared, give notice to all parties, that copies of the transcript are available on payment of the prescribed fee;

(*b*) from the magistrate's or district court, comply with any provision for appeal in the Codes of Procedure, Criminal Code or any other enactment regulation appeals from the magistrate's or district court; or

(*c*) from a tribunal-apply to the clerk or other officer of the court or tribunal for a—

(i) certified copy of the record of the proceedings,

(ii) certified copy of the notes of evidence given, and

(iii) statement of the judgment, the reasons for the decision and any finding on any question of law under appeal;

and forthwith upon receipt of these documents, give notice to all parties, that copies of the record, and other documents are available on payment of the prescribed fee.

(2) Where in any case, the transcript of the notes of evidence and of the judgment, or of the proceedings or the notes of evidence is unavailable, the court below shall inform all parties of this in writing.

(3) The parties may, by agreement in writing, dispense with the need for the transcript to be included in the record in whole or in part.

62.10 Interlocutory appeal

(1) On an interlocutory appeal, the appellant shall be required to file and serve with the notice of appeal, written submissions in support of the appeal, together with six bundles of documents comprising a copy of each of the following documents in the order set out below, bound, indexed and paginated—

(*a*) the judgment (if any) or order appealed,

(*b*) such affidavits, witness statements or exhibits relevant to the question at issue on the appeal, which were put in evidence before the court below,

(*c*) any written admissions or requests for information and replies,

(*d*) the judge's notes of any submissions made (if any), and

(*e*) any other relevant documents applicable to the appeal.

(2) The appellant's notice of appeal must state in the heading, that the appeal is an interlocutory appeal, and is made under rule 62.10 of the Civil Procedure Rules.

(3) A respondent who intends to oppose the notice of appeal, must within 7 days of receipt of the appeal, file and serve a notice of opposition.

(4) The respondent may, within 14 days of receipt of the notice of appeal, file and serve six copies of any written submissions in opposition to the appeal or in support of any cross appeal, together with any other documents, which have not been filed pursuant to paragraph (1), and the documents must be bound, indexed and paginated.

(5) The general rule is, that an interlocutory appeal is to be considered on paper by a single judge in the court.

(6) Consideration of the appeal must take place not less than 14 days after filing of the notice of appeal, unless the court otherwise directs.

(7) The judge may, however, direct that the parties be entitled to make oral submissions, and may direct that the appeal be heard by the court.

(8) The judge may exercise any power of the court, whether or not any party has filed or served a counter-notice.

62.11 Skeleton arguments

(1) Within forty-two days of receipt of the notice under rule 62.9(*a*), (*b*) or (*c*) the appellant must file with the court office, and serve on all other parties a skeleton argument.

(2) Within twenty-eight days of service of the appellant's skeleton argument, any other party wishing to be heard on the appeal must file its skeleton argument and serve a copy on all other parties.

(3) The appellant may file and serve a skeleton argument in reply within fourteen days of service of the skeleton argument by any other party.

(4) A skeleton argument must—

(*a*) set out concisely the nature of the appellant's arguments on each ground of appeal;

(*b*) in the case of a point of law, state the point and cite the principal authorities, in support with references to the particular page where the principle concerned is set out; and

(*c*) in the case of questions of fact, state briefly the basis on which it is contended that the Court of Appeal can interfere with the finding of fact concerned, with cross references to the passages in the transcript or notes of evidence which bear on the point.

(5) The appellant's skeleton argument must be accompanied by a written chronology of events relevant to the appeal cross-referenced to the core bundle or record.

(6) The Chief Justice may, by practice direction, set out those factors to which the court must have regard when considering the application of this Rule.

62.12 The record – appeals from High Court

(1) This Rule applies to all appeals from the High Court other than—

(*a*) interlocutory appeals; or

(*b*) summary appeals under rule 62.6.

(2) Within twenty-one days of receipt of the notice under rule 62.9(1)(*a*), (*b*) or (*c*), that the transcript is available, all parties must inform the appellant of the documents that they wish to have included in the record or the core bundle.

(3) Subject to paragraph (4), within forty-two days of receipt of such notice under rule 62.9(*b*), the appellant must prepare and file with the court office 6 sets of the record for the use of the court comprising a copy of each of the following documents—

(*a*) affidavits (with exhibits) which were put in evidence before the court below;

(*b*) a transcript or other record of the—

(i) evidence given in the court below, and

(ii) judgement;

(*c*) the documents required by rule 39.1(5) to be lodged with the court (including any core bundle);

(*d*) the notice of appeal and any counter-notices that have been served on the appellant; and

(*e*) the skeleton arguments and chronologies under rule 62.11.

(4) If the record consists of more than 100 pages the appellant must prepare a core bundle and file—

(*a*) 4 copies of the core bundle; and

(*b*) 2 copies of the record in accordance with paragraph (3),

for the use of the court.

(5) The appellant must forthwith serve one copy of the record or (if paragraph (4) applies) one copy of any core bundle on every respondent.

(6) Any application to correct the record must be made in writing to the Chief Registrar no later than twenty-one days after the service of the record or core bundle in accordance with paragraph (4).

62.13 The record – appeals from magistrates' courts

(1) This Rule applies to appeals from Magistrates' or District Courts.

(2) In the case of an appeal from a Magistrate's or District Court, the record must consist of the documents referred to in rule 62.9(1)(*b*), together with the notice of appeal and any counter-notices that have been served on the appellant.

(3) Within twenty-eight days of receipt of the notice under rule 62.9(1)(*b*), the appellant must file at the court office six copies of the record for the use of the court.

(4) The appellant must forthwith serve one copy of the record on each respondent to the appeal.

62.14 Case management

(1) Parts 25 to 27 so far as relevant apply to management of an appeal case as they do to case management of a trial.

(2) The Chief Justice may designate a single judge of the court, a judge, master or the Chief Registrar to manage an appeal case.

(3) The person designated under paragraph (2) may—

(*a*) give written directions which may include a direction that a date for hearing of the appeal be fixed or that a case management conference be held; or

(*b*) hold a case management conference.

(4) Directions, whether or not given at a case management conference, must include directions fixing a date for the hearing of the appeal or directions fixing a date by which a listing questionnaire must be sent to all parties and may include directions—

(*a*) as to the length of time to be allocated to the hearing of the appeal;

(*b*) that the parties agree a core bundle for use at the appeal;

(*c*) that the parties agree and file a statement of issues for the appeal;

(*d*) that the parties agree and file a statement summarising the facts found at the trial; and

(*e*) as to the filing of written briefs and as to the length of time allowed to each party for oral argument; or

(*f*) that the appeal be considered solely on written briefs without oral argument and as to the time by which such briefs are to be filed.

(5) If directions are given that a listing questionnaire be sent to all parties, rules 27.9 and 27.10 apply as if the references to the trial were references to the hearing of the appeal.

(6) If the management of an appeal has been referred to a single judge of the court under paragraph (2) that judge must wherever practicable be a member of the court hearing the appeal.

(7) The Chief Justice may, by practice direction, set out those factors to which the court must have regard when considering the application of this Rule.

62.15 Procedural applications to court

(1) Any application (other than an application for leave to appeal) to the court must be made in writing in the first instance and be considered by the Chief Justice, or if the Chief Justice directs, by—

(*a*) a judge;

(*b*) a master;

(*c*) a single judge of the court;

(*d*) the Chief Registrar;

(*e*) the court; or

(*f*) the registrar of the court below.

(2) If an appeal has been referred under rule 62.14(2) to a single judge of the court for case management, the application should, wherever practicable, be considered by that judge.

(3) So far as practicable, a procedural application is to be dealt with on paper or by telephonic or other means of communication.

(4) The court office must give the parties to the appeal at least seven days notice of any hearing.

62.16 Powers of single judge of the court, master and Chief Registrar to make certain orders

(1) A single judge of the court may make orders for—

(*a*) an injunction restraining any party from disposing of or parting with the possession of the subject matter of an appeal pending the determination of the appeal;

(*b*) a stay of execution on any judgement or order against which an appeal has been made pending the determination of the appeal;

(*c*) extension or abridgement of any time limit prescribed in this Part;

(*d*) the giving of security for any costs occasioned by an appeal.

(2) The Chief Justice may designate a master or the Chief Registrar to make orders for—

(*a*) extension or abridgement of any time limit prescribed in this Part;

(*b*) the giving of security for any costs occasioned by an appeal.

(3) An order made by a master or the Chief Registrar may be varied or discharged by a single judge.

(4) . . . . . .

62.16A Power of the Court to vary, discharge or revoke the order, direction or decision of a single Judge

Any order, direction or decision made or given by a single judge, may be varied, discharged or revoked by two judges, where the order, direction or decision relates to an appeal of a class which may be heard and determined by two judges and by the full court, in any case.

See The Windward Islands and Leeward Islands (Court's Order in Council, 1959, section 10(3) and CPR 2.5(4) and which provides for actions that may be heard and determined by two judges of the court, and actions may be heard and determined by the full court.

62.17 Security for costs of appeal

(1) The court may order—

(*a*) an appellant; or

(*b*) a respondent who files a counter notice asking the court to vary or set aside an order of a lower court,

to give security for the costs of the appeal.

(2) An application for security may not be made unless the applicant has made a prior written request for such security.

(3) In deciding whether to order a party to give security for the costs of the appeal, the court must consider—

(*a*) the likely ability of that party to pay the costs of the appeal if ordered to do so; and

(*b*) whether in all the circumstances it is just to make the order.

(4) On making an order for security for costs the court must order that the appeal be dismissed with costs if the security is not provided in the amount, in the manner and by the time ordered.

(5) Any costs to be paid under paragraph (4) must be assessed by the court.

Rule 65.12 deals with the assessment of costs.

62.18 Non-disclosure of payment into court, etc.

(1) If—

(*a*) any question on an appeal in a claim for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof; and

(*b*) an offer of settlement was made under Part 35 or payment into court in support of such an offer was made under Part 36 in the proceedings in the court below before judgement,

neither the fact nor the amount of the offer or payment is to be stated in any notice of appeal or counter-notice or communicated to the court until all such questions have been decided.

(2) For the purpose of complying with this Rule the appellant must cause to be omitted from the copies of the documents lodged by the appellant every part which states, or refers to the fact, that money was paid into court or an offer to settle was made in the proceedings in that court before judgement.

(3) This Rule does not apply to an appeal relating only to costs.

62.19 Stay of execution

Except so far as the court below or the court or a single judge of the court otherwise directs—

(*a*) an appeal does not operate as a stay of execution or of proceedings under the decision of the court below; and

(*b*) any intermediate act or proceeding is not invalidated by an appeal.

62.20 General powers of the court

(1) In relation to an appeal the Court of Appeal has all the powers and duties of the High Court including in particular the powers set out in Part 26.

(2) The court may hear an appeal in a Member State or Territory other than where the decision of the court below was made.

62.21 Failure of party to attend appeal

(1) If no party appears at the appeal and the court is satisfied that the parties have received notice of the hearing in accordance with these Rules, the court may strike out the appeal and any counter appeal.

(2) If one or more but not all parties appear, the court may proceed in the absence of the parties who do not appear if satisfied that the party who does not appear has received notice of the hearing in accordance with these Rules.

62.22 Application to set aside decision made in party's absence

(1) A party who was not present at an appeal at which a decision was made or where an appeal was struck out may apply to set aside that order.

(2) The application must be made within fourteen days after the date on which the judgement was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing—

(*a*) a good reason for failing to attend the hearing; and

(*b*) that it is likely that had the applicant attended, some other decision might have been made.

62.23 Adjournment of appeal

(1) The court may adjourn an appeal on such terms as it thinks just.

(2) The court may only adjourn an appeal to a date and time fixed by the court.

62.24 Certificate of result of appeal

At the conclusion of each appeal the court office must prepare a certificate of the result of the appeal in Form 24 and—

(*a*) file a copy at the court office at which the Notice of Appeal was lodged; and

(*b*) serve a copy on each party to the appeal.

62.25 Withdrawal or discontinuance

(1) If the appellant files a notice that he desires to withdraw or discontinue his appeal, the appeal shall stand dismissed on the date on which such notice is filed.

(2) The appellant shall serve copies of the notice of withdrawal or discontinuance on all the parties with regard to whom the appellant wishes to withdraw his appeal, within two days of filing, and shall file such notice and evidence of service, within two days of service.

(3) Any party served in accordance with this Rule, shall be precluded from laying claim to any costs incurred by him after such service, unless the court shall otherwise order.

(4) Notwithstanding the appeal stands dismissed, the appellant shall be liable for the costs incurred by the respondent.

62.26 Liability for costs on withdrawal or discontinuance

(1) Unless the—

(*a*) parties agree; or

(*b*) court orders otherwise;

an appellant who discontinues, is liable for the costs incurred by the respondent against whom the claim is discontinued, on or before the date on which notice of discontinuance was served.

(2) If an appeal is only partly discontinued—

(*a*) the appellant is only liable for the costs relating to that part of the appeal which is discontinued; and

(*b*) unless the court orders otherwise, the costs which the appellant is liable to pay, are not to be quantified until the conclusion of the rest of the appeal.

62.27 Quantification of costs on withdrawal or discontinuance

(1) The general rule is that, unless an order has been made for budgeted costs under rule 65.8, the costs are to be determined in accordance with the scale of prescribed costs contained in Part 65, Appendices B and C.

(2) If the appellant discontinues part of the appeal only, the amount of costs must be assessed by the court when the reminder of the appeal is resolved.

(3) In determining the appropriate amount of costs to be paid, where an order has been made under rule 65.8 (budgeted costs), the court may take into account, any written information provided by either party when the costs budget was made.

62.28 Judicial review appeals

(1) Where leave to apply for judicial review has been refused at a hearing in the court below, the person seeking that leave, may apply to the court for leave to appeal.

(2) An application in accordance with paragraph (1), must be made within 7 days of the decision of the court below, to refuse to give leave, to apply for judicial review.

(3) On an application under paragraph (1), the court may, instead of giving leave to appeal, give leave to apply for judicial review.

(4) Where the court gives leave to apply for judicial review in accordance with paragraph (3), the claim will proceed in the court below, unless the court orders otherwise.

PART 63

Change of Legal Practitioner

63.1 Scope of this Part

This Part deals with the procedure where—

(*a*) a legal practitioner acts in the place of a party in person;

(*b*) a party who has previously acted by a legal practitioner acts in person; or

(*c*) there is a change of legal practitioner.

63.2 Change of legal practitioner

When a party changes its legal practitioner the new legal practitioner must—

(*a*) file a notice of acting which states the legal practitioner's business name, address, telephone number and fax number (if any);

(*b*) serve a copy of the notice on every other party and the former legal practitioner; and

(*c*) file a certificate of service.

63.3 Notice of appointment of legal practitioner

If a person who has previously acted in person instructs a legal practitioner, that legal practitioner must—

(*a*) file notice of acting at the court office which states the legal practitioner's business name, address, telephone number and fax number (if any);

(*b*) serve a copy of the notice on every other party; and

(*c*) file a certificate of service.

63.4 Party acting in person

If a party who has previously been represented by a legal practitioner decides to act in person, that party must—

(*a*) file notice of acting in person at the court office which states the address, an address for service within the jurisdiction, telephone number and fax number (if any) of that party;

(*b*) serve a copy of the notice on every other party and the former legal practitioner; and

(*c*) file a certificate of service.

63.5 Application by another party to remove legal practitioner from record

(1) If—

(*a*) a legal practitioner on record for a party has—

(i) become bankrupt,

(ii) been removed from the roll,

(iii) died, or

(iv) failed to take out a practising certificate; and

(*b*) notice of the appointment of a new legal practitioner under rule 63.2 or of the party acting in person under rule 63.4 has not been received,

any other party may apply to the court for an order declaring that the legal practitioner in question has ceased to act.

(2) An application under this Part must be supported by evidence on affidavit and must be served on the legal practitioner (if practicable) and personally on the client.

(3) Any order made must be served by the applicant on the legal practitioner or former legal practitioner (if practicable) and personally on the client.

(4) The applicant must file a certificate of service of the order.

63.6 Application by legal practitioner to be removed from record

(1) A legal practitioner who wishes to be removed from the record as acting for a party may apply to the court for an order that he or she be removed from the record.

(2) The application must be on notice to the client or former client and to all other parties.

(3) The application must be supported by evidence on affidavit which must be served on the client but must not be served on any other party to the proceedings.

(4) Any order made must be served by the applicant on the other parties' legal practitioners and personally on the former client.

(5) The applicant must file a certificate of service of the order.

63.7 Time when notice or order takes effect

Any notice under rule 63.2, 63.3 or 63.4, or order under rule 63.5 or 63.6 does not take effect until service.

PART 64

Costs – General

64.1 Scope of this Part

This Part contains general Rules about costs and the entitlement to costs. Part 65 deals with the quantification of such costs.

64.2 Definitions and application

(1) In this Part and in Part 65, unless the context otherwise requires—

"assessed costs" and "assessment" have the meanings given them by rules 65.11 and 65.12;

"budgeted costs" has the meaning given to it by rule 65.8;

"costs" include a legal practitioner's charges and disbursements, fixed costs, prescribed costs, budgeted costs or assessed costs;

"fixed costs" has the meaning given to it by rule 65.4; and

"prescribed costs" has the meaning given to it by rule 65.5.

(2) If costs of—

(*a*) a legal practitioner to his or her client;

(*b*) arbitration proceedings; or

(*c*) proceedings before a tribunal or other statutory body,

are to be taxed or assessed by the court, they must be assessed in accordance with rule 65.12.

(3) If in any enactment there is a reference to the taxation of any costs this is to be construed as referring to the assessment of such costs in accordance with rule 65.12, unless the enactment otherwise provides.

64.3 Orders about costs

The court's powers to make orders about costs include power to make orders requiring a party to pay the costs of another person arising out of or related to all or any part of any proceedings.

64.4 Costs where there is an appeal

The court hearing an appeal may make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

64.5 Entitlement to recover costs

A person may not recover the costs of proceedings from any other party or person except by virtue of—

(*a*) an agreement between the parties;

(*b*) an order of the court; or

(*c*) a provision of these Rules.

64.6 Successful party generally entitled to costs

(1) Where the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.

(2) The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs.

(3) This Rule gives the court power in particular to order a person to pay—

(*a*) costs from or up to a certain date only;

(*b*) costs relating only to a certain distinct part of the proceedings; or

(*c*) only a specified proportion of another person's costs.

(4) The court may not make an order under paragraph 3(*a*) or 3(*b*) unless it is satisfied that an order under paragraph 3(*c*) would not be more practicable.

(5) In deciding who should be liable to pay costs the court must have regard to all the circumstances.

(6) In particular it must have regard to—

(*a*) the conduct of the parties both before and during the proceedings;

(*b*) the manner in which a party has pursued—

(i) a particular allegation,

(ii) a particular issue, or

(iii) the case;

(*c*) whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings;

(*d*) whether it was reasonable for a party to—

(i) pursue a particular allegation, and/or

(ii) raise a particular issue; and

(*e*) whether the claimant gave reasonable notice of intention to issue a claim.

- Rule 65.11 sets out the way in which the court must deal with the costs of procedural hearings other than a case management conference or pre-trial review.

64.7 Two or more parties having same interest

If two or more parties having the same interest in relation to proceedings are separately represented the court may disallow more than one set of costs.

64.8 Wasted costs orders

(1) In any proceedings the court may by order—

(*a*) direct the legal practitioner to pay; or

(*b*) disallow as against the legal practitioner's client,

the whole or part of any wasted costs.

(2) In this Rule—

"wasted costs" means any costs incurred by a party—

(*a*) as a result of any improper, unreasonable or negligent act or omission on the part of any legal practitioner or any employee of the legal practitioner; or

(*b*) which, in the light of any act or omission occurring after they were incurred,

the court considers it unreasonable to expect that party to pay.

64.9 Court's powers in relation to wasted cost orders

(1) The court may make an order under this Rule where—

(*a*) a party or his legal representative, fails to comply with a Rule, practice direction or court order; or

(*b*) it appears to the court, that the conduct of a party or his legal representative, before or during the proceedings, was unreasonable or improper.

(2) Where paragraph (1) applies, the court may—

(a) disallow all or part of the costs which are being assessed; or

(b) order the party at fault, or his legal representative, to pay costs to the court, or which he has caused any other party to incur; or both.

(3) Where—

(*a*) the court makes an order under paragraph (2), against a legally represented party; and

(*b*) the party is not present when the order is made, the party's legal practitioner receives notice of the order.

64.10 Costs against person who is not a party

(1) This Rule applies where—

(*a*) an application is made for; or

(*b*) the court is considering whether to make,

an order that a person who is not a party to the proceedings nor the legal practitioner to a party should pay the costs of some other person.

(2) Any application by a party must be on notice to the person against whom the costs order is sought and must be supported by evidence on affidavit.

(3) If the court is considering making an order against a person the court must give that person notice of the fact that it is minded to make such an order.

(4) A notice under paragraph (3) must state the grounds of the application on which the court is minded to make the order.

(5) A notice under paragraph (2) or (3) must state a date, time and place at which that person may attend to show cause why the order should not be made.

(6) The person against whom the costs order is sought and all parties to the proceedings must be given fourteen days' notice of the hearing.

PART 65

Costs – Quantification

65.1 Scope of this Part

This Part deals with the way in which any costs awarded by the court are quantified.

65.2 Basis of quantification

(1) If the court has a discretion as to the amount of costs to be allowed to a party, the sum to be allowed is—

(*a*) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence; and

(*b*) which appears to the court to be fair both to the person paying and the person receiving such costs.

(2) If the court has a discretion as to the amount of costs to be paid to a legal practitioner by his or her client, the sum allowed is—

(*a*) the amount that the court deems to be reasonable; and

(*b*) which appears to be fair both to the legal practitioner and the client.

(3) In deciding what would be reasonable the court must take into account all the circumstances, including—

(*a*) any order that has already been made;

(*b*) the care, speed and economy with which the case was prepared;

(*c*) the conduct of the parties before as well as during the proceedings;

(*d*) the degree of responsibility accepted by the legal practitioner;

(*e*) the importance of the matter to the parties;

(*f*) the novelty, weight and complexity of the case;

(*g*) the time reasonably spent on the case; and

(*h*) in the case of costs charged by a legal practitioner to his or her client—

(i) any agreement about what grade of legal practitioner should carry out the work,

(ii) any agreement that may have been made as to the basis of charging, and

(iii) whether the legal practitioner advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case.

65.3 Ways in which costs are to be quantified

Costs of proceedings under these Rules are to be quantified as follows—

(*a*) where rule 65.4 applies – in accordance with the provisions of that rule; and

(*b*) in all other cases if, having regard to rule 64.6, the court orders a party to pay all or any part of the costs of another party – in one of the following ways—

(i) costs determined in accordance with rule 65.5 ("prescribed costs"),

(ii) costs in accordance with a budget approved by the court under rule 65.8 ("budgeted costs"), or

(iii) (if neither prescribed not budgeted costs are applicable), by assessment in accordance with rules 65.11 and 65.12.

65.4 Fixed costs

(1) A party is entitled to the costs set out in column 3 of Appendix A to this Part in the circumstances set out in column 2 of that Appendix.

(2) The court may however direct that some other amount of costs be allowed for the work covered by any item in Part 2 of Appendix A.

(3) If it does so, the court must assess such costs.

Rule 65.11 and 65.12 deals with the assessment of costs.

65.5 Prescribed costs

(1) The general rule is that where rule 65.4 does not apply and a party is entitled to the costs of any proceedings, those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2) to (4) of this Rule.

(2) The "value" of the claim, whether or not the claim is one for a specified or unspecified sum, coupled with a claim for other remedies, is to be decided in the case of the claimant or defendant—

(*a*) by the amount agreed or ordered to be paid; or if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to, and the party liable to, such costs or, if not agreed, a sum stipulated by the court as the value of the claim; or

(*b*) if the claim is not for a monetary sum, it is to be treated as a claim for $50,000, unless the court makes an order under rule 65.6(1)(*a*).

(3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentages specified in column 3 of Appendix B against the appropriate value.

(4) The court may—

(*a*) award a proportion only of such sum having taken into account the matters set out in rule 64.6(4) and (5); and

(*b*) order a party to pay costs—

(i) from or to a certain date, or

(ii) relating only to a certain distinct part of the proceedings, in which case it must specify the proportion of the fixed costs which is to be paid by the party liable to pay such costs and in so doing may take into account the table set out in Appendix C.

65.6 Applications to determine value of claim for purpose of prescribed costs

(1) A party may apply to the court at any time before trial—

(*a*) to determine the value to be placed on a case which has no monetary value; or

(*b*) where the likely value is known, to direct that the prescribed costs to be calculated on the basis of some higher or lower value.

(2) . . . . . .

(3) If an application is made for costs to be prescribed at a higher level, rules 65.8(4)(*c*) and 65.9 apply.

65.7 What is included in prescribed costs

(1) Prescribed costs include all work that is required to prepare the proceedings for trial including, in particular, the costs involved in—

(*a*) instructing any expert;

(*b*) considering and disclosing any report made by the expert;

(*c*) arranging the expert witness' attendance at trial; and

(*d*) attendance and advocacy at the trial including attendance at any case management conference or pre-trial review.

(2) Prescribed costs exclude—

(*a*) expert's fees for preparing a report and attending any conference, hearing or trial;

(*b*) costs incurred in enforcing any order (which are generally fixed in accordance with rule 65.4 but may, in certain cases, be assessed in accordance with rule 65.12);

(*c*) the cost of obtaining a daily transcript of the evidence if the trial judge certifies this as a reasonable disbursement in all the circumstances of the case; and

(*d*) the making or opposing of any application except at a case management conference or pre-trial review.

65.8 Budgeted costs

(1) A party may apply to the court to set a costs budget for the proceedings.

(2) An application for a costs budget must be made at or before the first case management conference.

(3) The application may be made by either or both parties but an order setting a costs budget may not be made by consent unless all relevant parties are bodies corporate.

(4) An application for a costs budget must be accompanied by—

(*a*) a statement of the amount that the party seeking the order wishes to be set as the costs budget;

(*b*) a statement showing how the budget has been calculated and setting out in particular—

(i) a breakdown of the costs incurred to date,

(ii) the anticipated amount of any expert witness fees and whether or not such fees are included in the budget,

(iii) the disbursements other than expert fees that are included in the budget,

(iv) the fees that are anticipated to be paid to any legal practitioner other than the legal practitioner on record for advocacy (including advocacy by a Queen's Counsel, a State Counsel or more than one counsel), advising or settling any document,

(v) the hourly rate charged by the legal practitioner (or other basis of charging),

(vi) a statement of the number of hours of preparation time (including attendances upon the party, any witness and any other party to the proceedings) that the legal practitioner for the party making the application has already spent and anticipates will be required to bring the proceedings to trial, and

(vii) what procedural steps or applications are or are not included in the budget; and

(*c*) the written consent from the client in accordance with rule 65.9.

(5) A party may apply to vary the terms of an order made under this Rule at any time prior to the commencement of the trial but no order may be made increasing the amount of the budgeted costs unless the court is satisfied that there has been a change of circumstances which became known after the order was made.

65.9 Client's consent to application for budgeted costs

(1) The court may not make an order for budgeted costs unless—

(*a*) the court satisfies itself that each party fully understands the consequences of the order that is being sought as to—

(i) the party's liability for costs to the party's own legal practitioner, whether the party obtains an order for costs against any other party or not,

(ii) the party's liability to pay costs in the budgeted sum to the other party if that other party obtains an order for costs against the party, and

(iii) what the party's liability might be under paragraphs (i) and (ii) if rule 65.5 applied;

(*b*) the consent under paragraph (*c*) is in a separate document which—

(i) deals only with the question of budgeted costs,

(ii) gives an estimate of the total costs of the proceedings as between the legal practitioner and the client,

(iii) is signed by the party in person,

(iv) states the legal practitioner's estimate of what the prescribed costs appropriate to the proceedings would be, and

(v) sets out the basis of that estimate including the amount of any hourly charge;

(*c*) there has been filed a document recording the express consent of the party in person to the application and to any order made as a consequence of the application; and

(*d*) the party seeking the order is present in person when the application is made except where—

(i) that party is a body corporate, or

(ii) for some exceptional reason this is impracticable.

(2) The written consent of the client must not be disclosed to the other party.

(3) This Rule also applies to any other party personally who consents to or does not oppose an order for a costs budget.

65.10 What is included in costs budget

Unless the costs budget approved by the court specifies otherwise, rule 65.7 applies to budgeted costs as it does to prescribed costs.

65.11 Assessed costs – procedural applications

(1) On determining any application except at a case management conference, pre-trial review or the trial, the court must—

(*a*) decide which party, if any, should pay the costs of that application;

(*b*) assess the amount of such costs; and

(*c*) direct when such costs are to be paid.

(2) In deciding which party, if any, should pay the costs of the application the general rule is that the unsuccessful party must pay the costs of the successful party.

(3) The court must take into account all the circumstances including the factors set out in rule 64.6(6) but where the application is—

(*a*) an application to amend a statement of case;

(*b*) an application to extend the time specified for doing any act under these Rules or an order or direction of the court;

(*c*) an application for relief under rule 26.8 (relief from sanctions); or

(*d*) one that could reasonably have been made at a case management conference or pre-trial review,

the court must order the applicant to pay the costs of the respondent unless there are special circumstances.

(4) In assessing the amount of costs to be paid by any party the court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair and reasonable.

(5) A party seeking assessed costs must supply to the court and to all other parties a brief statement showing—

(*a*) any counsel's fees incurred;

(*b*) how that party's legal representative's costs are calculated; and

(*c*) the disbursements incurred.

(6) The statement under paragraph (5) must comply with any relevant practice direction.

(7) The costs allowed under this Rule may not exceed one tenth of the amount of the prescribed costs appropriate to the claim unless the court considers that there are special circumstances of the case justifying a higher amount.

65.12 Assessed costs – general

(1) This Rule applies where costs fail to be assessed in relation to any matter or proceedings, or part of a matter or proceedings, other than a procedural application.

(2) If the assessment relates to part of court proceedings it must be carried out by the judge, master or registrar hearing the proceedings.

(3) If the assessment does not fail to be carried out at the hearing of any proceedings then the person entitled to the costs must apply to a master or the registrar for directions as to how the assessment is to be carried out.

(4) The application must be accompanied by a bill or other document showing the sum in which the court is being asked to assess the costs and how such sum was calculated.

(5) On hearing any such application the master or registrar must either—

(*a*) assess the costs if there is sufficient material available to do so; or

(*b*) fix a date, time and place for the assessment to take place.

(6) The master or registrar may direct that the party against whom the bill is assessed pay the costs of the party whose bill is being assessed and, if so, must assess such costs and add them to the costs ordered to be paid.

65.13 Costs of proceedings in Court of Appeal

(1) The general rule is, that the costs of any appeal must be in accordance with rules 65.5, 65.6 and 65.7 and Appendix B, but the costs must be limited to two thirds of the amount that would be otherwise allowed.

(2) The court of Appeal may, if the circumstances of the appeal or the justice of the case require, depart from the general rule and, in such a case, it may—

(*a*) make an order for budgeted costs, whether on an application made in accordance with rules 65.8 and 65.9 or otherwise; or

(*b*) make such other order as it sees fit.

65.14 Costs capping orders – General

(1) A costs capping order is an order limiting the amount of future costs (including disbursements), which a party may recover, pursuant to an order for costs subsequently made.

(2) In this Rule, "future costs" means, costs incurred in respect of work done after the date of the costs capping order, but excluding the amount of any additional liability.

(3) A cost capping order may be in respect of—

(*a*) the whole litigation; or

(*b*) any issues which are ordered to be tried separately.

(4) The court may, at any stage of proceedings, make a costs capping order against all or any of the parties, if—

(*a*) it is in the interests of justice to do so;

(*b*) there is a substantial risk, that without such an order, costs will be disproportionately incurred; and

(*c*) it is not satisfied, that the risk in subparagraph (*b*) can be adequately controlled by—

(i) case management directions or orders made under Part 26, and

(ii) detailed assessment of costs.

(5) In considering whether to exercise its discretion under this Rule, the court will consider all the circumstances of the case, including—

(*a*) whether there is a substantial imbalance between the financial position of the parties;

(*b*) whether the costs of determining the amount of the cap, are likely to be proportionate to the overall costs of the litigation;

(*c*) the stage which the proceedings have reached; and

(*d*) the costs which have been incurred to date and the future costs.

(6) A costs capping order, once made, will limit the costs recoverable by the party subject to the order, unless a party successfully applies to vary the order. No such variation will be made unless—

(*a*) therehasbeenamaterialandsubstantialchangeofcircumstances since the date when the order was made; or

(*b*) there is some other compelling reason why a variation should be made.

65.15 Application for a costs capping order

(1) An application for a costs capping order, must be made on notice in accordance with Part 11.

(2) The application must—

(*a*) set out—

(i) whether the costs capping order is in respect of the whole of the litigation, or a particular issue which is ordered to be tried separately; and

(ii) why a costs capping order should be made; and

(*b*) be accompanied by an estimate of cost, setting out—

(i) the costs (and disbursements) incurred by the applicant to date, and

(ii) the costs (and disbursements) which the applicant is likely to incur, in the future conduct of the proceedings.

(3) The court may give directions for the determination of the application, and such directions may—

(*a*) direct any party to the proceedings—

(i) to file a schedule of costs,

(ii) to file written submissions on all or any part of the issues arising;

(*b*) fix the date and time estimate of the hearing of the application;

(c) include any further directions as the court sees fit.

65.16 Application to vary a costs capping order

An application to vary a costs capping order must be made by application notice pursuant to Part 11.

Appendix A

Fixed Costs

PART 1

This Part of the Appendix sets out the fixed costs applicable to a claim for a specified sum of money—

(*a*) which a defendant who does not defend must pay to the claimant, in addition to the amount claimed and interest and the court fees paid by the claimant, in order to avoid judgement being entered under Part 12. These sums are to be entered on the claim form. The table also deals with claims for possession of land or delivery of goods and an application for an order for attachment of debts – Table 1 refers; and

(*b*) which a claimant is entitled to include as costs in any default judgement under Part 12 in addition to the costs set out in Table 1 – Table 2 refers.

Scale of Fixed Costs

TABLE 1

1. This table shows the amounts to be entered on a claim form or provisional attachment of debts order in respect of a legal practitioner's charges in—

(*a*) a claim for payment of a specified sum of money;

(*b*) attachment of debt proceedings; or

(*c*) a claim for the recovery of land.

2. In addition to the fixed costs the appropriate court fee is to be allowed together with the sum of $100 for personal service of the claim form.

Column 1	*Column 2*	*Column 3*
(1)	Claim exceeding $5,000 but not exceeding $15,000 or a claim for recovery of land or delivery of goods	$ 750
(2)	Claim exceeding $15,000 but not exceeding $50,000	$ 1,000
(3)	Claim exceeding $50,000 but not exceeding $100,000	$ 1,500
(4)	Claim exceeding $100,000 but not exceeding $500,000	$ 2,000
(5)	Claim exceeding $500,000	$ 2,500

TABLE 2

This table shows additional costs which may be added on the entry of a default judgement under Part 12 or a judgement on admissions under Part 14 for a specified sum of money.

Column 1	*Column 2*	*Column 3*
(1)	Where there is only one defendant and items (3) to (6) of this table do not apply	$350
(2)	Where there is more than one defendant, in respect of each additional defendant served against whom judgement is entered	$50
(3)	Where an order is made under rule 5.14 (specified method of service) for each defendant served	$500
(4)	Where an order is made under Part 7 for service out of the jurisdiction (to cover the obtaining of an order under Part 7 and service)	$500
(5)	Where judgement is entered on an admission and the claimant accepts the defendant's proposals as to method of payment under rule 14.10	$350
(6)	Where judgement is entered on an admission and the time and rate of payment are not agreed under rule 14.11	$500

PART 2

Miscellaneous enforcement proceedings

The following table shows the amount to be allowed in respect of a legal practitioner's charges in the circumstances set out. The appropriate court fee is to be added. The court may order that the costs of any such matter be assessed.

Column 1	*Column 2*	*Column 3*
(1)	For filing a request for the issue of a writ of execution	$150
(2)	For each attendance at a hearing of—	
	(i) an application for time to pay where the debt is admitted,	
	(ii) an application to suspend a writ of execution, or	
	(iii) an oral examination	$300
(3)	For the costs of the judgement creditor where allowed in proceedings for an attachment of debts order or an application for payment out of money in court under rule 50.15, where the amount recovered—	
	(i) does not exceed $1000,	One half of the amount recovered
	(ii) exceeds $1000	$500
(4)	For the costs of the Judgement creditor where allowed in an application for a charging order	$500

(5)	In addition, for the personal service of any application requiring such service	$ 100

Appendix B

Scale of Prescribed Costs

Column 1	*Column 2*	*Column 3*
	Value of Claim	Percentage
(1)	Not exceeding $100,000	15%
(2)	Exceeding $100,000 but not exceeding $250,000	12.5%
(3)	Exceeding $250,000 but not exceeding $500,000	10%
(4)	Exceeding $500,000 but not exceeding $1,000,000	7%
(5)	Exceeding $1,000,000 but not exceeding $2,500,000	3%
(6)	Exceeding $2,500,000	0.5%

Note.—The costs for each stage of the scale are cumulative

(Example	Claim for	$750,000
First	$100,000	$15,000
Next	$150,000	$18,750
Next	$250,000	$25,000
Next	$250,000	$17,500
Total	$76,250	

Appendix C

Prescribed Costs: Percentage to be Allowed at Various Stages of Claim

Table showing the percentage of the prescribed costs to be allowed under Appendix B where a claim concludes prior to trial.

Column 1	*Column 2*	*Column 3*
	Stage	Percentage
(1)	Up to and including service of defence	45%
(2)	After defence and up to and including the case management conference	55%
(3)	From case management conference and up to and including listing questionnaire	70%
(4)	From listing questionnaire and up to and including pre-trial review (if any)	75%
(5)	To trial	100%
(6)	Up to default judgement and including assessment of damages	60%

(Example

Claim for $750,000 – full costs as in Appendix 3 – $76,250

Claim discontinued after case management conference – defendant entitled to 70% of total costs – $53,375)

PART 66

Mortgage Claims

66.1 Scope of this Part

(1) This Part deals with claims by a mortgagor or mortgagee for any of the following forms of relief—

(*a*) foreclosure;

(*b*) delivery of possession by the mortgagee;

(*c*) payment of monies secured by a mortgage;

(*d*) possession of a mortgaged property;

(*e*) reconveyance of the property or release from the mortgage;

(*f*) redemption of a mortgage; and

(*g*) sale of a mortgaged property.

(2) In this Part—

"mortgage" includes a legal or equitable charge and a legal or equitable mortgage;

"mortgage claims" means the claims by a mortgagee or mortgagor for any of the forms of relief referred to in paragraph (1);

"mortgagee" means the person to whom the mortgage was granted; and

"mortgagor" means the person who has granted a mortgage of the mortgaged property.

(3) This Part does not apply to Saint Lucia.

(4) This Part does not affect any procedure under any enactment relating to the registration of title to land unless court proceedings are taken.

66.2 Mortgage claim to be by fixed date claim

(1) A mortgage claim is made by issuing a fixed date claim in Form 2.

(2) Notice of the claim must be given to all other mortgagees of the land.

- Rules 8.1 and 27.2 deal with the procedure relating to fixed date claims.

66.3 Evidence at first hearing

A claimant who seeks final judgement at the first hearing must—

(*a*) file evidence on affidavit in support of the claim;

(*b*) serve—

(i) a copy of the affidavit but not the exhibits, and

(ii) a notice stating what relief is sought,

with the claim form; and

(*c*) file a certificate of service not less than seven days before the first hearing.

- Rule 28.16 enables a party to require copies of any document referred to in an affidavit.

66.4 Claim for possession or payment of mortgage debt

(1) On a claim for possession of the mortgaged property or for payment of the mortgage debt the claimant must file with the claim form evidence by affidavit—

(*a*) exhibiting a copy of the original mortgage;

(*b*) exhibiting a copy of any other document which sets out the terms of the mortgage; and

(*c*) giving particulars of—

(i) the amount of the advance,

(ii) the interest payable under the mortgage,

(iii) the amount of any periodic payments required to be made stating whether or not such payments include interest,

(iv) the amount of repayments that have been made,

(v) the amount of any repayments or interest due but unpaid at the date of the claim and at the date of the affidavit,

(vi) the amount remaining due under the mortgage, and

(vii) if the claim includes a claim for interest to judgement – the daily rate at which such interest accrues.

(2) If the claimant seeks possession of the mortgaged property, the claimant must also file with the claim form evidence by affidavit—

(i) giving details of any person other than the defendant and the defendant's family who to the claimant's knowledge is in occupation of the mortgaged property, and

(ii) stating the circumstances under which the right to possession arises.

(3) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if by service of a notice when and how that notice was served.

PART 67

Administration Claims

67.1 Scope of this Part

(1) This Part deals with—

(*a*) claims for—

(i) the administration of the estate of a deceased person, and

(ii) the execution of a trust under the direction of the court,

which are referred to as "administration claims"; and

(*b*) claims to determine any question or grant any relief relating to the administration of the estate of a deceased person or the execution of a trust.

(2) Such claims must be brought by a fixed date claim in Form 2.

(3) In this Part—

"administration claims" mean claims for—

(*a*) the administration of the estate of a deceased person; and

(*b*) the execution of a trust under the direction of the court.

67.2 Parties

(1) An administration claim or a claim under rule 67.4 may be brought by any—

(*a*) executor or administrator of the relevant estate;

(*b*) person having or claiming to have a beneficial interest in the estate of a deceased person or under a trust; or

(*c*) trustee of the relevant trust.

(2) Any executor or administrator of the relevant estate or trustee of the relevant trust who is not a claimant must be a defendant to the claim.

(3) The general rule is that the claimant need not join as a defendant any person having a beneficial interest under the estate or trust.

(4) (*a*) The claimant may make any such person a defendant; and

(*b*) the court may direct that any such person be made a defendant.

67.3 Claims by third parties

(1) This Rule applies where—

(*a*) there are proceedings under a judgement or order made in an administration claim relating to the estate of a deceased person; and

(*b*) a person not a party to the claim makes a claim against the estate.

(2) Any person other than the executors or administrators may not appear in proceedings relating to that claim unless the court otherwise directs.

67.4 Determination of questions without administration claim

(1) An executor, administrator or trustee may issue a claim for—

(*a*) any relief; or

(*b*) the determination of any question,

without bringing an administration claim.

(2) The "determination of any question" includes any question—

(*a*) arising in the administration of the estate of a deceased person;

(*b*) arising in the execution of, or under a trust;

(*c*) as to the composition of any class of persons having a claim against—

(i) a beneficial interest in the estate of a deceased person,

(ii) any property subject to a trust, or

(iii) the estate of a deceased person; and

(*d*) as to the rights or interests of a person claiming to be—

(i) a creditor of the estate of a deceased person,

(ii) beneficially entitled under a trust, or

(iii) entitled under a will or on the intestacy of a deceased person.

(3) "Any relief" includes an order—

(*a*) approving any sale, purchase, compromise or other transaction by a person in the capacity of executor, administrator or trustee;

(*b*) 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 under the direction of the court;

(*c*) directing a person to do or abstain from doing a particular act in the capacity of executor, administrator or trustee;

(*d*) requiring an executor, administrator or trustee to furnish and verify accounts; or

(*e*) requiring the payment into court of money held by a person in the capacity of executor, administrator or trustee.

67.5 Judgements and orders in administration claims

(1) The court need not make any judgement or order in an administration claim unless satisfied that the question in issue cannot be determined by other means.

(2) If an administration claim is brought by a—

(*a*) creditor of the estate of a deceased person;

(*b*) person claiming to be beneficially entitled under a trust; or

(*c*) person claiming to be entitled under the will or the intestacy of a deceased person; and

the claimant alleges that no, or no sufficient accounts have been furnished by the executors, administrator or trustees, the court may—

(i) stay the proceedings until a specified date and direct the executors, administrators or trustees to supply proper accounts to the claimant, or

(ii) if it is necessary to prevent proceedings by other creditors or claimants, give judgement or make an order for the administration of the estate and include an order that no proceedings are to be taken under the judgement or order, or under any particular account or inquiry directed without the court's permission.

67.6 Conduct of sale of trust property

If in an administration claim an order is made for the sale of any property vested in administrators, executors or trustees, they are to have conduct of the sale unless the court otherwise directs.

PART 68

Contentious Probate Proceedings

68.1 Scope of this Part

(1) This Part applies to probate causes and matters, including applications for the rectification of a will, and the other provisions of these Rules apply to those causes and matters subject to this Part.

(2) In this Part—

"probate claim" means a claim 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 a claim which is non-contentious or common form probate business; and

"will" includes a codicil.

68.2 How to commence probate proceedings

(1) Probate proceedings must be begun by issuing a fixed date claim form in Form 2.

(2) The claim form must state the nature of the interest of the claimant and of the defendant in the estate of the deceased person to which the claim relates.

(3) The claimant must file a statement of claim with the claim form.

68.3 Parties to proceedings for revocation of grant

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 the deceased person's will or letters of administration of the estate must be made a party to any proceedings for revocation of the grant.

68.4 Lodgement of grant in proceedings for revocation

(1) If, at the commencement of proceedings 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 the—

(*a*) claimant must lodge the probate or letters of administration at the court within seven days after the issue of the claim where the proceedings are commenced by a person to whom the grant was made; or

(*b*) applicable defendant must lodge the probate or letters of administration at the court within fourteen days after the service of the claim form, if it or they are in the possession or under the control of that defendant.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the proceedings, be ordered by the court to lodge the probate or letters of administration within a specified time.

(3) If an order is made under paragraph (2), a person against whom such an order is made may not take any step in the proceedings without the permission of the court until that person has complied with the order.

68.5 Affidavit of testamentary scripts

(1) Unless the court otherwise directs, the claimant and every defendant who has entered an acknowledgment of service in probate proceedings must swear an affidavit—

(*a*) describing any testamentary script of the deceased person, whose estate is the subject of the claim, of which he or she has any knowledge or, if such be the case, stating that he or she knows of no such script; and

(*b*) if the defendant has knowledge of any such script which is not in his or her possession or under his or her control—

(i) giving the name and address of the person in whose possession or under whose control it is, or

(ii) that he or she does not know the name or address of that person.

(2) (*a*) Any affidavit required by this Rule must be filed; and

(*b*) any testamentary script referred to therein which is in the possession or under the control of the deponent,

must be lodged at the court—

(i) within fourteen days after the filing of an acknowledgment of service by a defendant to the proceedings, or

(ii) if no defendant files an acknowledgment of service and the court does not otherwise direct – before the first hearing.

(3) If any testamentary script required by this Rule to be lodged 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 and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Notwithstanding rule 3.14(2), except with the leave of the court, a party to probate proceedings may not be allowed to inspect an affidavit filed, or any testamentary script lodged, by any other party to the proceedings under this Rule, until an affidavit sworn by the first party containing the information referred to in paragraph (1) has been filed.

(5) In this Rule—

"testamentary script" means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

68.6 Failure to file acknowledgment of service

(1) Part 12 does not apply to probate proceedings.

(2) If any of several defendants to probate proceedings fails to file an acknowledgment of service or to file and serve a defence, the claimant may—

(*a*) after the time for entering an acknowledgment of service or filing a defence has expired; and

(*b*) upon filing an affidavit proving due service of the claim form and statement of claim on that defendant,

proceed with the claim as if that defendant had entered an acknowledgment of service.

(3) If the defendant, or all the defendants, to probate proceedings, fails or fail to file an acknowledgment of service or file and serve a defence, then, unless on the application of the claimant the court orders the claim to be dismissed or discontinued, the claimant may apply to the court at the first hearing—

(*a*) for the claim to be dealt with summarily at that hearing; or

(*b*) for a trial date to be fixed and any necessary directions to be given.

(4) Before applying for an order under paragraph (3) the claimant must file an affidavit proving due service of the claim form and statement of claim on the defendant.

(5) If the court grants an order under paragraph (3), it may direct the proceedings to be tried on affidavit evidence.

68.7 Counterclaim

A defendant to probate proceedings who alleges that he or she has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate of the deceased person which is the subject of the proceedings must add to the defence a counterclaim for that relief or remedy.

68.8 Contents of statements of case

(1) If the claimant in probate proceedings disputes the interest of a defendant, the claimant must—

(*a*) deny the interest of that defendant; and

(*b*) state the claimant's reasons for doing so,

in the statement of claim.

(2) In probate proceedings 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 that party's statement of case that if the allegations made therein are proved he or she would be entitled to an interest in the estate.

(3) Any party who pleads that at the time when a will, the subject of the proceedings, 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 or she 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 that—

(*a*) at the time of the execution of the will the testator was not of sound mind, memory and understanding;

(*b*) the execution of the will was obtained by undue influence or fraud; or

(*c*) the will was not duly executed,

may be made by that party unless that other plea is also set out in his or her statement of case.

68.9 Discontinuance and dismissal

(1) Part 37 does not apply to probate proceedings.

(2) At any stage of the proceedings the court may, on the application of the claimant or of any party to the proceedings who has entered an acknowledgment of service order the proceedings to be—

(*a*) discontinued; or

(*b*) dismissed,

on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate of the deceased person, as the case may be, be made to the person entitled.

68.10 Compromise of claim: trial on affidavit evidence

If, either before or after the service of the defence in probate proceedings, the parties to the proceedings agree to a compromise, the court may order the trial of the proceedings on affidavit evidence.

68.11 Application for order to bring in will, etc.

(1) Any application in probate proceedings for an order requiring a person to bring a will or other testamentary paper into court or to attend in court for examination may be made without notice but must be supported by evidence on affidavit setting out the grounds of the application.

(2) Any person against whom an order is made under paragraph (1) and who denies that the will or other testamentary paper referred to in the order is in his or her possession or under his or her control may file an affidavit to that effect.

68.12 Probate counterclaim in other proceedings

(1) In this Rule, "probate counterclaim" means a counterclaim in any claim other than probate proceedings by which the defendant claims any such relief as is mentioned in rule 68.1(2).

(2) Subject to the following paragraph, this Part applies with the necessary modifications to a probate counterclaim as it applies to probate proceedings.

(3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the claimant in the estate of the deceased person to which the counterclaim relates.

PART 69

Defamation Claims

69.1 Scope of this Part

These Rules apply to claims for libel or slander subject to the rules in this Part.

69.2 Claimant's statement of claim

The statement of claim (or counterclaim) in a defamation claim must, in addition to the matters set out in Part 8—

(*a*) give sufficient particulars of the publications in respect of which the claim is brought to enable them to be identified;

(*b*) if the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning – give particulars of the facts and matters relied on in support of such sense; and

(*c*) if the claimant alleges that the defendant maliciously published the words or matters – give particulars in support of the allegation.

69.3 Defendant's statement of case

A defendant (or in the case of a counterclaim, the claimant) who alleges that—

(*a*) in so far as the words complained of consist of statements of facts, they are true in substance and in fact; and

(*b*) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or

(*c*) pleads to like effect,

must give particulars stating—

(i) which of the words complained of are alleged to be statements of fact; and

(ii) the facts and matters relied on in support of the allegation that the words are true.

69.4 Ruling on meaning

(1) At any time after the service of the statement of claim, either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statement of case, the judge may dismiss the claim or make such other order or give such judgement in the proceedings as may be just.

69.5 Payments into court and offers

If the claimant claims against several defendants sued jointly and accepts money paid into court under Part 36 or a written offer under Part 35 by any one or more but not all of those defendants, the claim must be stayed against that defendant or those defendants, but—

(*a*) the sum recoverable under any judgement in favour of the claimant against any other defendant must not exceed the amount paid into court or the offer by the defendant or defendants against whom the claim has been stayed; and

(*b*) the claimant is not entitled to any costs after the date of acceptance of the payment into court or the offer to settle unless either the—

(i) court is satisfied that there were reasonable grounds to continue the claim against the other defendant or defendants; or

(ii) damages awarded exceed the amount paid into court or offered.

69.6 Statement in open court

If a defamation claim is settled before trial either party may apply to a judge in chambers for leave to make a statement in open court in terms agreed by the judge.

69.7 Requests for information

In a defamation claim where the defendant states that the words or matters complained of—

(*a*) are fair comment on a matter of public interest; or

(*b*) were published on a privileged occasion,

the claimant may not make a request for information under Part 34 as to the defendant's sources of information or grounds of belief.

69.8 Evidence to mitigate damages

A defendant who does not in the defence assert the truth of the statement of which complaint is made may not give evidence in chief as to the—

(*a*) character of the claimant; or

(*b*) circumstances under which the libel or slander was published,

with a view to mitigating damages unless particulars are given in a witness statement served at least forty-two days before the trial.

PART 70

Admiralty Proceedings

70.1 Scope of this Part

(1) This Part applies to Admiralty proceedings including those proceedings listed in rule 70.2 and any other Admiralty jurisdiction of the High Court.

(2) The other provisions of these Rules apply to Admiralty proceedings subject to the provisions of this Part.

(3) In this Part—

"Act" means any relevant enactment relating to merchant shipping in force in the particular Member State or Territory;

"*caveat* against arrest" means a *caveat* entered in the *caveat* book under rule 70.10;

"*caveat* against release and payment" means a *caveat* entered in the *caveat* book under rule 70.15;

"*caveat* book" means the book in which *caveat*s issued under this Part are entered;

"claim *in rem*" means any such claim as is mentioned in rule 70.3;

"collision regulations" means regulations made under the Act or in accordance with any international convention or treaty applicable to the relevant Member State or Territory;

"limitation claim" means any proceedings by ship owners or other persons under the Act for the limitation of the amount of their liability in connection with a ship or other property;

"relevant person" means the person referred to in rule 70.9(3)(*b*) that is the person who would be liable on the claim in a claim *in personam*; and

"ship" includes every description of vessel used in navigation and not propelled by oars and, where the context so admits, includes an aircraft.

70.2 Claims to be dealt with under this Part

The following claims, questions and proceedings, namely—

(*a*) all proceedings to enforce a claim for damage, loss of life or personal injury arising out of—

(i) a collision between ships,

(ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships, or

(iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations;

(*b*) any application to the court under the Act;

(*c*) any claim arising out of an act which is or is claimed to be a general average act;

(*d*) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

(*e*) any claim arising out of bottomry;

(*f*) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

(*g*) any claim for damage done by a ship;

(*h*) any claim for damage received by a ship;

(*i*) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or fault of—

(i) the owners, charterers or persons in possession or control of a ship, or

(ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,

being an act, neglect or default in the navigation or management of a ship or in the loading, carriage or disembarkation of persons on, in or from the ship;

(*j*) any claim for loss or damage to goods carried in a ship;

(*k*) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty;

(*l*) any claim in respect of a mortgage of or charge on a ship or any share therein;

(*m*) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

(*n*) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;

(*o*) any claim in the nature of pilotage in respect of a ship or an aircraft;

(*p*) any claim in the nature of towage in respect of a ship or an aircraft;

(*q*) any claim to the possession or ownership of a ship or to the ownership of any share therein, including power—

(i) to settle any account outstanding and unsettled between the parties in relation to the ship, and

(ii) to direct that the ship, or any share thereof, must be sold, and to make such other order as the court thinks fit;

(*r*) any claim—

(i) under the International Convention on Salvage, 1989, or

(ii) under any contract for or in relation to salvage services, or

(iii) in the nature of salvage not falling within (i) or (ii) above, or any corresponding claim in connection with an aircraft;

(*s*) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;

(*t*) every limitation claim, in relation to—

(i) all ships or aircraft whether of any Member State or Territory or not and whether registered or not and wherever the residence or domicile of their owners may be;

(ii) all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and

(iii) (so far as they relate to ships or aircraft) all mortgages or charges, whether registered or not and whether legal or equitable including mortgages and charges created under foreign law;

(*u*) subject to any limitations imposed by the Act, any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages),

are to be dealt with as Admiralty claims.

70.3 Admiralty claims *in rem*

(1) In the case of any such claim or question as is mentioned in rule 70.2(*b*), (*l*), (*q*) or (*s*) a claim *in rem* may be brought against the ship or property in connection with which the claim or question arises.

(2) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, a claim *in rem* may be brought against that ship, aircraft or property.

(3) In the case of any such claim as is mentioned in rule 70.2(*c*) to (*g*), (*i*) to (*k*), (*m*) to (*p*), (*r*) and (*u*), where—

(*a*) the claim arises in connection with a ship; and

(*b*) the person who would be liable in a claim *in personam* was, when the cause of action arose, the owner or charterer, or in possession or in control, of the ship,

a claim *in rem* may (whether or not the claim gives rise to a maritime lien on that ship) be brought against—

(i) that ship, if at the time when the claim is made the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise, or

(ii) any other ship of which, at the time when the claim is made, the relevant person is the beneficial owner as respects all the shares in it.

(4) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, a claim *in rem* may be brought against that aircraft if, at the time when the claim is made, it is beneficially owned by the person who would be liable on the claim in a claim *in personam*.

(5) For the purpose of determining under paragraphs (3) and (4) whether a person would be liable on a claim *in personam* it shall be assumed that that person has an habitual residence or place of business within the jurisdiction.

(6) In this Rule—

"time when the claim is made" means the date on which the claim is issued in accordance with rule 8.1(2).

(7) If, as regards any claim mentioned in rule 70.3(3), a ship has been served with a claim form or arrested in a claim *in rem* brought to enforce that claim, no other ship may be—

(*a*) served with a claim form; or

(*b*) arrested,

in that or any other claim *in rem* brought to enforce that claim.

(8) Paragraph (7) does not prevent the issue, in respect of any one such claim, of a claim form naming more than one ship or two or more claim forms each naming a different ship.

(9) A claim *in rem* may not be brought against the Crown.

70.4 How to make Admiralty claim

(1) An Admiralty claim *in rem* is begun by a claim form in Form 25.

(2) An Admiralty claim *in personam* is begun by a claim form in Form 1.

(3) A limitation claim is begun by a claim form in Form 26.

(4) A claim *in rem* and a claim *in personam* may not be combined in the same claim form.

- Part 6 deals with the service of other documents.
- Part 8 deals with the issue of a claim form.

70.5 Service of claim form *in rem*

(1) Subject to paragraph (2), a claim form by which a claim *in rem* is begun must be served on the property against which the claim is brought, except where the property—

(*a*) has been sold by the marshal, in which case the claim form may not be served on that property but a sealed copy of it must be filed and the claim is deemed to have been duly served on the day on which the copy was filed; and

(*b*) is freight, in which case the claim form must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried.

(2) A claim form need not be served or filed as mentioned in paragraph (1) if it is deemed to have been duly served on the defendant by virtue of rule 5.19(2) or (3).

(3) If by virtue of this Rule a claim form is required to be served on any property, the claimant may request service of the claim form to be effected by the marshal only if a warrant of arrest has been issued for service against the property or the property is under arrest.

(4) Where paragraph (3) applies the claimant must file a request in the appropriate practice form and lodge—

(*a*) the claim form and a copy thereof; and

(*b*) an undertaking to pay on demand all expenses incurred by the marshal in respect of the service of the claim form,

and thereupon the marshal must serve the claim form on the property described in the request.

(5) If a claim form is served on any property by the marshal, the person effecting service must endorse on the claim form the following particulars—

(*a*) the day of the week and the date on which it was served;

(*b*) the manner in which it was served;

(*c*) the name and the address of the person effecting service;

(*d*) the property on which it was served; and

(*e*) where it was served,

and the endorsement is evidence of the facts stated.

(6) If the—

(*a*) claimant; or

(*b*) claimant's legal practitioner,

in a claim *in rem* becomes aware that there is in force a *caveat* against arrest with respect to the property against which the proceedings are brought, that person must serve the claim form forthwith on the person at whose instance the *caveat* was entered.

(7) The general rule is that if a claim form by which a claim *in rem* is begun is amended after service under Part 20, the amended claim form must be served on any—

(*a*) defendant who has acknowledged issue or service of the claim form; and

(*b*) intervener.

(8) However, if no defendant has acknowledged issue or service of the claim form, it must be served or filed—

(*a*) in accordance with paragraph (1); or

(*b*) as the court otherwise directs.

(9) An application for a direction under paragraph (8)(*b*) may be made without notice but must be supported by evidence on affidavit.

70.6 Service on ships, etc. – how effected

(1) The general rule is that service of a warrant of arrest or claim form in proceedings *in rem* against a ship, freight or cargo is to be effected by—

(*a*) affixing the warrant or claim form 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 claim form, leaving a copy of it affixed—

(i) (in the case of the warrant) in its place, or
(ii) (in the case of the claim form) on a sheltered, conspicuous part of the ship.

(2) However, service of a warrant of arrest or claim form in proceedings *in rem* against freight or cargo or both, if the cargo has been landed or transhipped, is to be effected—

(*a*) by placing the warrant or claim form for a short time on the cargo and, on removing the warrant or claim form, 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 claim form with that person.

70.7 Service of claim form out of jurisdiction

(1) A claim form under rule 70.2(*g*) or (*v*) other than a claim form *in rem* may be served out of the jurisdiction with the permission of the court if—

(*a*) the defendant's habitual residence or place of business is within the jurisdiction;

(*b*) the facts out of which the claim arises took place within the waters or within the limits of a port of a Member State or Territory; or

(*c*) a claim arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

(2) An application to serve a claim form out of the jurisdiction must be made in accordance with rule 7.5.

(3) In this Rule "port" includes a place and a harbour.

70.8 Acknowledgment of service

A defendant to a claim form *in rem* which has not been served, or a defendant to a limitation claim who has not been served with the claim form, who desires to take part in the proceedings, may acknowledge the issue of the claim form by filing an

acknowledgment of service substituting for the references to service of the claim form references to issue of the claim.

70.9 Warrant of arrest

(1) In a claim *in* rem the claimant or defendant who counterclaims may, after the issue of the claim form and subject to the provisions of this Rule, issue a warrant in Form 27 for the arrest of the property against which the claim or counterclaim is brought.

(2) The party intending to issue the warrant must first cause a search to be made in the *caveat* book to see whether there is a *caveat* against arrest in force with respect to that property.

(3) The general rule is that a warrant of arrest may not be issued until the party intending to issue the same has filed an affidavit made by the party or its agent containing the following particulars—

(*a*) in every case—

(i) the nature of the claim or counterclaim and that it has not been satisfied,

(ii) if the claim arises in connection with a ship, the name of that ship,

(iii) the nature of the property to be arrested, and

(iv) if the property is a ship, the name of the ship and her port of registry;

(*b*) in the case of a claim against a ship under rule 70.2(*c*) to (*g*), (*i*) to (*k*), (*m*) to (*p*), (*r*) and (*u*)—

(i) the name of the person who would be liable on the claim in a claim *in personam*,

(ii) that the relevant person was when the cause of action arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose, and

(iii) that at the time of the issue of the claim form the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise; and

(*c*) in the case of a claim for possession of a ship or for wages—

(i) the nationality of the ship in respect of which the warrant is required, and

(ii) that the notice (if any) required by paragraph (7) has been sent.

(4) Where appropriate a copy of any notice sent to a consul under paragraph (7) must be exhibited to an affidavit required by paragraph (3).

(5) The court may, however, give permission to issue the warrant notwithstanding that the affidavit does not contain all those particulars.

(6) A warrant of arrest may not be issued without the permission of the court in the case of property whose beneficial ownership has, since the issue of the claim, changed as a result of a sale or disposal by the court.

(7) The general rule is that a warrant of arrest may not be issued in a claim *in rem* against a foreign ship registered at a port of a State having a consulate in the jurisdiction, being a claim for possession of the ship or for wages, until notice that the proceedings has been begun has been sent to the consul or the court gives permission.

(8) Issue of a warrant of arrest takes place upon its being sealed by the court office.

70.10 Caveat against arrest

(1) Except in a case to which paragraph (2) applies, a person who wishes to prevent the arrest of any property must file a request in the appropriate practice form signed by that person or that person's legal practitioner undertaking—

(*a*) to acknowledge issue or service (as may be appropriate) of the claim form in any claim that may be made against the property described in the request; and

(*b*) within three days after receiving notice that such a claim has been made, to give bail in that claim in a sum not exceeding an amount specified in the request or to pay the amount so specified into court.

(2) On the filing of the request under paragraph (1) the court office must enter a *caveat* against the issue of a warrant to arrest the property described in the request in the *caveat* book.

(3) If a claimant in limitation proceedings—

(*a*) has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims, 1976 and rule 70.35; and

(*b*) desires to prevent the arrest of any property for a claim which may be or has been made against the fund,

the claimant must file in the court office a request, in the appropriate practice form signed by the claimant or its legal practitioner—

(i) stating that a limitation fund in respect of damage arising from the relevant incident has been constituted, and

(ii) undertaking to acknowledge issue or service (as may be appropriate) of the claim form in any claim that may be begun against the property described in the request,

and on the filing of the request a *caveat* against the issue of a warrant to arrest the property described in the request must be entered in the *caveat* book.

(4) The fact that there is a *caveat* against arrest in force does not prevent the issue of a warrant to arrest the property to which the *caveat* relates.

(5) If 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 for an order discharging the warrant.

(6) On the hearing of an application under paragraph (5), the court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for doing so, may—

(*a*) by order discharge the warrant; and

(*b*) order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

70.11 Committal of legal practitioner for failing to comply with undertaking

If the legal practitioner for a party to a claim *in rem* fails to comply with a written undertaking given by him or her to any other party or legal practitioner to—

(*a*) acknowledge issue or service of the claim form;

(*b*) give bail; or

(*c*) pay money into court in lieu of bail,

the legal practitioner is liable to committal.

- Part 53 deals with committal orders.

70.12 Execution, etc., of warrant of arrest

(1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the marshal.

(3) A warrant of arrest may not be executed until an undertaking to pay on demand—

(*a*) the fees of the marshal; and

(*b*) all expenses incurred by the marshal in respect of the arrest of the property and the care and custody of it while under arrest,

has been lodged in the marshal's office.

(4) A warrant of arrest may not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.

(5) The general rule is that a warrant of arrest must be served on the property against which it is issued.

(6) However, 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.

(7) Within seven days after the service of a warrant of arrest, the warrant must be filed.

70.13 Directions with respect to property under arrest

(1) The marshal may at any time apply to the court for directions with respect to property under arrest in any proceedings.

(2) The marshal may, and if the court so directs must, give notice of the application under paragraph (1) to any or all of the persons referred to in paragraph (3).

(3) The marshal must send by post a copy of any order made on an application under paragraph (1) to all those persons who, in relation to that property, have—

(*a*) acknowledged issue or service of the claim form in any claim in which the property is under arrest;

(*b*) caused a warrant for the arrest of the property to be executed by the marshal;

(*c*) entered a *caveat* which is still in force; or

(*d*) intervened in any claim in which the property is under arrest.

(4) A person other than the marshal may make an application under this Rule.

(5) The application together with copies of any affidavits in support must be served upon the marshal and all persons referred to in paragraph (3) unless the court otherwise orders.

(6) An application for an order dispensing with service may be made without notice.

70.14 Release of property under arrest

(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the court, such property may only be released under the authority of a release in the appropriate practice form.

(2) A release may not be issued with respect to property as to which a *caveat* against release is in force, unless—

(*a*) at the time of the issue of the release the property is under arrest in one or more other proceedings; or

(*b*) the court so orders.

(3) A release may be issued at the instance of any party to the claim in which the warrant of arrest was issued if—

(*a*) the court so orders; or

(*b*) subject to paragraph (2), if all the other parties, except a defendant who has not acknowledged issue or service of the claim form, consent.

(4) Before a release is issued, the party applying for its issue must, unless paragraph (2)(*a*) applies, give notice to any person at whose instance a subsisting *caveat* against release has been entered, or to that person's legal practitioner, requiring the *caveat* to be with-drawn.

(5) 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.

(6) The court, on the application of any party who objects to directions given to that party by the marshal under paragraph (5), may vary or revoke the directions.

70.15 *Caveat* against release, etc.

(1) A person—

(*a*) claiming to have a right to claim *in rem* against any property which is under arrest or the proceeds of sale thereof; and

(*b*) who wishes to be served with notice of any application to the court in respect of that property or those proceeds,

must file a request in the appropriate practice form.

(2) On the filing of a request under paragraph (1) the court office must enter a *caveat* in the *caveat* book.

(3) If 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 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.

(4) On hearing an application under paragraph (3) the court, unless it is satisfied that the person procuring the entry of the *caveat* had a good and sufficient reason for doing so, may make an order accordingly.

(5) If the court makes an order under paragraph (4), it must decide who should pay the costs of the application and assess the costs in accordance with rule 65.11.

70.16 Duration of *caveat*s

(1) A *caveat* entered in the *caveat* book is valid for 12 months beginning with the date of its entry.

(2) The person at whose instance a *caveat* was entered may withdraw it by filing a request in the appropriate practice form.

(3) The period of validity of a *caveat* may not be extended, but this provision is not to be taken as preventing the entry of successive *caveat*s.

70.17 Bail

(1) Unless a ship or aircraft has been arrested in respect of a claim under rule 70.2(*q*) or (*s*), the court must permit the release of a ship or aircraft which has been arrested upon sufficient bail being provided.

(2) If a ship or aircraft has been arrested in respect of a claim under rules 70.2(*q*) or (*s*), the court may—

(*a*) permit the person in possession of the ship or aircraft to continue trading upon such person providing sufficient bail; or

(*b*) deal otherwise with the operation of the ship or aircraft during the period of arrest.

(3) In default of agreement between the parties as to the amount of bail, the court must determine the nature and amount of such bail.

(4) Bail on behalf of a party to a claim *in rem* may be given by—

(*a*) bond in the appropriate practice form; or

(*b*) a bank guarantee or other security from a reputable financial institution acceptable to the marshal.

(5) Sureties to a bond must enter into the bond before a commissioner for oaths or justice of the peace, not being a commissioner who, or whose partner or associate, is acting as legal practitioner or agent for the party on whose behalf the bail is to be given.

(6) Subject to paragraph (7), a surety to a bail bond must make an affidavit stating that the surety is able to pay the sum for which the bond is given.

(7) If a corporation is a surety to a bail bond given on behalf of a party, no affidavit need be made under paragraph (6) 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.

(8) 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 that party's behalf and of the commissioner for oaths or justice of the peace before whom the bail bond was entered into.

(9) After the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) the party on whose behalf bail is given may file the bond and must at the same time file—

(*a*) the affidavits (if any) made under paragraph (6); and

(*b*) an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

70.18 Intervenors

(1) If property against which a claim *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 proceedings may, with the permission of the court, intervene in the proceedings.

(2) An application for permission may be made without notice.

(3) It must be supported by an affidavit showing the interest of the applicant in the property against which the proceedings is brought or in the money in court.

(4) A person to whom leave is granted under this Rule becomes a party to the proceedings.

(5) The court may order that a person to whom it grants leave to intervene in proceedings must, within the period or periods specified in the order, serve on any other party to the proceedings such notice of the intervention and such pleading as is specified.

70.19 Preliminary acts

(1) This Rule deals with proceedings relating to damage, loss of life or personal injury arising out of a collision between ships.

(2) The following provisions apply unless the court otherwise orders.

(3) The claimant must within 2 months after service of the claim form on any defendant and the defendant must within 2 months of acknowledging issue or service of the claim file in the court office a document in 2 parts (in these Rules referred to as a "preliminary act") containing a statement of the following—

Part One

(*a*) the names of the ships which came into collision and their ports of registry;

(*b*) the length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;

(*c*) the date and time (including the time zone) of the collision;

(*d*) the place of the collision;

(*e*) the direction and force of the wind;

(*f*) the state of the weather;

(*g*) the state, direction and force of the tidal or other current;

(*h*) the position, 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;

(*i*) the lights or shapes (if any) carried by the ship;

(*j*) (i)the distance and bearing of the other ship if and when her echo was first observed by radar,

(ii) the distance, bearing and approximate heading of the other ship when first seen;

(*k*) what lights or shapes or combinations of lights or shapes (if any) of the other ship were first seen;

(*l*) what other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;

(*m*) 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 (*h*) 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;

(*n*) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact, what light or shape or combination of lights or shapes (if any) of the other ship was first seen;

(*o*) what sound signals (if any) were given, and when; and

(*p*) what sound signals (if any) were heard from the other ship, and when.

Part Two

(*a*) a statement that the particulars in Part One are incorporated in Part Two;

(*b*) any other facts and matters upon which the party filing the preliminary act relies;

(*c*) all allegations of negligence or other fault which the party filing the preliminary act makes; and

(*d*) the remedy or relief which the party filing the preliminary act claims.

(4) Part Two of the preliminary act shall be deemed to be the statement of claim of the person filing the preliminary act including, in the case of the defendant, a counterclaim, and rules 8.4 to 8.8 and 10.5 to 10.8 apply to it save insofar as this Rule and rule 70.21 provide otherwise.

(5) The court may order that Part Two of the preliminary act need not be filed by the claimant or defendant and give directions for the further conduct of the proceedings.

(6) Every preliminary act must be sealed before filing and be filed in a sealed envelope which must not be opened except as provided in paragraph (8) or by order of the court.

(7) A claimant must serve notice of filing the preliminary act on every defendant who acknowledges issue or service of the claim within three days of receiving notice of that acknowledgment or upon filing the preliminary act, whichever is the later. A defendant must, upon filing the preliminary act, serve notice that the defendant has done so on the claimant and on every other defendant who has acknowledged issue or service of the claim.

(8) Any party may inspect and bespeak a copy of the preliminary act of any other party upon filing a consent signed by that other party or its legal practitioner.

(9) Within fourteen days after the last preliminary act in the proceedings is filed each party must serve on every other party a copy of its preliminary act.

(10) At any time after all preliminary acts have been filed any party may apply to the court for an order that—

(*a*) one or more parties file a schedule of the damages claimed by them and serve a copy thereof on every other party; and

(*b*) the damages be assessed prior to or at the trial on liability.

(11) Wherever practicable such an application must be dealt with at the case management conference.

70.20 Failure to file preliminary act: proceedings against party in default

(1) If in a claim covered by rule 70.19(1) the claimant fails to file a preliminary act within the prescribed period—

(*a*) any defendant who has filed such an act may apply to the court for an order to dismiss the proceedings; and

(*b*) the court may—

(i) dismiss the proceedings, or

(ii) make such other order on such terms as it thinks fit.

(2) If in a claim *in personam* covered by rule 70.19(1) a defendant fails to file a preliminary act within the prescribed period, Part 12 applies as if the defendant's failure to file the preliminary act within that period were a failure to file a defence on the claimant within the period fixed for service of the defence, and the claimant, if it has filed a preliminary act may, subject to rule 12.3(1)(*b*), enter judgement against that defendant.

- Rule 12.3(1)(*b*) deals with default judgement in proceedings against a State.

(3) If in a claim *in rem* within rule 70.19(1) a defendant fails to file a preliminary act within the prescribed period, the claimant, if the claimant has filed such an act—

(*a*) may apply to the court for judgement against that defendant; and

(*b*) need not file or serve a statement of case or an affidavit before the hearing.

(4) On the hearing of an application under paragraph (3), if—

(*a*) the defendant does not appear at the hearing; and

(*b*) the court is of the opinion that judgement should be given for the claimant provided the claimant proves the claimant's case,

it must order the claimant's preliminary act to be opened and require the claimant to satisfy the court that the claim is well founded.

(5) If paragraph (4) applies, the claimant's evidence may, unless the court otherwise orders, be given by affidavit without any order or direction in that behalf.

(6) If the claimant satisfies the court that the claim is well founded, the court may—

(*a*) give judgement on the claim; and

(*b*) at the same time order the property against which the claim is brought to be appraised and sold and the proceeds to be paid into court; or

(*c*) make such order as it thinks fit.

(7) The court may, on such terms as it thinks fit, set aside any judgement entered in pursuance of this Rule.

(8) In this Rule references to the prescribed period are to be construed as references to the period within which by virtue of—

(*a*) rule 70.19(3); or

(*b*) any order of the court,

a party is required to file a preliminary act.

70.21 Special provisions as to statements of case in collision, etc., proceedings

(1) The claimant in any such claim as is referred to in rule 70.2(1)(*a*) may not serve a reply or a defence to counterclaim on the defendant without the permission of the court.

(2) Subject to paragraph (3), in any such proceedings there is an implied joinder of issue on the facts set out in the preliminary acts and those acts stand as the statements of case of the claimant and the defendants.

(3) Paragraph (2) does not apply to a counterclaim if the claimant has served a defence to counterclaim pursuant to leave given under paragraph (1).

70.22 Judgement by default

(1) If a claim form is served under rule 70.5(5) on a party at whose instance a *caveat* against arrest was issued, then if—

(*a*) the sum claimed in the proceedings begun by the claim does not exceed the amount specified in the undertaking given by that party or that party's legal practitioner to procure the entry of that *caveat*; and

(*b*) that party or its legal practitioner does not within fourteen days after service of the claim fulfil the undertaking given as aforesaid,

the claimant may, after filing an affidavit verifying the facts on which the proceedings is based, apply to the court for judgement by default.

(2) Judgement given under paragraph (1) may be enforced by the arrest and an order for sale of the property against which the proceedings was brought and by committal of the party at whose instance the *caveat* with respect to that property was entered.

(3) If a defendant to a claim *in rem* fails to acknowledge service of the claim within the time limited for doing so, then—

(*a*) on the expiration of fourteen days after service of the claim form; and

(*b*) upon filing—

(i) an affidavit proving due service of the claim form,

(ii) an affidavit verifying the facts on which the proceedings is based, and

(iii) if a statement of claim was not filed and served with the claim form, a copy of the statement of claim,

the claimant may apply to the court for judgement by default and an order for sale.

(4) If the claim is deemed to have been duly served on the defendant by virtue of rule 5.19(2) (deemed service where defendant's legal practitioner accepts service), or was served by the marshal under rule 70.5(4), an affidavit proving due service of the claim need not be filed under this paragraph, but the certificate of service of the defendant's legal practitioner or the indorsement of the marshal under rule 70.5(5) must be lodged with the affidavit verifying the facts on which the claim is based.

(5) If a defendant to a claim *in rem* fails to serve a defence before the expiration of the period fixed by or under these Rules for service of the defence, the claimant, upon filing—

(i) an affidavit stating that no defence has been served by that defendant,

(ii) an affidavit verifying the facts on which the proceedings is based, and

(iii) if a statement of claim was not served with the claim, a copy of the statement of claim,

may apply to the court for judgement by default and an order for sale.

(6) If a defendant to a counterclaim in a claim *in rem* fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (7)—

(*a*) after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim; and

(*b*) upon filing—

(i) an affidavit stating that no defence to counterclaim has been served on the defendant making the counterclaim by the first-mentioned defendant,

(ii) an affidavit verifying the facts on which the counterclaim is based, and

(iii) a copy of the counterclaim,

the defendant making the counterclaim may apply to the court for judgement by default.

(7) No application may be made under paragraph (6) against the claimant in any such proceedings as is referred to in rule 70.2(*a*).

(8) If the court is satisfied that the applicant's claim is well founded, it may—

(*a*) give judgement for the claim or counterclaim; and

(*b*) order the property against which the claim or counterclaim is brought to be appraised and sold and the proceeds to be paid into court; or

(*c*) make such other order as it thinks just.

(9) In default proceedings *in rem* evidence may, unless the court otherwise orders, be given by affidavit without any order or direction in that behalf.

(10) The court may, on such terms as it thinks just, set aside or vary any judgement entered in pursuance of this Rule.

(11) Part 12 does not apply to a claim *in rem*.

70.23 Order for sale of ship: determination of priority of claims

(1) If in a claim *in rem* against a ship the court has ordered the ship to be sold, any party who has obtained or obtains judgement 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 judgement,

apply to the court for an order determining the order of priority of the claims against the proceeds of sale of the ship.

- Part 11 deals with applications to the court.

(2) If in a claim *in rem* against a ship the court orders the ship to be sold, it may further order that—

(*a*) the order of priority of the claims against the proceeds of sale of the ship is not to be determined until after the expiration of ninety days, or such other period as the court specifies, beginning with the day on which the proceeds of sale are paid into court;

(*b*) any party to the proceedings or to any other claim *in rem* against the ship or the proceeds of sale thereof may apply to the court in the proceedings to which it is a party to extend the period specified in the order; and

(*c*) within seven days after the date of payment into court of the proceeds of sale, the marshal must send for publication in the Official *Gazette* of the Member State or Territory concerned and such other newspaper, if any, as the court directs, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(*c*) must state that—

(*a*) the ship (naming her) has been sold by order of the High Court in a claim *in rem*, identifying the claim;

(*b*) the gross proceeds of the sale as specified have been paid into court;

(*c*) the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period specified in the order for sale; and

(*d*) any person with a claim against the ship or the proceeds of sale thereof, on which that person intends to proceed to judgement should do so before the expiration of that period.

(4) The marshal must lodge in the court 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 are to be included in the marshal's expenses relating to the sale of the ship.

(6) A copy of any application to the court to extend the period referred to in paragraph (2)(*a*) must be served on each party who has begun a claim *in rem* against the ship or the proceeds of sale thereof at least three days before the day fixed for the hearing.

70.24 Appraisement and sale of property

(1) A commission for the appraisement and sale of any property under an order of the court may not be issued until the party applying for it has filed a request in the appropriate practice form.

(2) Such a commission must be—

(*a*) in the appropriate practice form; and

(*b*) executed by the marshal unless the court otherwise orders.

(3) A commission for appraisement and sale may 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 sale must be by public auction unless the court gives permission for a sale by private treaty.

(5) The court may allow the sale to be completed at a price lower than the value shown in the appraisement.

(6) The marshal must pay into court the gross proceeds of the sale of any property sold by the marshal under a commission for sale and bring into court the account relating to the sale (with vouchers in support) for assessment.

(7) On the assessment of the marshal's account relating to a sale any person interested in the proceeds of the sale is entitled to be heard.

- Rule 65.12 deals with the assessment of costs.

70.25 Undertakings as to expenses, etc.

(1) Every undertaking under rule 70.5(4), 70.12(3), 70.14(5) or 70.24(3) must be given in writing to the satisfaction of the marshal.

(2) If a party is required by any of the rules mentioned in paragraph (1) to give to the marshal an undertaking to pay any fees or expenses, the marshal may accept instead of an undertaking the deposit with the marshal of such sum as the marshal 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 this Rule, vary or revoke the direction or determination.

70.26 Payment into and out of court

(1) Parts 35 and 36 apply in relation to an Admiralty claim (other than limitation proceedings).

(2) However money paid into court may not be paid out except in pursuance of an order of a Judge of the High Court.

70.27 Case management conference

(1) Parts 25 to 27 and 38 apply to an Admiralty claim except that—

(*a*) the date time and place for the case management conference must be fixed by the court office on the happening of the following events—

(i) in any proceedings other than one to which rule 70.19 or 70.36 applies – on the filing of a defence,

(ii) where rule 70.19 applies – on the filing of the second preliminary act;

(*b*) where rule 70.36 applies then, if the court does not make a decree limiting the claimant's liability, it must treat the hearing of the application under that rule as a case management conference; and

(*c*) the case management conference must be conducted by a judge of the High Court.

(2) At the case management conference the court must determine whether the trial is to be without assessors or with one or more assessors and the qualifications for such assessors.

(3) Rules 38.5, 38.6 and 39.1 apply to Admiralty claims subject to the following and any other necessary modifications—

(*a*) the bundles referred to in rules 38.6 and 39.1 must include any preliminary acts; and

(*b*) if trial with one or more assessors has been ordered, an additional bundle of the documents listed in rule 39.1(5) as amended by paragraph (*a*) must be lodged for the use of each assessor.

70.28 Trial

(1) Part 39 applies to the trial of Admiralty proceedings.

(2) If the claim has been ordered to be tried with an assessor or assessors, the legal practitioner to the party with conduct of the claim must file in the court office an undertaking to pay the proper fees and expenses of such assessor or assessors.

(3) If all the parties to a claim consent, the proceedings may be withdrawn without the leave of the court at any time before trial by producing to the court a written consent to the proceedings being withdrawn signed by all the parties.

70.29 Stay of proceedings in collision, etc., proceedings until security given

If a claim *in rem*, being proceedings to enforce any claim as referred to in rule 70.2(1)(*a*), is begun and a cross claim *in rem* arising out of the same collision or other occurrence as the first-mentioned proceedings is subsequently begun, or a counterclaim arising out of that occurrence is made in the first-mentioned proceedings—

(*a*) if the ship in respect of or against which the first-mentioned proceedings is brought has been arrested or security given to prevent her arrest; but

(*b*) the ship in respect of or against which the cross proceedings is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgement given in favour of the party bringing the cross proceedings or making the counterclaim,

the court may stay proceedings in the first-mentioned claim until security is given to satisfy any judgement given in favour of that party.

70.30 Inspection of ship, etc.

The court may, on the application of any party, make an order for the inspection by the assessors (if the proceedings are tried with assessors), by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be desirable for the purpose of obtaining full information or evidence in connection with any issue in the claim.

70.31 Examination of witnesses and other persons: evidence by affidavit

(1) The powers under rules 33.7 to 33.16 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 claim.

(2) In proceedings in which preliminary acts fall to be filed under rule 70.19, an order must not be made authorising any examination of a witness before the preliminary acts have been filed unless for special reasons the court otherwise orders.

(3) Unless the court otherwise directs, affidavits made for the purpose of rules 70.20(5), 70.22(3) and 70.36(2) may contain statements of information and belief provided that the sources and grounds are given.

70.32 Proceedings for apportionment of salvage

(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained must be commenced by a fixed date claim.

(2) The claimant need not file or serve a statement of claim but must file an affidavit in support of the claim.

(3) At the first hearing the judge may exercise any jurisdiction conferred by the Act or may give directions as on a case management conference.

70.33 Applications in proceedings *in rem*

(1) The affidavits, if any, in support of an application in a claim *in rem* must be filed unless the court gives permission to the contrary.

(2) Notice of an application, except an application for judgement in default, must be served on all *caveators* together with copies of the affidavits, if any, in support of the application 7 clear days at least before the hearing, unless the court gives permission to the contrary.

70.34 Limitation proceedings: parties

(1) In a limitation claim the person seeking relief is to be the claimant and must be named in the claim by name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The claimant must make one of the persons with claims against it in respect of the casualty to which the proceedings relates a defendant to the proceedings and may also make any or all of the others defendants.

(3) At least one of the defendants to the proceedings must be named in the claim by name but the other defendants may be described generally and not named by their names.

(4) The claim form 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 70.36, 70.37 and 70.38, "name" includes a firm name or the name under which a person carries on business.

(6) If any person with a claim against the claimant in respect of the casualty to which the proceedings relates is described for the purposes of the claim—

(*a*) merely as the owner of; or

(*b*) as bearing some other relation to,

a ship or other property, that person may be so described as defendant in the claim and, if so described, is deemed for the purposes of the rules mentioned in paragraph (5) to have been named in the claim by name.

70.35 Limitation proceedings: payments into court

(1) The claimant may constitute a limitation fund by paying into court the Eastern Caribbean (or in the case of the Virgin Islands, the United States) dollar equivalent of the number of special drawing rights to which the claimant claims to be entitled to limit its liability under the Act together with interest thereon from the date of the occurrence giving rise to its liability to the date of payment into court.

(2) If the claimant does not know the appropriate equivalent of the said number of special drawing rights on the date of payment into court, it may calculate the same on the basis of the latest available published Eastern Caribbean or United States (as the case may be) dollar equivalent of a special drawing right as fixed by the International Monetary Fund.

(3) In the event of the appropriate dollar equivalent of a special drawing right on the date of payment into court being different from that used under paragraph (2), the claimant may—

(*a*) make up any deficiency by making a further payment into court which, if made within fourteen days after the payment into court under paragraph (1), is to be treated, except for the purposes of the Rules relating to the accrual of interest on money paid into court, as if it had been made on the date of that payment into court; or

(*b*) apply to the court for payment out of any excess amount (together with any interest accrued thereon) paid into court under paragraph (1).

(4) An application under paragraph (3)(*b*) may be made without notice.

(5) The application must be supported by evidence on affidavit proving the appropriate dollar equivalent of the appropriate number of special drawing rights on the date of payment into court.

(6) On making any payment into court under this Rule, the claimant must give notice thereof in writing to every defendant, specifying the—

(*a*) date of payment in;

(*b*) amount paid in;

(*c*) amount of interest included therein;

(*d*) rate of such interest; and

(*e*) period to which such interest relates.

(7) The claimant must also give notice to every defendant of any excess amount (and any interest thereon) paid out to the claimant under paragraph (3)(*b*).

70.36 Application for decree or directions in limitation proceedings

(1) The claimant must within seven days after the—

(*a*) acknowledgment of issue or service of the claim by one of the defendants identified by name; or

(*b*) time limited for entering an acknowledgment of service if none of the defendants acknowledges issue or service,

apply to the court for a decree limiting liability or, in default of such a decree, for directions as to the future proceedings in the claim.

(2) The application must be supported by an affidavit—

(*a*) verifying the claimant's case in the proceedings;

(*b*) proving service of the claim on at least one of the defendants identified by name if no such defendant has acknowledged service; and

(*c*) stating—

(i) the names of all the persons who, to the knowledge of the claimant, have claims against the claimant in respect of the casualty to which the proceedings relates, not being defendants to the claim who are identified in the claim form by their names, and

(ii) the address of each of those persons if known to the claimant.

(3) The application and every affidavit in support must be served on every defendant who has acknowledged issue or service of the claim at least fourteen days before the hearing of the application.

(4) Any defendant who—

(*a*) disputes the claimant's claim to limit his liability; or

(*b*) alleges inability to decide whether to dispute that claim,

must, within fourteen days of the service of the summons and any affidavit in support upon that defendant, serve upon the claimant an affidavit stating—

(i) the grounds upon which the defendant relies to dispute the claimant's claim to limit his liability, or

(ii) such facts and matters as could justify the court in giving a direction under paragraph (7) of this Rule.

(5) The claimant may, within seven days of service upon it of any affidavit under paragraph (4), serve such further affidavit evidence as it may wish upon any defendant who has served an affidavit under paragraph (4) of this Rule.

(6) If on the hearing of the application it appears to the court that the claimant's claim to limit its liability is not disputed, the court must make an order limiting the claimant's liability to a specified amount.

(7) If on the hearing of the application the court is satisfied that any defendant has not sufficient information to enable the defendant to decide whether to dispute the claimant's claim to limit its liability, the court may, on such terms as seem just—

(*a*) give such directions as appear to be appropriate to enable the defendant to obtain such information; and

(*b*) adjourn the hearing to a specified date time and place.

(8) Any defendant who thereafter disputes the claimant's claim to limit its liability must—

(*a*) file an affidavit stating the grounds upon which the defendant relies; and

(*b*) serve the affidavit on the claimant at least 7 clear days before the adjourned hearing of the application.

(9) If on the hearing or the adjourned hearing of the application, the court does not make a decree limiting the claimant's liability, the court must proceed to deal with the application as a case management conference.

(10) Any defendant who, after the court has given directions under paragraph (7) or (9), ceases to dispute the claimant's right to limit its liability must—

(*a*) forthwith file a notice to that effect; and

(*b*) serve a copy on the claimant and on any other defendant who has acknowledged issue or service of the claim.

(11) If every defendant who disputes the claimant's right to limit its liability serves a notice on the claimant under paragraph (10), the claimant may apply to the court for an order limiting its liability; and paragraphs (3) and (6) apply to such an application.

70.37 Limitation proceedings: proceedings under decree

(1) If—

(*a*) the only defendants in a limitation proceedings are those named in the claim form by their names; and

(*b*) all the persons so named have either been served with the claim form or acknowledged the issue thereof,

any order in the claim limiting the claimant's liability—

(i) need not be advertised, but

(ii) operates only to protect the claimant 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 order in the claim limiting the claimant's liability must—

(*a*) be advertised by the claimant in such manner and within such time as may be provided by the order;

(*b*) fix a time within which persons with claims against the claimant in respect of the casualty to which the proceedings relates may file their claims, and, in cases to which rule 70.38 applies, apply to set the order aside.

(3) The advertisement required under paragraph (2)(*a*) must, unless for special reasons the court otherwise directs, be a single advertisement in each of 3 newspapers specified in the order—

(*a*) identifying the claim, the casualty and the relation of the claimant thereto (whether as owner of a ship involved in the casualty or otherwise);

(*b*) stating that the order has been made; and

(*c*) specifying the—

(i) amounts fixed thereby as the limits of the claimant's liability, and

(ii) time allowed for the filing of claims and applying to set the order aside.

(4) The claimant must within the time fixed under paragraph (2)(*b*) file a copy of each newspaper in which the advertisement required under paragraph (2)(*a*) appears.

(5) The time to be allowed under paragraph (2)(*b*) must, unless for special reasons the court otherwise directs, be not less than 2 months from the latest date allowed for the acknowledgment of service of the advertisements.

(6) After the expiration of the time allowed under paragraph (5), no claim may be filed or application made to set aside the order except with the permission of the court.

(7) Save as aforesaid, on the making of any order limiting the claimant's liability arising out of a casualty to which the proceedings relate the court may—

(*a*) distribute the limitation fund; and

(*b*) stay any proceedings relating to any claim arising out of that occurrence which is pending against the claimant.

70.38 Limitation proceedings: proceedings to set aside decree

(1) If an order limiting the claimant's liability fixes a time in accordance with rule 70.37(2), any person with a claim against the claimant in respect of the casualty to which the proceedings relates who—

(*a*) was not named by name in the claim as a defendant to the proceedings; or

(*b*) if so named—

(i) was not served with, or

(ii) has not acknowledged the issue of,

the claim form, may, within that time, after acknowledging issue of the claim, apply for the order to be set aside.

(2) The application must be supported by an affidavit or affidavits showing that the defendant in question has—

(*a*) a *bona fide* claim against the claimant in respect of the casualty in question; and

(*b*) sufficient *prima facie* grounds for the contention that the claimant is not entitled to the relief given it by the decree.

(3) At least 7 clear days before the hearing of the application, the application and every affidavit in support thereof must be served on the claimant and any defendant who has acknowledged issue or service of the claim.

(4) On the hearing of the summons the court, if satisfied that the defendant in question has a *bona fide* claim against the claimant and sufficient *prima facie* grounds for

the contention that the claimant is not entitled to the relief given to the claimant by the decree, must set the decree aside and give directions as if the hearing were a case management conference.

PART 71

Obtaining Evidence for Foreign Courts

71.1 Scope of this Part

(1) This Part deals with the procedure by which evidence may be obtained from a witness in a State or Territory for the purpose of proceedings in a court or tribunal outside the jurisdiction.

(2) Except where the enactment provides otherwise, the power of the High Court to make an order under any relevant enactment may be exercised by a judge in chambers, a master or the registrar.

71.2 Application for order

(1) Subject to paragraph (3) and rule 71.3, an application for an order may be made without notice but must be supported by affidavit evidence.

(2) There must be exhibited with the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation of the request into English.

(3) After an application has been made under paragraph (1) any application for a further order or directions must be on notice.

71.3 Application by Attorney-General in certain cases

If a request is to be received by the—

(*a*) court in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in a State or Territory 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 the party; or

(*b*) minister with responsibility for foreign affairs and sent by the minister to the court office with an intimation that effect should be given to the request without requiring an application for that purpose,

the court office must send the document to the Attorney-General.

71.4 Person to take and manner of taking examination

(1) Any order made in pursuance of this Part for the examination of a witness may direct the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the court or before any other qualified person as to the court seems fit.

(2) Subject to rule 71.6 and to any special directions contained in any order made in pursuance of this Part for the examination of any witness, the examination must be taken in the manner provided by rules 33.8 to 33.12 and an order may be made under rule 33.13 for payment of the fees and expenses due to the examiner.

71.5 Dealing with depositions

Unless any order made in pursuance of this Part for the examination of any witness otherwise directs, the examiner before whom the examination is taken must send the deposition of that witness to the court, and the court must—

(*a*) give a certificate sealed with the seal of the Supreme Court identifying the documents annexed thereto, that is to say, the request, the order of the court for examination and the deposition taken in pursuance of the order; and

(*b*) send the certificate with the documents annexed thereto to the minister with responsibility for foreign affairs, or, if the request was sent to the court office by some other person in accordance with a Civil Procedure Convention, to that other person,

for transmission to the court or tribunal out of the jurisdiction requesting the examination.

71.6 Claim to privilege

(1) This Rule applies where—

(*a*) a witness claims a right to withhold evidence; and

(*b*) that claim is contested.

(2) The examiner may require the witness to give the evidence to which the claim relates.

(3) If the examiner does not do so the person who obtained the order under rule 71.2 may apply to the court to do so.

(4) Such an application may be made without notice.

(5) If such evidence is taken—

(*a*) it must be recorded in a document separate from that witness' deposition;

(*b*) the examiner must send to the court office with the deposition—

(i) that document, and

(ii) a statement signed by the examiner setting out the claim and the ground on which it was made;

(*c*) on receipt of the document the court office must, notwithstanding anything in rule 71.5—

(i) retain the document containing the evidence to which the claim related, and

(ii) send the statement with a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 71.5.

(6) If the claim is rejected by the foreign court or tribunal, the court office must send to that court or tribunal the document containing the evidence to which the claim related.

(7) If the claim is upheld the court must send the document to the witness.

(8) In either case the court must notify the witness and the person who obtained the order under rule 71.2 of the court's or tribunal's determination.

PART 72

Reciprocal Enforcement of Judgements

72.1 Scope of this Part

(*a*) This Part deals with the procedure whereby under the provisions of any enactment a judgement of a foreign court or tribunal may be registered in the High Court for enforcement within a Member State or Territory.

(*b*) In this Part "relevant enactment" means any enactment in force in a Member State or Territory in question which relates to the reciprocal enforcement of judgements.

(*c*) This Part is subject to the requirements of any relevant enactment.

72.2 Application for registration

An application to have a judgement registered in the High Court may be made without notice to the court but must be supported by affidavit evidence—

(*a*) exhibiting the judgement or a verified, certified or otherwise duly authenticated copy of it and, if the judgement is not in the English language, an English translation of it certified by a notary public or authenticated by affidavit;

(*b*) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgement up to the time of the application;

(*c*) stating the name, trade or business and the usual or last known place of abode or business of the judgement creditor and the judgement debtor respectively, so far as is known to the deponent; and

(*d*) stating to the best of the information or belief of the deponent—

(i) that the judgement creditor is entitled to enforce the judgement; and either—

(A) that at the date of the application the judgement has not been satisfied; or

(B) the amount in respect of which it remains unsatisfied,

(ii) that the judgement may be ordered to be registered for enforcement under any relevant enactment, and

(iii) that the registration would not be or be liable to be, set aside under any relevant enactment.

72.3 Security for costs

The court may order the judgement creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

72.4 Order for registration

(1) An order giving leave to register a judgement must be drawn up by, or on behalf of, the judgement creditor.

(2) Except where the order is made following an application on notice, it need not be served on the judgement debtor.

(3) The order must state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgement will not issue until after the expiration of that period.

(4) The court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

(5) The court hearing the application may order that notice of the application be given to any person.

72.5 Register of judgements

(1) A register of the judgements ordered to be registered must be kept in the court office.

(2) There must be included in each such register particulars of any execution issued on a judgement ordered to be so registered.

72.6 Notice of registration

(1) Notice of the registration of a judgement must be served on the judgement debtor by delivering it to the judgement debtor personally 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 rules 7.8, 7.9 and 7.10 apply to such a notice as they apply to a claim form.

(3) The notice of registration must state—

(*a*) full particulars of the judgement registered and the order for registration;

(*b*) the name and address of the judgement creditor or of the legal practitioner or agent on whom any summons issued by the judgement debtor may be served;

(*c*) the period within which an application to set aside the registration may be made; and

(*d*) the right of the judgement debtor to apply to have the registration set aside.

72.7 Application to set aside registration

(1) An application to set aside the registration of a judgement must be supported by affidavit evidence.

(2) If the court hearing an application to set aside the registration of a judgement is satisfied that—

(*a*) it is not just or convenient that the judgement should be enforced within the jurisdiction; or

(*b*) the judgement falls within any of the cases in which a judgement may not be registered under the provisions of any relevant enactment,

it may order the registration of the judgement to be set aside on such terms as it directs.

72.8 Issue of execution

(1) Execution may not issue on a judgement registered under the Act until after the expiration of the period which, in accordance with rule 72.4(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the court, until after the expiration of the extended period.

(2) If an application is made to set aside the registration of a judgement, execution on the judgement may not issue until after the application is finally determined.

(3) Any party wishing to issue execution on a registered judgement must produce to the court office an affidavit of service of the notice of registration of the judgement and any order made by the court in relation to the judgement.

72.9 Certified copy of High Court judgement for enforcement in another country

(1) An application under any relevant enactment for a certified copy of a judgement entered in the High Court for the purpose of enforcement in some other country must be made without notice supported by affidavit evidence.

(2) The certified copy of the judgement must be an office copy sealed with the seal of the Supreme Court and indorsed with a certificate signed by a master or registrar that it is a true copy of a judgement obtained in the High Court and that it is issued in accordance with the relevant enactment.

PART 73

Transitional Provisions

73.1 Scope of this Part

(1) This Part deals with the way in which actions, matters and other proceedings in existence at the commencement date become subject to these Rules.

(2) In this Part "commencement date" means the date on which these Rules come into force.

73.2 New proceedings

(1) Subject to paragraph (2), these Rules apply to all proceedings commenced on or after the commencement date.

(2) Proceedings commenced after the commencement date but before 1st July, 2001, under the Rules of the Supreme Court, 1970 may continue under those rules until that date but will then be deemed to have commenced under these Rules and must proceed accordingly.

73.3 Old proceedings

(1) These Rules do not apply to proceedings commenced before the commencement date in which a trial date has been fixed unless that date is adjourned.

(2) In proceedings commenced before the commencement date, an application to adjourn a trial date is to be treated as a pre-trial review and these Rules apply from the date that such application is heard.

(3) If a trial date has not been fixed in proceedings commenced before the commencement date—

(*a*) the court office must fix a date, time and place for a case management conference under Part 27 after a defence has been filed and give all parties at least twenty-eight days' notice of the conference; and

(*b*) these Rules apply from the date of the case management conference.

73.4 Exercise of discretion

If in proceedings commenced before the commencement date the court has to exercise its discretion, it may take into account the principles set out in these Rules and, in particular, Parts 1 and 25.

PART 74

Schedules

74.1 Scope of this Part

This part deals with the making of Schedules which will form part of the Rules.

74.2 Subject matter of schedules

Schedules to the Rules may be made by authority in respect of the procedure to be followed when matters are to be dealt with under specific legislation of Member States or Territories.

APPENDIX

Prescribed Forms

FORM 1

Claim Form

[Rule 8.1(4).]

The Eastern Caribbean Supreme Court .....

In the High Court of Justice

[State/Territory] .....

Claim No. ..... of 20 .....

Between A.B. .....

..... Claimant

and

C.D.

..... Defendant

Claim Form

The claimant, ... A.B. (full names), of ..... (full address)

claims against

the defendant, ... C.D. (full names), of ..... (full address)

(Set out briefly the nature of the claim and state any specific amount or remedy that you are claiming)

(to be completed only where the claim is for a specified amount)

Amount claimed	$.....
Court fees	$.....
Legal practitioner's fixed costs on issue	$.....
Together with interest from ..... to date	$.....
(Daily rate thereafter = $ ..... per day)	
Total Claim	$.....

NOTICE TO THE DEFENDANT – See the notes served with this claim form

This claim form must contain or have served with it either a statement of claim or a copy of a court order entitling the claimant to serve the claim form without a statement of claim.

If you do not complete the form of acknowledgment of service served on you with this claim form and deliver or send it to the court office (address below) so that they receive it within 14/21 days of service of this claim form on you, the claimant will be entitled to apply to have judgement entered against you. The form of acknowledgment of service may be completed by you or a legal practitioner acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time.

Dated .....

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.] ..... to ..... except public holidays.

The claimant's address for service is: .....

FORM 1A

Notes for Defendant

[Rule 8.14(1).]

Notes for Defendant

This form is important

When you get this document, you should consider getting legal advice.

Action to be Taken on Receipt of this Form

The claimant is making a claim against you in the court. If you do nothing judgement may be entered against you. That means that the claimant will be entitled to take steps to enforce payment from you of any money the claimant is claiming and you will have no

right to be heard except as to the amount of any costs claimed or as to the way in which you can pay the judgement, unless you apply to set judgement aside.

WHAT YOU CAN DO

You can

A. Defend the claim

If you would like to do this you must—

- Complete the form of acknowledgment of service and return it to the court office so that they receive it within 14/21 days of the date on which you received this form.
- AND, if a statement of claim was served on you with the claim form—
- Complete the form of defence or submit some other form of defence showing why you dispute the claim giving full details of all the facts on which you intend to rely if there is a trial.
- Deliver or send the form of defence to the court office so that they receive it within 28/42 days of the date on which you received this form.
- Serve a copy of the form of defence on the claimant's legal practitioner (or the claimant if the claimant has no legal practitioner) at the address given on the claim form.
- If no statement of claim is served with the claim form you need not file and serve a defence until twenty eight/forty two days after the statement of claim is served on you.
- After you have filed your defence you will be given details of the date, time and place of a case management conference at which a judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried.
- You must attend the case management conference.

B. Admit the whole of the claim

If you would like to do this you must—

- Complete the form of acknowledgment of service stating that you admit the claim and return it to the court office so that they receive it within 14/21 days of the date on which you received this form.
- If you can pay the amount stated on the claim form including fees, costs and interest you should pay this to the claimant within 8/21 days and no further steps can be taken against you. You must add interest at the daily rate shown from the date stated on the claim form.
- If you cannot pay this sum in full you may apply to the court to pay by instalments. If you wish to do so you must complete the Application to Pay by Instalments form and return it to the court with your acknowledgment of service.

C. Admit part of the claim and defend the rest

If you would like to do this you must—

- Complete the form of acknowledgment of service stating how much you admit and return it to the court office so that they receive it within fourteen/twenty-one days of the date on which you received this form AND complete the form of defence as under section A above.
- You may also—

– Pay the amount that you admit direct to the claimant OR apply to pay that sum by instalments. If so you should follow the procedure indicated under B.

D. Make a claim against the claimant

If you would like to do this you must—

– Complete the form of acknowledgment of service and return it to the court office so that they receive it within 14/21 days of the date on which you received this form.

– Complete the form of defence giving details of your defence (if any) to the claim as under A above and also the claim that you are making against the claimant and return it to the court office so that they receive it within 28/42 days of the date on which you received this form.

– If you admit the claim but wish to counterclaim you should say so. If your counterclaim is for a lower sum than the claim you may pay the difference between the amount that the claimant claims from you and the amount that you claim from him direct to the claimant OR apply (using the procedure indicated under B) to pay that sum by instalments. You will be given details of the date, time and place of a case management conference at which a judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried.

REMEMBER THAT IF YOU DO NOTHING, JUDGEMENT MAY BE ENTERED AGAINST YOU WITHOUT ANY FURTHER WARNING.

FORM 2

Fixed Date Claim Form

[Rule 8.1(5).]

The Eastern Caribbean Supreme Court .....

In the High Court of Justice

[State/Territory] .....

Claim No. .....of ....., 20 .....

Between ..... A.B.

..... Claimant

and

C.D.

..... Defendant

Claim Form

The claimant, ... A.B. (full names), of ..... (full address)

claims against

the defendant, ... C.D. (full names), of .....(full address)

(Set out briefly the nature of the claim and state any specific amount or remedy that you are claiming)

Notice to the Defendant—

The first hearing of this claim will take place at [xxx xxx xxx] on ..... day the ..... day of ..... , 20..... , at a.m./p.m.

If you do not attend at that hearing, judgement may be entered against you in accordance with the claim.

If you do attend, the judge may—

(*a*) deal with the claim, or

(*b*) give directions for the preparation of the case for a further hearing.

A statement of claim or an affidavit giving full details of the claimant's claim should be served on you with this claim form. If not and there is no order permitting the claimant not to serve the statement of claim or affidavit you should contact the court office immediately.

You should complete the form of acknowledgment of service served on you with this claim form and deliver or send it to the court office (address below) so that they receive it within 14/28 days of service of this claim form on you. The form of acknowledgment of service may be completed by you or a legal practitioner acting for you.

You should consider obtaining legal advice with regard to this claim. See the notes on the back of this form or on the next page.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time.

Dated .....[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[.....a.m.] and [..... p.m.] ..... to ..... except public holidays.

The claimant's address for service is:

NOTES FOR DEFENDANT (FIXED DATE CLAIM)

The claimant is seeking an order from the court as set out in the claim form on the basis of the facts or evidence set out in the statement of claim or affidavit served with it. The claimant will not be entitled to enter judgement against you without a hearing.

You may:

A. Admit the claim

If so, you should complete and return the form of acknowledgment of service to the court office within 14/28 days stating this. You may attend the first hearing if you wish to do so.

B. Dispute the claim

If so, you should complete and return the form of acknowledgment of service as under A. You should also file at the court office and serve on the claimant's legal practitioner (or the claimant if the claimant has no legal practitioner):

(*a*) a defence if the claim form was accompanied by the claimant's statement of claim, OR

(*b*) an affidavit in answer if the claim form is accompanied by an affidavit sworn by or on behalf of the claimant,

within 28/42 days of the date on which the claim form was served on you. Your defence or affidavit must set out briefly ALL the facts on which you will rely to dispute the claim made against you.

You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.

C. Make a claim against the claimant

If so, you should complete and return the form of acknowledgment of service as under A. You must file a statement of claim (a counterclaim) setting out full details of what you claim against the claimant and the facts on which you will rely. This must be done within 28/42 days of the date on which the claim form was served on you. The statement of claim should set out ALL the facts on which you rely in disputing any part of the claimant's claim against you.

You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.

FORM 3

Application to Pay by Instalments

[Rule 8.14(1).]

(Heading as in Form 6)

The Applicant, ... A.B. (full names),of ..... (full address) owes the claimant the amount of $..... claimed on the claim form

and cannot pay the amount in one lump sum.

The Applicant applies to the court for an order to pay the amount due by instalments of $.....
per week/month and provides the following information:

1. Marital status: Married ☐ Single ☐ Other ☐ (*specify*)
2. Age: .....
3. Dependants: Children: .....(*state names and ages*)
4. Other Dependants: .....(*state names and give details*)
5. If employed state nature of employment and name and address of employer
6. If self-employed, give particulars of annual receipts of the business
7. Give details of any job other than main job
8. Give details of—
   (*a*) contracts and other work in hand; and
   (*b*) any sums due for work done.
9. If unemployed, say how long unemployed: .....
10. Pensioner: Yes/No
11. List cash assets: .....
12. I live in my own property ☐ jointly owned property ☐ rented property ☐ lodgings ☐ other ☐ (*specify*)
    (*a*) My usual take home pay is; or $.....
    (*b*) My pension is $.....
    (*c*) Other income $.....
    Total Income $.....
13. My regular expenses are as follows—
    (*a*) Mortgage $.....
    (*b*) Rent $.....
    (*c*) Electricity $.....
    (*d*) Water $.....
    (*e*) Cooking gas $.....
    (*f*) Telephone $.....
    (*g*) Hire Purchase repayments $.....
    (*h*) Food $.....
    (*i*) School fees $.....
    (*j*) Travelling expenses $.....
    (*k*) Children's clothing $.....
    (*l*) Maintenance payments $.....
    (*m*) Others (do not include court orders and debts listed in 14, 15 and 16) $.....
    ..... $.....
    ..... $.....
    ..... $.....
    ..... $.....
    Total expenses $.....
14. I am in arrears as follows—
    (*a*) Rent arrears $.....
    (*b*) Mortgage arrears $.....
    (*c*) Water arrears $.....
    (*d*) Electricity arrears $.....
    (*e*) Telephone arrears $.....
    (*f*) Maintenance arrears $.....
    (*g*) Others $.....

..... $.....

..... $.....

..... $.....

..... $.....

Total arrears $.....

15. I am making court ordered payments as follows: (*specify particulars of case*(s) *and instalments or amounts ordered to be paid*) $.....

16. I have loans and credit card debts as follows:

..... $.....

..... $.....

..... $.....

..... $.....

Of the above payments, I am behind with payments to (please list)

.....

.....

.....

.....

I declare that the details I have given above are true to the best of my knowledge.

Dated .....

Signed ..... Applicant

NOTICE:

This application will be heard by [the Judge in Chambers] [Master xxxxx] on .... day the ..... day of ....., at ..... am/pm at [xxx xxx xxx]

If you do not attend this hearing an order may be made in your absence.

OR

The [Judge in Chambers] [Master] will deal with this application by—

.....

Note.—This notice of application must be served as quickly as possible on the respondent to the application.

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between [..... a.m.] and [..... p.m.] ..... to ..... except public holidays.

FORM 4

Acknowledgment of Service of Claim Form

[Rule 9.2(1).]

(Heading as in Form 1)

Acknowledgment of Service

WARNING: If this form is not fully completed and returned to the court at the address below within 14/28 days of service of the claim form on you, the claimant will be entitled to apply to have judgement entered against you. If the claimant does so, you will have no right to be heard by the court except as to costs or the method of paying any judgement unless you apply to set judgement aside.

1. Have you received the claim form with the above number? YES/NO

2. If so, when? ...../ ... / ....

3. Did you also receive the claimant's statement of claim? YES/NO

4. If so, when? ...../ ... / ....

5. Are your names properly stated on the claim form? YES/NO

   If not, what are your full names? .....

6. Do you intend to defend the claim? YES/NO

   If so you must file a defence within 28/42 days of the service of the claim form on you.

7. Do you admit the whole of the claim? YES/NO

   If you do you should either

   (*a*) pay the claim direct to the claimant or the claimant's solicitor; or

   (*b*) complete the application form to pay the claim by instalments.

   If you pay the whole debt together with the costs and interest as shown on the claim form within 14/28 days you will have no further liability for costs.

8. Do you admit any part of the claim? YES/NO

   If you do you may—

   (*a*) pay the money that you admit direct to the claimant or the claimant's legal practitioner; or

   (*b*) complete the application form to pay the claim by instalments.

9. If so, what do you admit? .....

   If you dispute the balance of the claim you must also file a defence within 28/42 days of service of the claim form on you or judgement may be entered against you for the whole amount claimed.

10. What is your own address? .....

    .....

    .....

11. What is your address for service? .....

    If you are acting in person you must give an address within miles

    of the court office to which documents may be sent either from other parties or from the court. You should also give your telephone number and fax number, if any.

Dated .....

Signed .....

[Defendant in person] [Defendant's legal practitioner]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[..... a.m.] and [..... p.m.] ..... to ..... except public holidays.

FORM 4A

A Acknowledgment of Service of Fixed Date Claim Form

[Rule 9.2(1).]

(Heading as in Form 1)

Acknowledgment of Service of Fixed Date Claim Form

WARNING: This form should be completed and returned to the court at the address below within 14/28 days of service of the claim form on you. However, the claimant will not be entitled to have judgement entered against you except at the first or subsequent hearing of the claim.

1. Have you received the claim form with the above number? YES/NO

2. If so, when did you receive it? ...../ ... / ....
3. Did you also receive the claimant's statement of claim or affidavit in support? YES/NO
4. If so, on what date did you receive them? ...../ ... / ....
5. Are your names properly stated on the claim form? YES/NO

   If not, what are your full names? .....
6. Do you intend to defend the claim? YES/NO

   If so you must file a defence within 28/42 days of the service of the claim form on you.
7. Do you admit the whole claim? YES/NO
8. Do you admit any part of the claim? YES/NO
9. If so, what do you admit? .....
10. What is your own address? .....

    .....

    .....
11. What is your address for service? .....

    If you are acting in person you must give an address within miles

    of the court office to which documents may be sent either from other parties or from the court. You should also give your telephone number and fax number, if any.

Dated .....

Signed .....

[Defendant in person] [Defendant's legal practitioner]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[.....a.m.] and [.....p.m.]..... to ..... except public holidays.

FORM 5

Defence and Counterclaim

[Rule 10.2 (1).]

(Heading as in Form 1)

Defence

I dispute the claim on the following grounds—

.....

I certify that all the facts set out in my defence are true to the best of my knowledge information and belief.

My address for service is

Telephone no. .....

Dated .....

Signed .....

[Defendant in person]

We are acting for the defendant; our address for service is: .....

Signed ..... (Legal practitioner for the defendant)

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[..... a.m.] and [.....p.m.]..... to ..... except public holidays.

Counterclaim

I claim against the claimant (set out details of the remedy or relief sought) on the following grounds—

.....

I certify that all the facts set out in my counterclaim are true to the best of my knowledge information and belief and that I am entitled to the remedy claimed.

Dated .....

Signed .....

[Defendant in person]

We are acting for the defendant; our address for service is: .....

Signed ..... (Legal practitioner for the defendant)

Notes.—

(*a*) The defendant may set out the defendant's defence in another manner – it is not necessary to use this form.

(*b*) the defendant must—

- state which allegations in the claim are admitted.
- which are denied.
- which are neither admitted or denied because the defendant does not know whether they are true.
- identify any documents considered necessary to the defendant's case.

(*c*) The defendant must give reasons for denying any allegations made by the claimant.

(*d*) The defendant must set out clearly all the facts on which the defendant relies to dispute the claim and must set out any different version of events on which the defendant relies.

(*e*) The defendant may not be allowed to give evidence about any fact which is not set out in the defence.

(*f*) If the defendant wishes to counterclaim the defendant must

- specify any remedy that the defendant seeks against the claimant
- include a short statement of all facts on which the defendant relies
- identify any documents which the defendant considers necessary to the defendant's case.

(*g*) If the defendant is represented by a legal practitioner, the defendant must also sign the form and give the defendant's address for service.

FORM 6

Application

[Part 11.6(1)]

The Eastern Caribbean Supreme Court

In the High Court of Justice

[State/Territory]

Claim No. ..... of .....

Between

A.B.

..... Applicant

and

C.D.

..... Respondent

Notice of Application

The Applicant, ... A.B. (full names), of .....(full address)

applies to the court for an order that—

A draft of the order that I seek is attached.

The grounds of the application are—

[An affidavit in support accompanies this application]

Dated .....

Signed .....

[Legal practitioner for the] Applicant

NOTICE:

This application will be heard by [the Judge in Chambers] [Master xxxxx] on .....

day the ..... day of, ... at ..... a.m./p.m. .....

at [xxx xxx xxx].

If you do not attend this hearing an order may be made in your absence.

OR

The [Judge in Chambers] [Master] will deal with this application by—

Note.—This notice of application must be served as quickly as possible on the respondent to the application.

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.] ..... to ..... except public holidays.

FORM 7

Request for Default Judgement

[Rule 12.7.]

(Heading as in Form 1)

Request for Entry of Judgement In Default

I/We, ... the claimant/claimant's

Legal practitioner request entry of judgement against the defendant in default of—

Acknowledgment of service	YES/NO
Defence	YES/NO

(In case of failure to enter acknowledgment of service) Evidence of service of the claim form and statement of claim is filed with this form.

(in case or failure to serve defence) ..... I/We, certify that—

(*a*) the time for the defendant to file and serve a defence has expired (including any extension of time agreed between the parties);

(*b*) no defence or counterclaim has been served on me/us; and

(*c*) the defendant has not paid any monies in settlement of the claim except such sum as is stated below;

(*d*) (where appropriate) permission to enter judgement was given by the court on (date).

Judgement should be entered for—

Amount claimed	$ .....
Court fees on claim	$ .....
Legal practitioner's fixed costs on issue	$ .....

Together with interest from date of issue to today	$ .....
Court fees on entering judgement	$ .....
Legal practitioner's fixed costs on entering judgement	$ .....
Total	$ .....
Less paid since issue of claim	$ .....
Amount for which judgement is to enter	$ .....

to be paid [forthwith] [on ..... (state date)] or by weekly/monthly instalments of $.....

Dated .....

Signed .....

[Legal practitioner for the] Claimant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between [..... a.m.] and [..... p.m.] ..... to ..... except public holidays.

FORM 8

Request for Entry of Judgement on Admission

[Rule 14.6 (2).]

(Heading as in Form 1)

Request for Entry of Judgement on Admission

I/We, ... the claimant/claimant's legal practitioner request entry of judgement against the defendant on the defendant's admission—

(Admission of whole debt)

A. Judgement should be entered for—

Amount claimed	$ .....
Court fees on claim	$ .....
Legal practitioner's fixed costs on issue	$ .....
Together with interest from date of issue to today	$ .....
Court fees on entering judgement	$ .....
Legal practitioner's fixed costs on entering judgement	$ .....
Total	$ .....
Less paid since issue of claim	$ .....
Amount for which judgement is to enter	$ .....

(Admission of part of debt)

B. Judgement should be entered for—

Amount admitted by defendant	$ .....
Court fees on claim	$ .....
Legal practitioner's fixed costs on issue	$ .....

(*Legal practitioner's fixed costs must be the fees and costs appropriate to the amount admitted*)

Together with interest from date of issue to today	$ .....
Court fees on entering judgement	$ .....
Legal practitioner's fixed costs on entering judgement	$ .....

(*Legal practitioner's fixed costs must be the fees and costs appropriate to the amount admitted*)

Total	$ .....
Less paid since issue of claim	$ .....

Amount for which judgement is to enter $ .....

C. (i) I/We accept the claimant's offer to pay the amount due—

on ..... (date);

or, by instalments of $ ..... per week/month

and ask for judgement to be entered accordingly [the first payment to be on]

OR

(ii) I/We do not accept the claimant's proposals for payment of the amount due but would accept—

payment on ..... (date);

or, by instalments of $ ..... per week/month

the first payment to be on ..... (date)

OR

(iii) I/We, do not accept the defendant's proposals as to payment and ask for judgement to be entered for the balance due to be paid forthwith.

D. In cases (ii) and (iii) above my/our reasons for objecting to the defendant's proposals are:

I/We, do not accept that the defendant's financial statement is correct in the following ways:

Dated .....

Signed .....

[Legal practitioner for the] Claimant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.] ..... to ..... except public holidays.

FORM 9

Ancillary Claim Form

[Rule 18.2(2).]

(Heading as in Form 1)

Ancillary Claim Form

To ..... of.....

This claim has been brought by the claimant against the defendant in accordance with the claim form and statement of claim served with this notice. Copies of the defendant's statement of claim (the defendant's defence) and of all other statements of case that have been filed in the proceedings are also served with this notice.

The defendant claims against you .....

on the grounds that .....

[The defendant will also ask the court to determine the following matters not only between the claimant and the defendant but also between defendant and you:

.....

.....]

If you wish to dispute the claimant's claim against the defendant or the defendant's claim against you, you must—

(*a*) send or deliver a completed form of acknowledgment of service to the court office (address below) so that it is received by them within 14/28 days; and

(*b*) send or deliver a defence to this claim to the court office so that it is received by them within

28/42 days of the day on which this claim was served on you. You must also serve a copy of your defence on the defendant's legal practitioners whose address is given below.

If you do not file a defence you will—

(*a*) be deemed to have admitted the defendant's claim against you; and

(*b*) be bound by any judgement or decision in the main proceedings in so far as it is relevant to any claim made against you and judgement may be entered against you.

Dated ..... (SEAL)

This claim was issued by .....

of..... [Legal practitioner for the] Defendant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.]..... to ..... except public holidays.

FORM 10

Listing Questionnaire

[Rule 27.9(1).]

(Heading as in Form 1)

Listing Questionnaire

WARNING: This is an important document. The information is required by the Court to list your case accurately. Inaccurate information may lead to a waste of court time and delays to other people's cases. Failure to return the form to the court office within 21 days or to complete it fully will lead to a listing hearing being fixed. You may have to pay the costs of this hearing.

1. Have all the directions given by the court been carried out? YES/NO
2. If not, which directions have not been carried out?
   - Disclosure of documents YES/NO
   - Inspection of documents YES/NO
   - Service of witness statements YES/NO
   - Service of expert reports YES/NO
   - Other (state which) YES/NO
3. Why have they not been carried out?
4. When can the direction be complied with?
5. Will any application for relief be made by you? YES/NO
6. Has ADR* been tried? YES/NO
7. If not, why not?
8. Is ADR likely to be tried? YES/NO
9. Are you ready for trial? YES/NO
10. If not, why not?
11. How many witnesses do you intend to call? .....
12. What is your present estimate for trial length? ..... hours
13. What dates within the stated trial period will cause difficulty to—
    - (*a*) the claimant/defendant;
    - (*b*) the claimant's/defendant's Legal practitioner;
    - (*c*) the claimant's/defendant's advocate;
    - (*d*) any non-expert witness;
    - (*e*) any expert witness.
14. Please give names, addresses and telephone numbers of
    - (*a*) any trial Legal practitioner you propose to instruct;
    - (*b*) any expert witness whom you are entitled to call to give oral evidence.
15. Please state the name of the legal practitioner (if any) who has conduct of this matter and

give the legal practitioner's direct telephone number or Fax number.

Dated .....

Signed .....

[Legal practitioner for the] Claimant/Defendant

This form must be returned to the court office within 21 days.

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.] ..... to.....except public holidays.

*ADR means alternative dispute resolution.

FORM 11

List of Documents

[Rule 28.7(2).]

(Heading as in Form 1)

List of Documents

This list is completed in accordance with an order for—

(*a*) Standard disclosure YES/NO

(*b*) Specific disclosure YES/NO

dated

and is served on behalf of the claimant/defendant/ ..... [other].

I, ...[claimant] [defendant] [.....]

certify that I have had explained to me—

(*a*) the duty of standard disclosure; and

(*b*) the terms of the order dated ..... for specific disclosure,

and my duty to disclose documents in accordance with that order, ...

and that I have complied with that duty.

(In the case of a list served by a company, firm, association or other organisation, the certificate must continue)

I am the (capacity) .....the ..... of the [claimant] [defendant] [other].

I accept responsibility for identifying any individuals who might be aware of any document which should be disclosed. I have asked the following individuals whether they are aware of any such documents—

NAME POSITION

Part 1 of Schedule 1 contains a list of ALL the documents which—

(*a*) are or were in the physical possession of the [claimant] [defendant];

(*b*) the [claimant] [defendant] has or has had a right to possession of; or

(*c*) he [claimant] [defendant] has or has had a right to inspect or take copies of, and on which the [claimant] [defendant] relies or intends to rely in these proceedings, [together with such documents or classes of documents which the [claimant] [defendant] was ordered to disclose by the order of the court dated xx.xx.xxxx.

I/We claim a right to withhold disclosure and inspection of the documents listed in Part 2 of Schedule 1 on the basis stated in the Schedule.

The [claimant] [defendant] is not in physical possession of the documents listed in Schedule 2 and the Schedule states what has happened to those documents.

Neither the [claimant] [defendant] nor the [claimant's] [defendant's] legal practitioner nor anyone else on behalf of the [claimant] [defendant] now has or has ever had physical possession of, nor has the [claimant] [defendant] now or ever had the right to possession or the right to take copies of any document which should be disclosed and inspected under the terms of the court's order other than those listed in this List of Documents.

Dated .....

Signed .....

[Claimant] [Defendant]

[named representative for claimant/defendant]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.]..... to..... except public holidays.

SCHEDULE 1

PART 1

No.	Details of document or class of documents

PART 2

No.	Details of document or class of documents	Reason for claiming a right not to disclose

SCHEDULE 2

No.	Details of document or class of documents	What has happened to the documents including (to the best of my/our information and belief) where they are

NOTICE TO INSPECT

The Documents listed in Part 1 of Schedule 1 may be inspected at .....

on any normal working day between the hours of ..... a.m and ..... p.m. until ..... (date).

Dated .....

Signed .....

[Legal practitioner for the] [Claimant] [Defendant]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 12

Witness Summons

[Rule 33.2(2).]

(Heading as in Form 1)

Witness Summons

To ..... (witness' name)

of ..... (witness' address)

You are summoned to attend at the High Court of Justice at [xxx xxx xxx] at ..... a.m. on ..... day the ..... day of ....., 20 ..... , the day fixed for the hearing of this claim and from day to day till the end of the trial to give evidence and to bring with you and produce the following documents—

Sum to be paid to the witness $ .....

DATED ..... (SEAL)

This summons was issued on the application of the [claimant] [defendant] whose legal

practitioner is ..... of .....

Tel. ..... Fax. .....

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 13

Notice to Non-party Served with Order

[Rule 42.12(3).]

(Heading as in Form 1)

NOTICE

To ..... of .....

A judgement or order of this court was given or made on the ..... day of ..... ,

20 . and a copy of that judgement or order is attached to this notice.

You are bound by the terms of the judgement or order to the same extent as you would have been had you been a party to the proceedings in which the judgement was given or order made.

However you may apply to the court within 28 days after service of this notice to—

(*a*) set aside; or

(*b*) vary; or

(*c*) add to,

the judgement or order.

You may do this by completing and issuing a form of application at the court office whose address is given below saying what order you want the court to make and the grounds on which you make the application.

Dated ..... (SEAL)

This notice was issued by ..... [legal practitioners for] the claimant/defendant whose address for service is .....

Tel ..... Fax .....

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 14

Order for Oral Examination

[Rule 44.4(1).]

(Heading as Form 1)

Order for Oral Examination

To: CD, the examinee

The claimant obtained a judgement/order against [you/the defendant company] in this court on [date] [and (in the case of a company) it appears you are an officer of the defendant company].

You are ordered to attend before an examiner of this court on [date] at ..... a.m. to be examined under oath as to your financial circumstances [in the case of a company, the financial circumstances of the defendant company] including what property or other assets you/it may

have, and to produce at the examination any books or documents in your possession or power containing information about your/the defendant company's financial circumstances.

And it is further ordered that the costs of this application and of the examination be in the discretion of the examiner.

Dated ..... (Seal)

This order was made on the application of .....

of .[claimant/claimant's legal practitioner]

AND TAKE NOTICE that if you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.

Amount due	$ .....
Together with interest from to .....date	$ .....
(Daily rate thereafter $ ..... per day)	$ .....
Total	$ .....
Less payments made to date	$ .....
Amount now due	$ .....

Important Notes:

1. It will not be necessary for you to attend the examination if you pay the amount now due to the claimant or the claimant's Legal practitioner.
2. DO NOT bring or send payments to the court office. They will not be accepted.
3. You should allow at least 4 days for your payment to reach the claimant or the claimant's Legal practitioner.
4. Keep records and ensure that you can account for all payments made. Proof may be required if there is disagreement.
5. If payment is made too late, you may be liable for further costs.

Date ..... [SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 15

Notice of Adjourned Examination

[Rule 44.5(7).]

(Heading as Form 1)

Notice of Adjourned Examination

To: [CD, the examinee]

You were ordered to attend court on the [date] at ..... a.m. to be examined under oath before the examiner as to your financial circumstances (or as to the financial circumstances of the defendant company) and you failed to attend/refused to be sworn or affirmed/refused to answer a question(s).

TAKE NOTICE that your appointment for examination has been adjourned to [date] at..... a. m. before a judge of the High Court when you are ordered to attend..

Dated .....

AND TAKE NOTICE that if you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.

Amount due	$ .....
Together with interest from..... to date	$ .....
(Daily rate thereafter – $ .....per day)	
	$ .....

Total	$ .....
Less payments made to date	$ .....
Amount now due	$ .....

Important Notes:

1. It will not be necessary for you to attend the examination if you pay the amount now due to the claimant or the claimant's legal practitioner.
2. DO NOT bring or send payments to the court office. They will not be accepted.
3. You should allow at least 4 days for your payment to reach the claimant or the claimant's legal practitioner.
4. Keep records and ensure that you can account for all payments made. Proof may be required if there is disagreement.
5. If payment is made too late, you may be liable for further costs.

Dated ..... [SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 16

Financial Position Notice

[Rule 44.7(1).]

(Heading as Form 1)

Financial Position Notice

To:

An application has been made to orally examine you as to your income, assets and liabilities [the income assets and liabilities of the [defendant] [claimant] company] and the means by which the judgement debt may be paid. There is served with this notice an order giving the date time and place of the oral examination.

You are required to complete and return the attached questionnaire as to your means [the means of the company]. A copy will be sent to the judgement creditor and the judgement creditor may withdraw its application for an oral examination if satisfied with the information that you provide.

Unless you are notified by the court that your attendance is not required you must attend court on the date time and place stated in the attached order. If you fail to do so further proceedings may be taken which may result in your being imprisoned.

Dated ..... [SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 17

Writ of Execution against Goods (*Fieri Facias*)

[Part 46.]

(Heading as in Form 1)

Request for Issue of Writ of Execution

To the Court .....

[We] [I] ..... of .....

(Tel ..... Fax) ..... [Legal practitioners for the .....] [..... in person] apply for the issue of a Writ of Execution against the judgement debtor to recover the sum stated below.

Amount of judgement	$ .....
Costs	$ .....
Interest to date	$ .....
Total sum due	$ .....
Less: Paid since judgement	$ .....
Balance of judgement now due	$ .....
Plus: fee on issue	$ .....
Legal practitioner's costs on issue	$ .....
Amount for which writ to issue	$ .....

[We] [I] certify that

(*a*) the whole or part of any instalment due under the judgement has not been paid:

(*b*) the balance of judgement now due is as shown above.

Dated .....

Signed .....

[Legal practitioners for the] [Claimant] [Defendant]

Writ of Execution

To: The Marshal

You are required to levy the sum stated above together with interest at the rate of .....% per annum from the ..... day of ..... 20..... , until payment together with the marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgement debt, fees, costs and interest to the [claimant] [defendant].

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated ..... [SEAL]

Notice to Judgement Debtor

Notice of levy

The marshal has levied on your goods. This means that you must not dispose of them as the marshal may have to take them and sell them, at a public auction.

Payment of the judgement debt

If you pay the total amount due under this Writ including the marshal's poundage fees, costs of levying and any other legal incidental expenses, your goods will not be taken and you will not have to pay any more costs. You must pay the money to the marshal and will be given a receipt.

If you do not want the marshal to remove your goods

You can ask the marshal not to do so but you must sign the walking possession agreement below.

If your goods are removed—

- you will be given a list of the goods removed;
- the goods will not be sold for at least [ ] days unless they are perishable;
- you will be given [ ] days notice of the date and place of sale;
- further fees may be charged and added to the debt;
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

Walking Possession Agreement (request not to remove goods)

Please do not take my goods listed here–

I agree that until payment is made or the writ withdrawn, I will—

- not remove or damage the goods or allow anyone to do so;
- show this form to anyone who calls and tries to take these goods;
- tell you immediately if anyone tries to do so; and
- allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.

Dated .....

Signed .....

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 18

Writ of Possession

[Part 46.]

(Heading as in Form 1)

Request for Issue of Writ of Possession

To the Court .....

[We] [I] ..... of .....

(Tel ..... Fax) ..... [Legal practitioners for the .....] [..... in person] apply for the issue of a Writ of Possession against the judgement debtor to recover possession of the land and property known as .....

..... (description of property) and also to recover the sum stated below.

Amount of judgement (if any)	$ .....
Costs	$ .....
Interest	$ .....
Rent/mesne profits to date	$ .....
Total sum due	$ .....
Less: Paid since judgement	$ .....
Balance of judgement now due	$ .....
Plus: Fee on issue	$ .....
Legal practitioner's costs on issue	$ .....
Amount for which writ to issue	$ .....

[We] [I] certify that—

(*a*) the claimant is entitled to possession and that the defendant has not complied with any conditions upon which the order for possession was suspended;

(*b*) the balance of judgement and rent/mesne profits now due is as shown above.

Dated .....

Signed .....

[Legal practitioners for the] Claimant/Defendant

Writ of Possession

To: The Marshal

You are required to take possession of the property known as .....

..... (description of property)

and to deliver the same to the claimant/defendant or the claimant's/defendant's representative and also to levy the sum stated above together with interest at the rate of ..... %

per annum from the ..... day of ....., 20 .....

until payment together with the marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgement debt, fees, costs and interest to the [claimant][defendant].

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated ..... [SEAL]

Notice to Judgement Debtor

Notice of taking possession

You have failed to give up possession of the property described overleaf and the Marshal is authorised to enter the land to take possession of the property and deliver possession to the claimant.

Notice of levy

The Marshal has levied on your goods in order to discharge the judgement for [arrears of rent] [damages] [rent] [mesne profit] and [costs]. This means that you must not dispose of them as the Marshal may have to take them and sell them, at a public auction.

Payment of the money judgement

If you are able to pay the money judgement in full, the Marshal will not need to remove your goods. You will have to pay the full amount of the judgement plus interest and the costs of issuing this writ together with the Marshal's fees. You will be given a receipt for any money that you pay.

If your goods are removed—

- you will be given a list of the goods removed;
- the goods will not be sold for at least [ ] days – unless they are perishable;
- you will be given [ ] days notice of the date and place of sale;
- further fees may be charged and added to the debt;
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 19

Writ of Delivery or Value

[Part 46.]

(Heading as in Form 1)

Request for Writ of Delivery or Value

To the Court .....

[We] [I] ..... of .....

(Tel .....Fax .....) [Legal practitioners for the .....] [..... in person]

apply for the issue of a Writ of Delivery against the judgement debtor to recover possession of (description of goods)

or to recover the assessed value of the goods, namely $ .....

And also to recover

Damages	$ .....
Costs	$ .....
Total sum due	$ .....
Less: Paid since judgement	$ .....
Balance of judgement now due	$ .....
Plus: fee on issue	$ .....
Legal practitioner's costs on issue	$ .....
Amount for which writ to issue	$ .....

[We] [I] certify that—

(*a*) the claimant is entitled to recover the goods which are the subject of the court's order or the value of $ ....., assessed by the court;

(*b*) the balance of judgement now due is as shown above.

Dated .....

Signed .....

[Legal practitioners for the] Claimant/Defendant

Writ of Delivery or Value

To: The Marshal

You are required to cause the goods ..... (description of goods) to be delivered to the claimant/defendant, and if you are not able to do so to levy the sum of $ .... the assessed value.

You are also required to levy the sum of $ ..... as stated above together with interest at the rate of ..... % per annum from the ..... day of ..... , 20..... , until payment together with the marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgement debt, fees, costs and interest to the [claimant] [defendant].

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated ..... [SEAL]

Notice to Judgement Debtor

Notice of taking possession

You have failed to deliver up the goods described overleaf and the marshal is authorised to take possession of the goods and deliver them to the claimant. If the marshal is not able to take possession of the goods the marshal is authorised to levy the sum stated above being the value of the goods as assessed by the court.

Notice of levy

The Marshal has levied on your goods in order to—

(*a*) discharge the claim for the assessed value of the goods;

(*b*) discharge the judgement for [damages] and [costs].

This means that you must not dispose of them as the marshal may have to take them and sell them at a public auction.

Payment of the money judgement

If you are able to—

(*a*) deliver the goods described overleaf; or

(*b*) pay the assessed value of the goods; and

(*c*) pay the money judgement in full,

the Marshal will not need to remove your goods. You will have to pay the full amount plus interest and the costs of issuing this writ together with the marshal's fees. You will be given a receipt for any money that you pay.

If you do not want the marshal to remove your goods

You can ask the marshal not to do so but you must sign the walking possession agreement below.

If your goods are removed—

- you will be given a list of the goods removed;
- the goods will not be sold for at least [ ] days unless they are perishable;

– you will be given [ ] days notice of the date and place of sale;
– further fees may be charged and added to the debt;
– these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

Walking Possession Agreement (request not to remove goods)

Please do not take my goods listed here—

I agree that until payment is made or the writ withdrawn, I will—

– not remove or damage the goods or allow anyone to do so;
– show this form to anyone who calls and tries to take these goods;
– tell you immediately if anyone tries to do so; and
– allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.

Dated .....

Signed .....

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 20

Writ of Specific Delivery

[Part 46.]

(Heading as in Form 1)

Request for Writ of Specific Delivery

To the Court .....

[We] [I] .....of .....

(Tel ..... Fax .....) [Legal practitioners for the .....] [..... in person] apply for the issue of a Writ of Delivery against the judgement debtor to recover possession of .... (description of goods)

And also to recover

Damages	$ .....
Costs	$ .....
Total sum due	$ .....
Less: Paid since judgement	$ .....
Balance of judgement now due	$ .....
Plus: fee on issue	$ .....
Legal practitioner's costs on issue	$ .....
Amount for which writ to issue	$ .....

[We] [I] certify that—

(*a*) the claimant is entitled to recover the goods which are the subject of the court's order and that the court has given permission for the issue of a writ of specific delivery on (date);

(*b*) the balance of judgement now due is as shown above.

Dated: .....

Signed: .....

[Legal practitioners for the] Claimant/Defendant

Writ of Specific Delivery

To: The Marshal

You are required to cause the goods..... (description of goods) to be delivered to the claimant, A.B.

You are also required to levy the sum of $ ..... as stated above together with interest at the rate of ..... % per annum from the ..... day of ..... , 20..... , until payment together with Marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgement debt, fees, costs and interest to the [claimant][defendant].

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated ..... [SEAL]

Notice to Judgement Debtor

Notice of taking possession

You have failed to deliver up the goods described overleaf and the marshal is authorised to take possession of the goods and deliver them to the claimant.

Notice of levy

The marshal has levied on your goods in order to discharge the judgement for [damages] and [costs].

This means that you must not dispose of them as the marshal may have to take them and sell them at a public auction.

Payment of the money judgement

If you are able to pay the money judgement in full, the marshal will not need to remove your goods. You will have to pay the full amount plus interest and the costs of issuing this writ together with the marshal's fees. You will be given a receipt for any money that you pay.

If you do not want the marshal to remove your goods (other than the goods which the court order you to deliver up to the claimant)

You can ask the marshal not to do so but you must sign the walking possession agreement below.

If your goods are removed—

- you will be given a list of the goods removed;
- the goods will not be sold for at least [ ] days unless they are perishable;
- you will be given [ ] days notice of the date and place of sale;
- further fees may be charged and added to the debt;
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

Walking Possession Agreement (request not to remove goods)

Please do not take my goods listed here—

I agree that until payment is made or the writ withdrawn, I will—

- not remove or damage the goods or allow anyone to do so;
- show this form to anyone who calls and tries to take these goods;
- tell you immediately if anyone tries to do so; and
- allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.

Dated .....

Signed .....

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 21

Judgement Summons

[Rule 52.2(1).]

(Heading as Form 1)

Judgement Summons

To the defendant [if the summons is issued against only one or some of several defendants, name that defendant or those defendants].

On [date] the claimant obtained a judgement or order against you.

And as you have failed to pay as ordered, the claimant has requested this judgement summons be issued against you.

You are therefore summoned to appear [personally] in this court on [date] at .....
a.m. to be examined on oath as to the means you have had since the date of the judgement or order to comply with the terms of the judgement or order and also to give good reasons why you should not be committed to prison for failing to comply.

Amount for which judgement summons is to issue	$ .....
Court fees on summons	$ .....
Legal practitioner's costs on summons	$ .....
Together with interest from ..... to date	$ .....
(Daily rate thereafter =$ ..... per day)	$ .....
Total	$ .....
Less payments made to date	$ .....
Amount now due	$ .....

AND TAKE NOTICE that if you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.

Important Notes:

1. It will not be necessary for you to attend the examination if you pay the amount now due to the claimant or the claimant's legal practitioner.
2. DO NOT bring or send payments to the court office. They will not be accepted.
3. You should allow at least 4 days for your payment to reach the claimant or the claimant's legal practitioner.
4. Keep records and ensure that you can account for all payments made. Proof may be required if there is disagreement.
5. If payment is made too late, you may be liable for further costs.

Dated, ... [SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 22

Writ of Habeas Corpus

[Rule 57.3(1).]

(Heading as in Form 10)

To: the Commissioner/Superintendent of Prisons:

You are required to produce to the High Court on the ..... day of at ..... a.m./p.m the body of ..... by whatsoever name that person is called, said to be detained in your custody, and be prepared to state the day and cause of that person's being taken and detained so that the court may then and there examine whether such cause is legal.

TAKE NOTICE that if you fail to produce the body of ..... before the court on the date and at the time stated above the court may commit you to prison for your contempt in not obeying the order.

Dated ..... (SEAL)

Issued by ..... of .....

Legal practitioners for the claimant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[..... a.m.] and [..... p.m.]..... to..... except public holidays.

FORM 23

Notice of Appeal

[Rule 62.4(1).]

The Eastern Caribbean Supreme Court

[State/Territory]

In the Court of Appeal

High Court/Magisterial Civil Appeal No.

Between

A.B.

..... Appellant

and

CD.

..... Respondent

Notice of Appeal

TAKE NOTICE that the appellant (being the [claimant] [defendant] in the court below) hereby appeals to the Court of Appeal against the decision of .....]
contained in the order dated ..... [a copy of which is attached to this Notice].

1. Details of order appealed:
2. Details of—
   (*a*) any finding of fact:
   (*b*) any finding of law:
   which are challenged.
3. Grounds of Appeal:
   (*a*) .....
   (*b*) .....
   (*c*) .....
4. Order sought:
5. Any specific power which the court is asked to exercise:
6. Details of the other parties to the proceedings in the court below:

Name ..... Address for Service .....

Dated .....

Signed .....

[Legal practitioners for the] Appellant(s)

Date ..... [SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between

[..... a.m.] and [..... p.m.]..... to..... except public holidays.

Address for service of the Appellant(s) is:

.....

.....

FORM 24

Certificate of Result of Appeal

[Rule 62.24.]

(Heading as in Form 19)

Certificate of Result of Appeal

This appeal was heard on [date(s)] before ..... in the presence of ..... for the Appellant(s) and ..... for the Respondent(s).

I HEREBY CERTIFY that an Order was made as follows:

.....

.....

Dated ..... [SEAL]

.....

Chief Registrar

FORM 25

Admiralty Claim In Rem

[Rule 70.4(1).]

The Eastern Caribbean Supreme Court

In the High Court of Justice

Claim No. ..... of .....

Admiralty.....

Between

A.B.

..... Claimant

and

C.D.

..... Defendant

Claim Form *In Rem*

Admiralty claim *in rem* against

[The ship "X" or other res]

The claimant, ... A.B. ..... (full names), of ..... (full address)
claims against .....
the defendant, ... C.D. ..... (full names), of ..... (full address)
Set out briefly the nature of the claim and state any specific sum that you are claiming

Amount claimed	$ .....
Court fees	$ .....
Legal practitioner's costs on issue	$ .....
Together with interest from ..... to date	$ .....
(Daily rate thereafter = $ .....per day)	$ .....
Total Claim	$ .....

NOTICE TO THE DEFENDANTS being the owners of and other persons interested in the ship ..... of the port of ..... [or cargo or as may be]

If you do not complete the form of acknowledgment of service served on you with this claim form and deliver or send it to xxx xxx xxx within 14/28 days of service of this claim form on you, the claimant will be entitled to apply to have judgement entered against you for the amount claimed. If the res described in this claim form is then under arrest of the court it may be sold by order of the court.

The form of acknowledgment of service may be completed by you or a solicitor acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it is not served within [12] months of the date below unless you are also served with an order that extends the time for ..... service.

Dated ..... [SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[..... a.m.] and [..... p.m.]..... to ..... except public holidays.

Dated .....

The claimant's address for service is:

FORM 26

Admiralty Limitation Claim

[Rule 70.4(3).]

(Heading as in Form 16)

Limitation Claim Form

The claimant, ... A.B. ..... (full names), ...
of ..... (full address) .....
claims against .....
the defendant, ... C.D. ..... (full names), ...
of ..... (full address) .....
Set out briefly the nature of the claim

NOTICE TO THE DEFENDANT

Unless you admit the claim against you, you must complete the form of acknowledgment of service served on you with this claim form and deliver or send it to xxx xxx xxx so that it is received within 14/28 days of service of this claim form on you.

If you fail to do so the claimant may proceed with the claim without further notice to you. The form of acknowledgment of service may be completed by you or a solicitor acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it is not served within [twelve] months of the date below unless you are also served with an order that extends the time for service.

Dated ..... [SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx, fax xxx-xxxx. The office is open between
[..... a.m.] and [..... p.m.]..... to..... except public holidays.

The claimant's address for service is:

FORM 27

Warrant of Arrest (*Admiralty*)
[Rule 70.9(1).]

(Heading as in Form 16)

Request For Warrant Of Arrest

We ..... of .....

[Legal practitioners for] the claimant request a warrant to arrest .....

(description of property, giving name and port if a ship)

Dated .....

(*Signed*) .....

Warrant Of Arrest

To: the Marshal

You are required to arrest the ship ..... of the port of .....
[and the cargo now or lately laden in her together with the freight due for the transportation of it,] or [and the freight due for the transportation of the cargo now or lately laden in her] and to keep the same under safe arrest until you receive further orders from the Court.

The claimant claims:

Date ..... [SEAL]

Taken out by ..... of .....(Tel .....)

.....(Fax .....)

[Legal practitioners for] the claimant .....

[Marshal's indorsement as to service]

FORM 28

Request for Claim to be recorded as satisfied
[Rule 14.2(3).]

(Heading as in Form 1)

Request For Claim To Be Recorded As Satisfied

I/We ..... the Defendant/Defendant's Legal paractitioners,
Hereby request that the claim in this matter be recorded as satisfied.

Dated .....

(*Signed*) .....

Legal practitioner for the Defendant

To: (Claimant/Legal practitioner for the Claimant

The Claimant is required to notify the court within 14 days, of whether he/she disputes that the claim has been satisfied. Failure to do so within the time stipulated, the court will record that the

claim has been satisfied.

The court office is at ..... telephone number .....

The office is open between [..... am] and [..... pm] ..... to ..... except Public holidays

FORM 29

Request for Order for Oral Examination of an Individual

[Rule 44.3(1).]

(Heading as in Form 1)

Request For Order For Oral Examination Of An Individual

The {claimant} {defendant} (the 'judgment creditor') applies for an order, that the {defendant} {claimant} ('the judgment debtor') attend court to provide information about the judgement debtor's means, and any other information needed to enforce the judgement or order, dated the ..... day of ....., 20.....

1. Judgement Debtor

The judgement debtor is .....

whose address is .....

2. Judgement Debtor or Order

{The judgement or order required the judgment debtor to pay $ .....
(including interest and costs). The amount now owing is $ .....

{which includes further interest payable on the judgement debt}.

[The judgement or order required the judgement debtor to .....

.....

Notes—

Normally, the examiner will ask the questions set out in the Appendix A of Practice Direction 44, and the judgement debtor will be told to produce all relevant documents including—

- Pay slips
- Bank Statements
- Share certificates
- Credit Union Pass books
- Mortgage statement
- Hire purchase and similar agreements
- Court orders
- Any other outstanding bills
- Electricity, gas, water, cable, telephone bills for the last year

Statement of Truth

*(I believe) (The Judgement creditor believes) that the facts stated in this application are true.

*I am duly authorised by the judgement creditor to sign this statement.

Signed .....

Date .....

*(Judgement creditor) (Judgement creditor's solicitor)

*delete as appropriate

Full name .....

Name of judgement creditor's solicitor firm .....

The court office is at [.....]

telephone number [.....], fax number [.....]. The office

is open between [..... am] and [..... pm] ..... to ..... except public holidays.

FORM 30

Request for Order for Oral Examination of an Officer or a debtor company

[Rule 44.3(1).]

(Heading as in Form 1)

Request For Order For Oral Examination Of An Officer or a Debtor Company

The [claimant] [defendant] (the 'judgement creditor') applies for an order, that the [defendant] [claimant] company or corporation ('the judgement debtor') attend court to provide information about the judgement debtor's means, and any other information needed to enforce the judgement or order, dated ..... day of, 20.....

1. Judgement Debtor

The judgement debtor is .....

whose address/registered office is situated at .....

2. The officer

The officer is the judgement debtor's .....

whose name and address is .....

3. Judgement debt or order

[The judgment or order required the judgment debtor to pay $ ..... (including interest and costs). The amount now owing is $ ..... [which includes further interest payable on the judgement debt].

The judgement or order required the judgement debtor to .....

.....

Notes—

Normally, the examiner will ask the questions set out in the Appendix B of Practice Direction 44, and the judgement debtor will be told to produce all relevant documents including—

- Bank statements
- Court orders on which money is still owed
- Bills owed to the company
- Hire purchase and similar agreements
- Any other outstanding bills
- 2 year's accounts

Statement of Truth

*(Judgement creditor) (Judgement creditor's solicitor)

*delete as appropriate

Full name .....

Name of judgement creditor's solicitor's firm .....

The court office is set at [.....]

telephone number [.....], fax number [.....]. The office is open

Between [..... am] and [..... pm] ..... to ..... except on public holidays.

Eastern Caribbean Supreme Court (Sittings of Criminal Causes) Rules

SRO 30 of 2009

ARRANGEMENT OF RULES

1. Citation.
2. Criminal sitting of Court.
3. Special sittings for criminal causes.
4. Assignment of cause.
5. Hearing of applications, etc., in vacations.
6. Hour of sitting.

EASTERN CARIBBEAN SUPREME COURT (SITTINGS OF CRIMINAL CAUSES) RULES

[SRO 30 of 2009.]

1. Citation

These Rules may be cited as the Eastern Caribbean Supreme Court (Sittings of Criminal Causes) Rules, 2009.

2. Criminal sitting of Court

(1) The Court shall sit for the trial of criminal causes in Grenada from January to March, May to July and October to December.

(2) The Court shall sit on the first Tuesday in the month aforementioned save and except:

Provided that where the first Tuesday in the month of January falls within the Christmas vacation, the sitting of the Court shall be fixed for the next working day of the Court, not being a Saturday.

(3) The judge assigned to Grenada may with the concurrence of the Chief Justice fix an alternative date for the commencement of criminals trials. Notice shall be given in the *Gazette* of the date so fixed not less than seven days prior to the commencement of the sitting.

3. Special sittings for criminal causes

The Chief Justice may at any time direct a special sitting of the Court to be held for the trial of criminal causes. Notice of such direction shall be published in the *Gazette* and in a local newspaper, if any, not less than fourteen days before the date fixed for the sitting.

4. Assignment of cause

The Chief Justice may from time to time direct that any cause or matter pending in the Court in Grenada shall be heard by a judge other than the judge assigned to that State.

5. Hearing of applications, etc., in vacations

The Court or a judge may hear any criminal cause or matter during the vacation.

6. Hour of sitting

The sitting of the Court shall commence at 9:00 a.m. unless the judge otherwise directs.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

ARRANGEMENT OF DIRECTIVES

DIRECTIVE
1. Introduction.
2. Service by electronic means.
3. Effective date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 and supplements Part 5 of the Rules.

[SI 1 of 2011.]

[1*st October*, 2011.]

Introduction

1. 1.1. This Practice Direction authorises the use of electronic means of communication for service of a claim form.

1.2. In this Practice Direction, "electronic means" means CD ROMs, memory sticks, e-mail, Fax or other means of electronic communication of the contents of documents.

Service by electronic means

2. 2.1. Where a party intends to serve a claim form by electronic means (other than by Fax) that party must first ask the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).

2.2. The party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving—

(*a*) that the party to be served or the solicitor is willing to accept service by Fax or other electronic means; and

(*b*) the Fax number, e-mail address or other electronic identification to which it must be sent.

2.3. The following are to be taken as sufficient written indications for the purposes of paragraph 2.2 (*b*)—

(*a*) a Fax number set out on the writing paper of the solicitor acting for the party to be served;

(*b*) an e-mail address set out on the writing paper of the solicitor acting for the party to be served except where it is stated that the e-mail address may not be used for service; or

(*c*) a Fax number, e-mail address or electronic identification set out on a statement of case or a response to a claim filed with the court.

2.4. Where a document is served by electronic means, the party serving the document shall, upon request by the party being served send or deliver a hard copy.

2.5. Where a document is to be served by electronic means and any of the Rules or any Practice Direction requires that document to be signed, that requirement shall be satisfied if the signature is printed by computer or other mechanical means.

Rule 5.13 of the Eastern Caribbean Civil Procedure Rules, 2000, applies as it relates to proof of service where service is by electronic means.

Effective date

3. This Practice Direction will come into effect on the 1st day of October, 2011, and will be applicable to all claim forms which are dispatched or transmitted after that date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

ARRANGEMENT OF DIRECTIVES

DIRECTIVE

1. Introduction.
2. Circumstances in which an affidavit or a statement of claim must be filed.
3. First hearing.
4. Effective date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 and supplements Part 8 of the Rules.

[SI 2 of 2011.]

[1*st October*, 2011.]

Introduction

1. This Practice Direction clarifies the scope and application of Part 8 of the Rules.

Circumstances in which an affidavit or a statement of claim must be filed

2. 2.1. This paragraph clarifies rule 8.2(1).

2.2. The judge may direct that an affidavit or a statement of claim be filed and served in addition to the claim form.

First hearing

3. The first hearing of a fixed date claim shall take place in open court unless—

(*a*) all parties agree otherwise; or

(*b*) the court directs otherwise of its own initiative or on the application of one or more of the parties.

Effective date

4. This Practice Direction will come into effect on the 1st day of October, 2011 and will be applicable to all claims where the claim form is filed after that date or the court otherwise directs.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

ARRANGEMENT OF DIRECTIVES

DIRECTIVE
1. Evidence and practice in cases where the court's jurisdiction is disputed.
2. Effective date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 and supplements Part 9 of the Rules.

[SI 3 of 2011.]

[1*st October*, 2011.]

Evidence and practice in cases where the court's jurisdiction is disputed

1. 1.1. This paragraph clarifies the application of rule 9.7(4).

1.2. Where a defendant is unable to file all the evidence on which he wishes to rely to support his application under rule 9.7(4), he must—

(*a*) file with his application an affidavit which sets out the general nature of the grounds on which he proposes to contest the jurisdiction;

(*b*) indicate when the additional evidence will be available; and

(*c*) apply for case management directions for the future conduct of the application and, in particular, the timetable which will apply.

Effective date

2. This Practice Direction will come into effect on the 1st day of October, 2011 and will be applicable to all claim forms filed after that date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

ARRANGEMENT OF DIRECTIVES

DIRECTIVE
1. Introduction.
2. Effective date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 and supplements Part 12 of the Rules.

[SI 4 of 2011.]

[1*st October*, 2011.]

Introduction

1. 1.1. This Practice Direction clarifies the application of rule 12.4.

1.2. In the circumstances where—

(i) the claimant does not make a request under rule 12.5 and 42 days have elapsed since the last date for filing a defence without a defence being filed, or

(ii) a defence is filed after the claimant has made a request under rule 12.4,

the court shall fix a status hearing and notify the parties of the date of that hearing.

1.3. Where there is uncertainty as to the application of any of the Rules relating to the grant of default judgments, the matter must be referred to a master or a judge immediately.

1.4. At the status hearing the court will give case management directions for the future conduct of the claim and the timetable which will apply.

Effective date

2. This Practice Direction will come into effect on the 1st day of October, 2011 and will be applicable to all claims issued after that date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

ARRANGEMENT OF DIRECTIVES

DIRECTIVE

1. Introduction.
2. Applications to change the statement of case where the permission of the court is required.
3. General.
4. Factors to which the court must have regard.
5. Effective date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 and supplements Part 20 of the Rules.

[SI 5 of 2011.]

[1*st October*, 2011.]

Introduction

1. This Practice Direction supplements rule 20.1(2).

Applications to change the statement of case where the permission of the court is required

2. 2.1. The application may be dealt with at a hearing or, if rule 11.14 applies, without a hearing.

2.2. When making an application to change a statement of case, the applicant should file with the court—

(1) the application and affidavit in support; together with

(2) a copy of the statement of case with the proposed changes.

2.3. Where permission to change has been given, the applicant should within 14 days of the date of the order, or within such other period as the court may direct, file with the court the amended statement of case.

2.4. A copy of the order and the amended statement of case should be served on every party to the proceedings, unless the court orders otherwise.

General

3. 3.1. The amended statement of case and the court copy of it should be endorsed as follows—

(1) Where the court's permission was required—

> Amended [Particulars of Claim *or as may be*] by Order of [Master] [Judge .....*or as may be*] dated .....

(2) Where the court's permission was not required—

> Amended [Particulars of Claim *or as may be*] under CPR [rule 20.1(1)] dated .....

3.2. The statement of case in its amended form must show the original text and the amendments made, the court may direct that the amendments should be shown either—

(1) by coloured amendments, either manuscript or computer generated; or

(2) by use of a numerical code in a monochrome computer generated document.

3.3. Where colour is used, the text to be deleted should be struck through in colour and any text replacing it should be inserted or underlined in the same colour.

3.4. The order of colours to be used for successive amendments is—

(1) red;

(2) green;

(3) violet; and

(4) yellow.

3.5. If the substance of the statement of case is changed by reason of the amendment, the statement of case should be re-verified by a statement of truth.

3.6. A copy of the amended statement of case should be served on every party to the proceedings.

3.7. A party applying for an amendment will usually be responsible for the costs of and arising from the amendment.

Factors to which the court must have regard

4. 4.1. When considering an application to change a statement of case pursuant to rule 20.1(2) the factors to which the court must have regard are—

(1) how promptly the applicant has applied to the court after becoming aware that the change was one which he wished to make;

(2) the prejudice to the applicant if the application were refused;

(3) the prejudice to the other parties if the change were permitted;

(4) whether any prejudice to any other party can be compensated by the payment of costs and or interest;

(5) whether the trial date or any likely trial date can still be met if the application is granted;

(6) the administration of justice.

Effective date

5. This Practice Direction will come into effect on the 1st day of October, 2011, and will be applicable to all claims whenever issued.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

ARRANGEMENT OF DIRECTIVES

DIRECTIVE
1. Introduction.
2. Effective date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 and supplements Part 26 of the Rules.

[SI 6 of 2011.]

[1*st October*, 2011.]

Introduction

1. 1.1. This Practice Direction supplements rule 26.7(1).

1.2. In respect of any one default, any sum which may be payable by order of the court under rule 26.7 shall be limited to an amount of $5,000.00 or the equivalent in such other currency as the court shall direct.

Effective date

2. This Practice Direction will come into effect on the 1st day of October, 2011 and will be applicable to any default occurring after that date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

ARRANGEMENT OF DIRECTIVES

DIRECTIVE
1. Introduction.
2. Filing by electronic means.
3. Effective date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 and supplements Parts 3 and 42 of the Rules.

[SI 7 of 2011.]

[1*st October*, 2011.]

Introduction

1. 1.1. This Practice Direction authorises the use of electronic means of communication for *lodging* draft orders.

1.2. In this Practice Direction, "electronic means" means CD ROMs, memory sticks, e-mail, FAX or other means of electronic communication of the contents of documents.

Filing by electronic means

2. 2.1. Where a party *lodges* a draft order by electronic means, the document is not *lodged* until the transmission is received by the court irrespectively of the time that it is sent.

2.2. The time of receipt of a transmission will be recorded electronically on the transmission as it is received *by the court*.

2.3. If a transmission is received after 3 p.m.—

(*a*) the transmission will be treated as received; and

(*b*) any document attached to the transmission will be treated as filed, on the next day the court office is open *unless the Court orders otherwise*.

2.4. Where a *draft order* is *lodged* by electronic means, the party *lodging* the document need not in addition send or deliver a hard copy.

2.5. Where a *draft order* is to be *lodged* by electronic means and any of the Rules or any Practice Direction requires that document to be signed, that requirement shall be satisfied if the signature is printed by computer or other mechanical means.

2.6. Parties are advised not to transmit electronically any document of a confidential or sensitive nature, as security cannot be guaranteed.

2.7. If a document which is *lodged* by electronic means requires urgent attention, the sender should contact the court office by telephone.

Effective date

3. This Practice Direction will come into effect on the 1st day of October, 2011 and will be applicable to all draft orders filed after that date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

ARRANGEMENT OF DIRECTIVES

DIRECTIVE
1. Introduction.
2. Application for order for oral examination.
3. Conduct of oral examination.
4. Persons authorised to conduct oral examinations.
5. Effective date.

APPENDIX A

APPENDIX B

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 and supplements Part 44 of the Rules.

[SI 8 of 2011.]

[1*st October*, 2011.]

Introduction

1. This Practice Direction clarifies the position as stated in Part 44 with regard to the oral examination of judgment debtors.

Application for order for oral examination

2. 2.1. An application by a judgment creditor must be made by filing an application using Form 29.

2.2. The application notice must—

(1) state the name and address of the judgment debtor;

(2) identify the judgment or order which the judgment creditor is seeking to enforce;

(3) if the application is to enforce a judgment or order for the payment of money, state the amount presently owed by the judgment debtor under the judgment or order;

(4) if the judgment debtor is a company or other corporation, state—

(*a*) the name and address of the officer of that body whom the judgment creditor wishes to be ordered to attend court; and

(*b*) his position in the company;

(5) if the judgment creditor wishes the questioning to be conducted before a judge or master instead of the Registrar, state this and give his reasons;

(6) if the judgment creditor wishes the judgment debtor (or other person to be questioned) to be ordered to produce specific documents at court, identify those documents; and

(7) if the application is to enforce a judgment or order which is not for the payment of money, identify the matters about which the judgment creditor wishes the judgment debtor (or officer of the judgment debtor) to be questioned.

Conduct of oral examination

3. The examiner as defined in rule 44.4 of the Civil Procedure Rules, 2000, shall ask a standard series of questions, as set out in the forms in Appendices A and B to this Practice Direction. The form in Appendix A shall be used if the person being questioned is the judgment debtor, and the form in Appendix B shall be used if the person is an officer of a company or other corporation.

Persons authorised to conduct oral examinations

4. For the purposes of rule 44.4 of the Civil Procedure Rules, 2000, the persons authorised to conduct oral examinations are a judge, master, Registrar or any other officer of the court authorised by the Chief Justice.

Effective date

5. This Practice Direction will come into effect on the 1st day of October, 2011, and will be applicable to all civil proceedings whenever commenced.

APPENDIX A

Record of examination
(Individual)

In the High Court	
Claim No.	

Judgment Creditor: _____

Judgment Debtor: _____

1 Personal

Full Name _____ Your age? _____

Present Address _____

National Insurance no. _____

Are you ☐ Married? ☐ Single? ☐ Separated? ☐ Divorced? ☐ Living with partner?

Phone numbers:

Home _____ Work _____

Mobile _____ Other _____

Do you intend moving to another address? ☐ Yes ☐ No

If Yes, what will your new address be and when are you moving? Date

Do you have any dependent children? ☐ Yes ☐ No

If Yes, what are their names and ages?

Name	*Age*

Do you have other dependents living with you, *eg. elderly relatives*? ☐ Yes ☐ No

If Yes, what are their names and ages and to what extent are they dependent?

2 Employment Status

Are you

☐ Employed? Go to section 3 below

☐ Self employed? Go to section 4 page 565

☐ Unemployed? Go to section 5 page 567

☐ Retired? Go to section 6 page 567

3 Employment Details

What is your occupation?

What is the name and address of your employer and your employee number? employee number

Where is your place of work if different?

What is your gross pay i.e. Before tax, national insurance deductions?

What is your average take home pay including overtime and commission?

How often are you paid? ☐ Weekly ☐ Monthly ☐ Other

On which day are you paid?

Is your pay paid ☐ In cash ☐ By cheque ☐ Direct to bank or other financial institutions

If direct to bank or other financial institution account what is the name and address of the branch and account number?

Account number

Do you have any jobs other than your main job? ☐ Yes ☐ No

If Yes, ask for all the above details in relation to all other jobs and set out information below.

4 Self Employed

How long have you been self employed?

What work do you do?

What is the name of your business?

Do you have business premises? eg. shop, yard, lockup ☐ Yes ☐ No

If Yes, what is the address?

What is your annual turnover?

What amount of profit did the business make over the last year?

How much do you draw from the business?

What were your total drawings in last 12 months?

Are you a ☐ Sole trader? ☐ Partner?

If partner, (*a*) How many partners are there?

(*b*) What is your share of the partnership?

Do you complete Income Tax Returns? ☐ Yes ☐ No

Do you have accounts? ☐ Yes ☐ No

Do you employ an accountant? ☐ Yes ☐ No If Yes, what is the accountant's name and address?

If you don't have an accountant are accounts audited by a third party? ☐ Yes ☐ No If Yes, give name and address and say when audit takes place?

Will you allow the creditor to approach your accountant or auditor or Inland Revenue to verify the information you have given in this section? ☐ Yes ☐ No

Are you working on any contracts at the moment? ☐ Yes ☐ No If Yes, give details below

Name and address of customer	*Nature of work*	*Contract price*	*Amount outstanding*	*Date payment expected*

Is any money still due to you for work already done? ☐ Yes ☐ No If Yes, give details below.

Name and address of customer	*Nature of work*	*Contract price*	*Amount outstanding*	*Date payment expected*

If money (see above) is overdue what steps are you taking to recover it?

Do you have contracts for work in the future? ☐ Yes If Yes, give details below.

☐ No

Name and address of customer	*Nature of work*	*Expected price*

5 Unemployed

How long have you been unemployed? ☐

What is your trade/training/profession? ☐

What steps are you taking to obtain employment? ☐

Do you have any outstanding job interviews? ☐ Yes ☐ No If Yes, when? ☐

6 Retired

When did you retire? ☐

By whom are your pension(s) paid, how much is paid and when? (include both state and private pensions)

Pension from	*Amount*	*Frequency of payment*

7 Other Income

Is there anyone else in your household who is employed? (Do ☐ Yes

If Yes, how much do they contribute to the ☐ $ per

not include tenants/lodgers. See section 8 on page 6)

☐ No

running of the home?

Do you receive income from any other source?

☐ Yes

☐ No

If Yes, from where and how much?

8 Residence

Is your home

☐ Your own property? Go to 8a below

☐ Rented furnished from a private landlord? Go to 8b page 569

☐ Rented unfurnished from a private landlord? Go to 8b page 569

☐ Other (eg. CDC apartment) Go to 8b page 569

8a Your Own Property

Are you the sole owner? ☐ Yes

☐ No If No, name joint owner(s)

Do you own the ☐ Freehold?

☐ Leasehold

When did you buy the property?

Is your home a ☐ House? ☐ Apartment?

How many of the following rooms does it have? ☐ Living rooms? ☐ Kitchens?

☐ Bedrooms? ☐ Bath/shower rooms?

How much Property Tax do you pay per year? $

What was the purchase price of the property? $ What is its value now? $

Is your home mortgaged? ☐ Yes

☐ No

If Yes, what is the name and address of your mortgage lender?

How much are your mortgage payments per month? $

How long is the mortgage for? years

When did you take out the mortgage?

How much is currently owed under the mortgage?

Do you let any part of your home? ☐ Yes ☐ No

If Yes, give names of the tenants/lodgers and details of rent received

Do you have any loans secured on your home? (eg. further mortgage) ☐ Yes ☐ No

If Yes, give the same details as for the first mortgage

8b Rented Property

Do you rent ☐ On your own ☐ Jointly?

What is the name and address of your landlord?

How long have you lived at the property? months years

Do you share parts of your home with someone unconnected with you? ☐ Yes ☐ No

How much the rent do you pay? $ per

☐ None

Do you sub-let any part of your home? ☐ Yes ☐ No

If Yes, give names of tenants/lodgers and details of rent received.

9 Savings, Investments and other Assets

Do you own any property other than your home? ☐ Yes ☐ No

If Yes, give the address and value

☐ No	and details of any mortgages and lettings	

Do you have any bank, credit union or other accounts? ☐ Yes ☐ No

If Yes, give details below

Name & Address of Bank/Credit Union	*Account No.*	*Type of Account*	*Balance*	*Sole or joint A/C*	*Name(s) of joint account holder(s)*

Do you have any share, investments insurance policies or stock/bonds? ☐ Yes ☐ No

If Yes, give details below

Are you making contributions to a pension scheme?	☐ Yes ☐ No	If Yes, give details	

Do you have any of the following items and how long have you had them?

		Is it owned by you, on hire purchase credit sale or rented?	*If not owned by you give:*		
	Age (years)		*Name of Creditor*	*Amount still owed*	*Payments*
Microwave					
Hi-fi/surround sound					
Television (No.....)					
Video					
Camcorder					
Computer					
Dishwasher					
Camera					
Dining Room Suite					
DVD Player					
Mobile Telephone					
Musical Instruments					
Other Items...					

Do you own a motor vehicle? ☐ Yes ☐ No

If Yes, give age, make, model value and registration number. State whether it is owned by you, or subject to a hire purchase/rental agreement.

Do you have any assets not previously mentioned? ☐ Yes ☐ No

If Yes, give details

Assets	*Value*

Does anyone owe you money, which is not a business debt for work you have done? ☐ Yes ☐ No

If Yes, who owes you money and how much do they owe?

	Value

10 Other Debts or Regular Payments and Court Orders

Expenses per month

Do not include payment made by other members of your household out of their own income or priority debts listed opposite.

Mortgage	$ per
Rent	$ per
Property Tax	$ per
Gas	$ per
Electricity	$ per
Water charges	$ per
Housekeeping, food, school meals	$ per
Travelling expenses	$ per
Children's clothing	$ per
Maintenance/child support payments	$ per
Student loan repayments	$ per

Priority Debts

This section is for arrears only. DO NOT include regular expenses listed left.

	Total arrears outstanding
Rental arrears	$
Mortgage arrears	$
Water charge arrears	$
Fuel arrears: Gas	$
Electricity	$
Other	$
Maintenance arrears	$
Income tax	$

Hire Purchase repayments	$ per	National Insurance	$
Cable TV Subscriptions	$ per	Others (give details below)	$
Telephone	$ per		$
Mobile phone	$ per		$
Other expenses (not court order, priority debts or credit debts listed left)	$ per		$
	$ per		$
	$ per		$
	$ per		$
	$ per		$
	$ per		$
Total Expenses	$ per	Total Priority Debts	$

Have any court orders been made against you? ☐ Yes If Yes, give details below

☐ No

Name of court and case number	*Date of Judgment or order*	*Amount of Judgment or order*	*Instalments payable per month*	*Name of creditor*	*Total Still owed*	*Are payments up to date? (yes/no)*	*If no, how much in arrears?*
TOTALS							

Do you owe money on credit or any other loans (not mortgage or business)? ☐ Yes If Yes, give details below

☐ No

Name of creditor	*Total amount owing*	*Instalments payable per month*	*Are payments up to date? (yes/no)*	*If no, how much in arrears?*
TOTALS				

Have any bankruptcy proceedings been issued against you? ☐ Yes ☐ No

If Yes, what is the court name and case no.

Is the petition ☐ Still pending? ☐ Order made but discharged? ☐ Order has been made but not discharged? ☐ Other outcome? (give details below)

Has an individual voluntary Arrangement been made? ☐ Yes ☐ No

If Yes, give the date

If No, is there a current proposal for one? ☐ Yes ☐ No

11 Offer of Payment

Can you make an offer of payment? ☐ Yes ☐ No

If No, please explain why

What is your offer of payment?

Pay in full by ____ day of ____

Instalments of $ ____ per ____ to start on ____

Method of payment ☐ Standing order ☐ Manager's Cheque ☐ Cash ☐ Direct debit

I certify that this is a correct record of the answers I gave to the questions in this document.

Signed _____ Judgment Debtor

Print name _____

Date _____

The judgment debtor refused to sign this record of evidence.

Signed _____ Court Officer

Print name _____

Date _____

12 Documents Produced

The judgment debtor produced the following documents:

APPENDIX B

Record of examination
(officer of company or corporation)

In the High Court	
Claim No.	

Judgment Creditor:

Judgment Debtor:

1 Personal

Full Name

Present Address

Phone numbers:

Home

Mobile

Work

Other

Your position in the company

2 Company Information

Name of company | Company registration no.

Business address | Telephone no.(s)

Is the company the sole occupier? ☐ Yes ☐ No

Registered office | Telephone no.(s)

Name and address of other company

Name and address of company solicitors | Name and address of company accountants

Where are the company records held?

3 Current Operational Status

What is the nature of business

Is the company still trading? ☐ Yes ☐ No If No, when did the company cease trading

How were assets disposed of?

Have you any current contacts ☐ Yes ☐ No

If Yes, what are they and what is their total value?

	Value

Have you any current contacts ☐ Yes ☐ No

If Yes, what are they and what is their total value?

	Value

(4) Current Financial Status

Does the company hold any cash? ☐ Yes ☐ No

If Yes, say how much and where held eg. named bank or other?

Does the company have any overdraft facilities? ☐ Yes ☐ No

If Yes, please provide details of overdraft facility

What is the name and address of the branch, account number and type?

Type of account

Account number

How much of the overdraft facility have you used? ☐ All ☐ Part If Part, say how much

Have you approached the bank to increase the limit? ☐ Yes ☐ No ☐

If No, why not?

If Yes, what was the response?

Is your overdraft secured? ☐ Yes ☐ No If Yes, how? ☐ Fixed charge

☐ Fixed and floating charge

☐ Floating charge

☐ Personal guarantee

What assets are affected by the charge?

What is the current turnover of the company?

5 Assets

What assets, excluding property,

are owned outright by your company? – description, value and in the case of vehicles, registration numbers.	

What assets are subject to the hire purchase?				
Value				
Last payment date				
What assets are subject to lease purchase?				
Value				
Last payment date				
What assets are on lease?				

Are there any debts due to your company? ☐ Yes ☐ No

If Yes, give details

Name and address of debtor		*Invoice no.*	*Total amount owing?*	*Are amounts owed disputed? Yes/No*

Does your company own livestock? ☐ Yes ☐ No Does your company have/own

Investments ☐ Yes ☐ No

Shares ☐ Yes ☐ No

Has the company sold any assets within the last 12 months? ☐ Yes ☐ No

If Yes, on what date?				

Description of assets sold				
Buyer's name and address				
Purchase price				

6 Property

Does your company own any property? ☐ Yes ☐ No

If Yes, please give address(es) and value			
Value			

Are the premises mortgaged? ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No

If yes, give details of lender's name and address			
Amount borrowed			

Amount outstanding			
Date borrowed			
Purchase price			
Current value of property			
Details of any subsequent charges			

Does your company rent any premises from a landlord? ☐ Yes ☐ No If Yes, how much is paid for ☐ Rent?

Is the rent in arrears? ☐ Yes ☐ No

If Yes, how much? ☐

What action is being taken to recover the debt? ☐

7 Liabilities

Please list all Creditors			
Amounts owed			
What actions are the creditors taking to recover the debts?			

Are the amounts disputed by the company? ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No

Are any of the debts secured? ☐ Yes ☐ No If Yes, how? ☐ Fixed charge

Does the company have court order(s) against it? ☐ Yes ☐ No

☐ Fixed and floating charge

☐ Floating charge

☐ Personal guarantee

If Yes, please provide details of date of judgment			
Name of court			
Case number			
Name of creditor			
Total amount owing			
Amount now due			
Rate of payments being made			

Are the payments in arrears? ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No

* If Yes, by how much?			

* Is the company able to pay its debts as they fall due? ☐ Yes ☐ No

(8) Other information

Are there any associated or subsidiary companies? ☐ Yes ☐ No

If Yes, please provide names			
Place of business			
Other trading addresses			

What accounting records are kept? | Have annual returns been submitted to Registry of Companies & Intellectual Property? ☐ Yes ☐ No

Do you or any other director/personnel hold a loan account with the company? ☐ Yes ☐ No

If Yes, What is the current status? Overdrawn by ☐

In credit by ☐

Have any assets been transferred to you or any other director/personnel personally? ☐ Yes ☐ No

If Yes, please give description

Value

Other information

Have you or any other member of the company received benefits other than by way of salary? ☐ Yes ☐ No

If Yes, please give details

Additional information

9 Offer of Payment

Can the company make payment in full now ☐ Yes ☐ No

If No, why?

When can the company make payment in full ?

Have you any other proposal for payment?

10 Other Debts or Regular Payments and Court Orders

I certify that this is a correct record of the answers I gave to the questions in this document.

Signed _____ Judgment Debtor

Print name _____

Date _____

The judgment debtor refused to sign this record of evidence.

Signed _____ Court Officer

Print name _____

Date _____

11 Documents Produced

The judgment debtor produced the following documents:

ARRANGEMENT OF DIRECTIVES

DIRECTIVE
1. Introduction.
2. Appeal management directions.
3. Effective date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000, and supplements Part 62 of the Rules.

[SI 9 of 2011.]

[1*st October*, 2011.]

Introduction

1. This Practice Direction supplements rule 62.14(2).

Appeal management directions

2. 2.1. The Chief Justice may at any stage after an appeal has been set down designate a single judge of the court, a judge, master or the Chief Registrar to manage an appeal case, and to give such directions in relation to the documents to be produced at the appeal, and the manner in which they are required to be produced and as to other matters incidental to the conduct of the appeal, as appear best adapted to secure the just, expeditious and economical disposal of the appeal.

2.2. Before giving any such directions the single judge of the court, a judge, master or the Chief Registrar may consult the Chief justice, and/or Justices of Appeal who are expected to preside at the hearing of the appeal.

2.3. Such directions may be communicated to the parties either on paper or at a hearing and any hearing will, if appropriate, be held before a single Justice of Appeal.

2.4. The directions to be given may include appropriate directions as to length of time to be allowed to each party for oral argument. At trial, the opening speech should be succinct. At its conclusion other parties may be invited briefly to amplify their skeleton arguments. In a heavy case the court may in conjunction with final speeches require written submissions, including the findings of fact for which each party contends.

2.5. The Directions given should ensure that documents for use in court should be on A4 size paper where possible, contained in suitably secured bundles, and lodged with the court within the time specified by the relevant rules or practice direction. Each bundle should be paginated, indexed, wholly legible, and arranged chronologically and contained in a ring binder or a lever-arch file. Where documents are copied unnecessarily or bundled incompetently cost will be disallowed. Where documents are skeleton arguments and list of authorities, regard should be had to the practice direction guiding the submission of these documents.

2.6. The court is obliged to further the overriding objective by actively managing cases. The court will accordingly exercise its discretion to limit—

(*a*) discovery;

(*b*) the length of oral submissions;

(*c*) the issues on which it wishes to be addressed;

(*d*) reading aloud from documents and authorities.

2.7. In advance of the hearing parties should use their best endeavours to agree which are the issues or the main issues.

2.8. In exceptional cases it is appropriate that a judge be assigned to manage the conduct of an appeal. The request for the assignment of such an appeal management judge is to be made to the court. The request should contain enough information to satisfy the court that such an appointment is appropriate. The decision to appoint an Appeal Management Judge will be made by the Chief Registrar of the court. Counsel will be advised of the outcome of the decision.

2.9. The Appeal Management Judge shall conduct such appeal management conferences as are appropriate and hear all applications (within the jurisdiction of a single judge) brought by any party to the appeal.

2.10. Appeal management conferences will be held to deal with matters not otherwise governed by the Civil Procedure Rules, including consideration of the order of argument; time allocated for the argument of each party; the date and length of the hearing of the appeal; the issues to be argued; whether settlement of the appeal or issues under appeal is possible; co-ordination, if necessary, of the scheduling of prehearing applications and similar matters.

Such conferences will be conducted in person or by teleconference. In order to ensure efficient administration of the appeal, the results of any decisions made by the Appeal Management Judge on such conference will be communicated as necessary to the bench hearing the appeal, all parties and the court's staff.

2.11. Where all parties consent to an order, it may be obtained by filing a notice of application, two copies of the draft order, the consent of the parties, and an affidavit or covering letter containing sufficient information to satisfy the judge that the order is appropriate.

2.12. If the order is not on consent, an application is appropriate. Because the application will be heard by the Appeal Management Judge, counsel is first required to obtain a hearing date from the court by contacting the court. After obtaining a date for such an application, the applicant must file a notice of application in accordance with the Civil Procedure Rules and this Practice Direction.

2.13. Such an application may be heard in writing, in person or by teleconference as appropriate.

Effective date

3. This Practice Direction will come into effect on the 1st day of October, 2011 and will be applicable to all claims whenever issued.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

ARRANGEMENT OF DIRECTIVES

DIRECTIVE

1. Introduction.
2. Consequences of non-compliance.
3. Effective date.

EASTERN CARIBBEAN SUPREME COURT PRACTICE DIRECTION

This Practice Direction is made pursuant to rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000 and supplements Part 62 of the Rules.

[SI 10 of 2011.]

[1*st October*, 2011.]

Introduction

1. 1.1. This Practice Direction supplements rule 62.11.

1.2 Skeleton arguments and lists of authorities must be lodged in support of/in opposition to every application or appeal. A skeleton argument should be concise and succinct. It should at the same time be comprehensive, in that, it should state all the points which a legal practitioner intends to take and summarise the argument on each of those points. A point not taken or an argument not advanced in a party's skeleton argument may not be pursued at the hearing of the application or appeal without the leave of the court.

1.3. The appellant's skeleton argument should commence with a brief statement of the nature of the proceedings below; a similarly brief statement of the facts material to the resolution of the issues which are said to arise on the appeal; and a concise statement of those issues. The skeleton argument should then outline the points which the appellant intends to take and a brief statement of the appellant's argument on each of those points.

1.6. Skeleton arguments should not normally exceed 10 pages in the case of an appeal on law and 15 pages in the case of an appeal on fact, printed on A4 paper. Legal practitioners should not, however, assume that longer cases justify proportionately longer skeleton arguments; and, in the case of interlocutory and shorter final appeals, it should normally be possible to do justice to the relevant points in a skeleton argument of considerably less than 10 pages.

(EDITORIAL NOTE: Numbering as per *Gazette*.)

1.7. A skeleton argument must contain—

(*a*) a numbered list of the points which the legal practitioner wishes to make. These should both define and confine the areas of controversy. Each point should be stated as concisely as the nature of the case allows;

(*b*) in respect of each authority cited—

(i) the proposition of law that the authority demonstrates, and

(ii) the parts of the authority (identified by page or paragraph references) that support the proposition;

(*c*) if more than one authority is cited in support of a given proposition, a brief statement as to the reasons for taking that course. The statement should not materially add to the length of the skeleton argument but should be sufficient to demonstrate, in the context of the argument—

(i) the relevance of the authority or authorities to that argument, and

(ii) that the citation is necessary for a proper presentation of that argument;

(*d*) copies of the authorities cited, annexed to the list of authorities. Each authority should be tabbed (either numerical or alphabetical), and the index of the authorities should indicate the tab where the authority is reproduced.

1.8. In the case of points of law, the skeleton argument should state the point and cite the principal authority or authorities in support, with references to the particular page(s) where the principle concerned is enunciated.

1.9. In the case of questions of fact, the skeleton argument should state briefly the basis on which it is contended that the court can interfere with the finding of fact concerned, with cross-references to the passages in the transcript or notes of evidence which bear on the point.

1.10. The skeleton argument must be accompanied, by a written chronology of relevant events cross-referenced to the case bundle or the appeal bundle. The chronology must be a separate document so that it may easily be consulted in conjunction with other papers.

1.11. A total of six sets of skeleton argument and list of authorities must be filed in support of/opposing every application or appeal.

1.12. Where a legal practitioner intends to use skeleton arguments previously used in these proceedings, notice of that fact must be given within the time specified in rules 62.11(1), (2) and (3) of the Eastern Caribbean Supreme Court Civil Procedure Rules, 2000.

1.13. Litigants in person are not obliged to send to the court skeleton arguments in support of their applications and appeals, but are strongly encouraged to do so. If they do, they should try to comply with the directions given herein. Many litigants in person find that setting out the arguments which they wish to raise in court in advance can be of great assistance when, at a hearing, the court asks them to explain what their case is about.

Consequences of non-compliance

2. Where a legal practitioner fails to comply with this Practice Direction in any respect he or she will be required to account for the failure to the court and, in the absence of a good and sufficient explanation, the party in default may be penalised in costs.

Effective date

3. This Practice Direction will come into effect on the 1st day of October, 2011 and will be applicable to all claims whenever issued.