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RULES OF COURT 2012

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COURTS OF JUDICATURE ACT 1964

SUBORDINATE COURTS RULES ACT 1955

RULES OF COURT 2012

ARRANGEMENT OF ORDERS

Order

1. Citation, application, interpretation and forms
1A. Court or judge shall have regard to justice
2. Effect of non-compliance
3. Time
4. Consolidation of proceedings
5. Mode of commencement of proceedings
6. Writs of summons: General provisions
7. Originating summonses: General provisions
8. *(There is no Order 8)*
9. *(There is no Order 9)*
10. Service of originating process: General provisions
11. Service of process out of the jurisdiction
12. Entry of appearance to writ
13. Default of appearance to writ
14. Summary judgment
14A. Disposal of case on point of law
15. Causes of action, counterclaims and parties
16. Third party and similar proceedings
17. Interpleader
18. Pleadings
19. Default of pleadings
20. Amendments
21. Withdrawal and discontinuance
22. *(There is no Order 22)*
22A. Interim payments

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Order

22B. Offer to settle
23. Security for costs
24. Discovery and inspection of documents
25. *(There is no Order 25)*
26. Interrogatories
27. Admissions
28. Originating summons procedure
29. Interlocutory injunctions, interim preservation of property
30. Receivers
31. Sales of immovable property by order of court
32. Applications and proceedings in chambers
33. Mode of trial
34. Pre-trial case management
35. Proceedings at trial
35A. *(There is no Order 35A)*
36. Trials before and inquiries by Registrar
37. Assessment of damages
38. Evidence: General
39. Evidence by deposition: Examiners of the court
40. Court expert
40A. Experts of parties
41. Affidavits
42. Judgment and orders
43. Accounts and inquiries
44. Proceedings under judgments and orders on the equity side
45. Enforcement of judgment and orders
46. Writs of execution: General
47. Writs of seizure and sale
48. Examination of judgment debtor
49. Garnishee proceedings
50. Charging orders, stop orders
51. Receivers: Equitable execution

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Order

51A. Rateable distribution
52. Committal
53. Application for judicial review
54. *(There is no Order 54)*
55. Appeals to High Court from Subordinate Courts
55A. Appeals to High Court under written law
56. Appeals from Registrar of the High Court to a Judge in Chambers
57. Transfer of proceedings
58. *(There is no Order 58)*
59. Costs
60. The Registry
61. Sittings, vacation and office hours
62. Service of documents
63. Paper, printing, notices and copies
63A. Electronic filing
64. Change of solicitor
65. Service of foreign process
66. Obtaining evidence for foreign court
67. Reciprocal enforcement of judgments
68. *(There is no Order 68)*
69. Arbitration proceedings
70. Admiralty proceedings
71. Non-contentious probate proceedings
72. Contentious probate proceedings
73. Proceedings by and against the Government
74. Debtors Act 1957
75. Distress Act 1951
76. Disability
77. Partners
78. Defamation actions
79. Moneylenders' actions
80. Administration and similar actions

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Order

81. Actions for specific performance, summary judgment
82. Debenture holders' action: Receiver's register
83. Charge actions
84. Proceedings relating to infants
85. Bills of Sale Act 1950
85A. Proceedings arising out of hire-purchase agreements
86. Inheritance (Family Provision) Act 1971
86A. Employment Act 1955
87. Trade Marks Act 1976
88. Companies Act 1965
89. Summary proceedings for possession of land
90. Lodgment in court and payment to sheriff
91. Court fees
92. Miscellaneous
93. Small claims procedure
94. Repeal, savings and transitional provisions

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COURTS OF JUDICATURE ACT 1964

SUBORDINATE COURTS RULES ACT 1955

RULES OF COURT 2012

IN exercise of the powers conferred by section 17 of the Courts of Judicature Act 1964 [*Act 91*] and section 4 of the Subordinate Courts Rules Act 1955 [*Act 55*], and with the consent of the Chief Judge of the High Court in Malaya and the Chief Judge of the High Court in Sabah and Sarawak, the Rules Committee and the Subordinate Courts Rules Committee make the following rules:

ORDER 1

CITATION, APPLICATION, INTERPRETATION AND FORMS

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

1. (1) These rules may be cited as the **Rules of Court 2012**.

(2) These Rules, except for Order 91, come into operation on 1 August 2012.

(3) Order 91 comes into operation on a date to be appointed by the Rules Committee and the Subordinate Court Rules Committee by notification in the *Gazette*.

Application (O. 1, r. 2)

2. (1) Subject to paragraph (2), these Rules apply to all proceedings in—

(a) the Magistrates' Court;

(b) the Sessions Court; and

(c) the High Court.

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(2) These Rules do not have effect in relation to proceedings in respect of which rules have been or may be made under any written law for the specific purpose of such proceedings or in relation to any criminal proceedings.

(3) Where prior to the coming into operation of these Rules, reference is made in any written law to any Rules of Court that reference shall be to these Rules.

3. *(There is no rule 3)*

Definitions (O. 1, r. 4)

4. (1) In these Rules, unless the context otherwise requires—

"Act" means the Courts of Judicature Act 1964 or the Subordinate Courts Act 1948 [*Act* 92] or both;

"bailiff" includes the Registrar, any clerk or other officer of the Court charged with performing the duties of a bailiff;

"Form" means a form set out in Appendix A to these Rules, and a form referred to by a number means the form so numbered in Appendix A;

"cause book" means the book kept in the Registry or any data stored electronically in which the number of, and other details relating to, a cause or matter are entered;

"issued", in relation to a document, means that the appropriate officer of the Court has stamped the seal of the Court on it;

"document" means anything in which information of any description is recorded and includes a claim, summons, application, judgment, order, affidavit, witness statement or any other document used in a Court proceeding;

"folio" means 100 words, each figure being counted as one word;

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"attend" includes the appearance by any person using electronic, mechanical or other means permitted by the Court;

"Judge" means a Judge or Judicial Commissioner of the High Court and includes, where he is empowered to act, a Judge of the Sessions Court, a Magistrate or a Registrar, as the case may require;

"Government" means the Federal Government or the State Government or both;

"Subordinate Court" has the same meaning assigned to it under the Court of Judicature Act 1964;

"officer" means an officer of the High Court, Sessions Court or Magistrates' Court and includes a Registrar, Court interpreter, bailiff, clerk, process server or other officer who is attached to a Court;

"solicitor" means an advocate and solicitor as defined in section 3 of the Legal Profession Act 1976 [*Act 166*];

"Registry" means the Registry of the High Court, the Sessions Court or the Magistrates' Court;

"filing", in relation to a document, means delivering it, by post or otherwise, to the Court office;

"Registrar" means—

(a) the Chief Registrar or the Deputy Chief Registrar of the Federal Court;

(b) the Registrar of the High Court of Malaya or the Registrar of the High Court of Sabah and Sarawak;

(c) any Deputy Registrar or Senior Assistant Registrar of the High Court; or

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(d) any Registrar of the Subordinate Courts under the Subordinate Courts Act 1948;

"Controller" means the Controller of Foreign Exchange as defined in section 2 of the Exchange Control Act 1953 [*Act 17*];

"pleading" does not include a notice of application or a preliminary act;

"proceeding" means any proceeding whether in open Court or in Chambers and includes an application at any stage of a proceeding which is deemed to have started when an action is filed;

"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;

"Sheriff" means the Registrar of the High Court;

"sign", in relation to the signing of any document by the Registrar, includes the affixing of a facsimile signature;

"moneylender's action" has the same meaning assigned to it by Order 79;

"scheduled territories" means the territories as specified in the First Schedule to the Exchange Control Act 1953.

(2) In these Rules, unless the context otherwise requires, "Court" refers to the Magistrate's Court, or any one or more Magistrates thereof, the Sessions Court, or any one or more Judges thereof, the High Court or any one or more Judges or Judicial Commissioners thereof, whether sitting in Court or in Chambers; but the foregoing provision shall not be taken as affecting any provision of these Rules and, in particular, Order 32, rule 9, by virtue of which the authority and jurisdiction of the Registrar of the Court is defined and regulated.

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Construction of references to Orders, rules (O. 1, r. 5)

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

(2) Any reference in these Rules to anything done under a rule of these Rules includes a reference to the same thing done before the commencement of that rule under any corresponding rules of court ceasing to have effect on the commencement of that rule.

(3) Except where the context otherwise requires, any reference in these Rules to any written law shall be construed as a reference to that written law as amended, extended or applied by or under any other written law.

Construction of references to Acts, Ordinances, Enactments to Sarawak and Sabah (O. 1, r. 5A)

5A. Where references are made under these Rules to any provisions in the Acts, Ordinances or Enactments or other written laws in force in Peninsular Malaysia, there shall be substituted therefor references to the corresponding Acts, Ordinances or Enactments or other written laws in force in Sarawak or Sabah, as the case may be.

Construction of references to action for possession of immovable property (O. 1, r. 6)

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

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Forms (O. 1, r. 7)

7. The Forms in Appendix A shall be used where applicable with such variations as the circumstances of the particular case require.

Applicability of certain Orders (O. 1, r. 8)

8. Orders 30, 31, 43, 44, 50, 51, 51A, 53, 56, 66, 67, 69, 70, 71, 72, 80, 82, 83, 86, 87, 88 and 89 are applicable only to the High Court.

ORDER 1A

COURT OR JUDGE SHALL HAVE REGARD TO JUSTICE

Regard shall be to justice (O. 1A)

In administering these Rules, the Court or a Judge shall have regard to the overriding interest of justice and not only to the technical non-compliance with these Rules.

ORDER 2

EFFECT OF NON-COMPLIANCE

Non-compliance with Rules (O. 2, r. 1)

1. (1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been non-compliance with the requirement of these Rules, the non-compliance shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) These Rules are a procedural code and subject to the overriding objective of enabling the Court to deal with cases justly. The parties are required to assist the Court to achieve this overriding objective.

(3) The Court or Judge may, on the ground that there has been such non-compliance as referred to in paragraph (1), and on such terms as to costs or otherwise as it or he thinks just, bearing in mind the overriding objective of these Rules, exercise

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its or his discretion under these Rules to allow such amendments, if any, to be made and to make such order, if any, dealing with the proceedings generally as it or he thinks fit in order to cure the irregularity.

Application to set aside for irregularity (O. 2, r. 2)

2. (1) An application to set aside any proceedings, any step taken in any proceedings or any document, judgment or order therein for non-compliance with these Rules shall not be allowed unless the application is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity and the non-compliance has occasioned a substantial miscarriage of justice or occasioned prejudice that cannot be cured either by amendment or an appropriate order for costs.

(2) An application under this rule may, after notice of the irregularity has been given to the other party, be made by notice of application and the grounds of objection shall be stated therein.

Preliminary objection for non-compliance of rules not allowed (O. 2, r. 3)

3. A Court or Judge shall not allow any preliminary objection by any party to any cause or matter or proceedings only on the ground of non-compliance of any provision of these Rules unless the Court or Judge is of the opinion that such non-compliance has occasioned a substantial miscarriage of justice or occasioned prejudice that cannot be cured either by amendment or an appropriate order for costs or both.

ORDER 3

TIME

"Month" means calendar month (O. 3, r. 1)

1. Without prejudice to the Interpretation Acts 1948 and 1967 [*Act 388*], the word "month", where it occurs in any judgment order, direction or other document forming part of any proceedings in Court, means a calendar month, unless the context otherwise requires.

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

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

(2) Where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(3) Where an act is required to be done within or not less than a specified period before a specified date, the period ends immediately before that date.

(4) Where an act is required to be done within a specified number of clear days before or after a specified date, at least that number of days must intervene between the day on which the act is done and that date.

(5) Where, apart from this paragraph, the period in question, being a period of seven days or less, would include the day before the weekly holiday or public holiday, that day shall be excluded.

Court Vacation excluded from time for service of pleadings (O. 3, r. 3)

3. *(There is no rule 3)*

Time expires on weekly holiday (O. 3, r. 4)

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

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

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

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

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

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

6. *(There is no rule 6)*

ORDER 4

CONSOLIDATION OF PROCEEDINGS

Consolidation of causes or matters (O. 4, r. 1)

1. (1) Where two or more causes or matters are pending, and if it appears to the Court that—

(a) some common question of law or fact arises in both or all of them;

(b) the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or

(c) for some other reason it is desirable to make an order under this rule,

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

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(2) An order for consolidation shall be made in Form 1 and shall direct that the cause or matter in which the application is made shall be carried on as or under such other cause or matter and that the title of such other cause or matter be amended by adding thereto the title of the cause or matter in which the application is made.

(3) Upon such order being made, the file of the cause or matter in which the application is made shall be transferred to and added to the file of such other cause or matter, and the copy of the order shall be left in place of the file so transferred, and a memorandum of the transfer shall be entered in the cause book against the cause or matter so consolidated.

ORDER 5

MODE OF COMMENCEMENT OF PROCEEDINGS

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

1. Subject to Order 94, rule 2, proceedings shall be commenced either by writ or by originating summons.

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

2. Proceedings in which a substantial dispute of fact is likely to arise shall be begun by writ.

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

3. Proceedings by which an application is to be made to the Court or a Judge thereof under any written law shall be begun by originating summons.

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

4. (1) Proceedings—

(a) in which the sole or principal question at issue is or is likely to be one of the construction of any written law or of any instrument made under any written law, or of any deed, will, contract or other document, or any other question of law; or

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(b) in which there is unlikely to be any substantial dispute of fact,

are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 81 or for any other reason considers the proceedings are more appropriate to be begun by writ.

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

5. *(There is no rule 5)*

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

6. (1) Subject to paragraph (2) and Order 76, rule 2, any person, whether or not he sues as trustee or personal representative or in any other representative capacity, may begin and carry on proceedings in the Court by a solicitor or in person.

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

ORDER 6

WRITS OF SUMMONS: GENERAL PROVISIONS

Form of writ (O. 6, r. 1)

1. Every writ shall be in Form 2.

Endorsement on writ (O. 6, r. 2)

2. (1) Before a writ is issued, it shall be endorsed—

(a) with a statement of claim, which shall comply with the requirements of Order 18, or, if the statement of claim is not endorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;

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(b) where the plaintiff sues in a representative capacity, with a statement of the capacity in which he sues;

(c) where a defendant is sued in a representative capacity, with a statement of the capacity in which he is sued;

(d) where the plaintiff sues by a solicitor, with the plaintiff's address and the solicitor's name or firm and a business address of his within the jurisdiction;

(e) where the plaintiff sues in person—

(i) with the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent; and

(ii) with his occupation; and

(f) with the number of days within which an appearance is required to be entered under Order 12, rule 4.

Endorsement as to capacity (O. 6, r. 3)

3. *(There is no rule 3)*

Endorsement as to solicitor and address (O. 6, r. 4)

4. *(There is no rule 4)*

Concurrent writ (O. 6, r. 5)

5. (1) One or more concurrent writs may at the request of the plaintiff be issued at the time when the original writ is issued or any time thereafter before the original writ ceases to be valid.

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(2) Without prejudice to the generality of paragraph (1), a writ for service within the jurisdiction may be issued as a concurrent writ with one, notice of which is to be served out of the jurisdiction, and a writ, notice of which is to be served out of the jurisdiction, may be issued as a concurrent writ with one for service within the jurisdiction.

(3) A concurrent writ is a true copy of the original writ with such differences only, if any, as are necessary having regard to the purpose for which the writ is issued.

(4) A concurrent writ shall be marked by the Registrar with the word "Concurrent", and he shall sign and date the day of issue of the concurrent writ.

Issue of writ (O. 6, r. 6)

6. (1) *(There is no paragraph (1))*

(2) A plaintiff or his solicitor shall, on presenting a writ for sealing, leave with the Registrar the original writ and a copy of the original writ together with as many copies thereof as there are defendants to be served.

(3) The Registrar shall assign a serial number to the writ and shall sign, seal and date the writ whereupon the writ is deemed to be issued.

(4) The original writ shall be filed in the Registry and an entry thereof shall be made in the cause book.

Duration and renewal of writ (O. 6, r. 7)

7. (1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for six months beginning from the date of its issue, and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Subject to paragraph (2A), where efforts to serve a writ on a defendant have been unsuccessful, the Court may by order extend the validity of the writ twice (in

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Sabah and Sarawak thrice and in admiralty actions five times), not exceeding six months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order.

(2A) An application for a renewal of writ must be made before the expiry of the writ, *ex parte* by notice of application supported by affidavit showing that efforts have been made to serve the defendant within one month from the date of the issue of the writ and that efforts have been made subsequent thereto to effect service.

(3) Before a writ, the validity of which has been extended under this rule, is served, it shall be marked with an official stamp in Form 3 showing the period for which the validity of the writ has been so extended.

(4) Where the validity of a writ is extended by order made under this rule, the order shall operate in relation to any other writ (whether original or concurrent) issued in the same action which has not been served, so as to extend the validity of that other writ until the expiration of the period specified in the order.

(5) A note of the renewal shall be entered in the cause book.

ORDER 7
ORIGINATING SUMMONSES: GENERAL PROVISIONS

Application (O. 7, r. 1)

1. *(There is no rule 1)*

Forms of originating summons (O. 7, r. 2)

2. (1) Every originating summons shall be in Form 5 or 6 whichever is appropriate.

(1A) Every originating summons shall state in its intitulement any provision of these Rules and any provision of any written law under which the Court is being moved.

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

(3) The party taking out an *ex parte* originating summons shall be described as the applicant.

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

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

(2) Order 6, rule 2, except for subparagraphs (1)*(a)* and *(b)* shall apply in relation to an originating summons as it applies in relation to a writ.

Concurrent summons (O. 7, r. 4)

4. *(There is no rule 4)*

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

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

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

6. Order 6, rule 7, shall apply in relation to an originating summons as it applies in relation to a writ.

***Ex parte* originating summons (O. 7, r. 7)**

7. (1) Rules 2, 3(1) and 5 shall, in so far as applicable, apply to an *ex parte* originating summons; but, except as aforesaid, this Order shall not apply to an *ex parte* originating summons.

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(2) Order 6, rule 6(3) shall apply, with the necessary modifications, in relation to an *ex parte* originating summons as it applies in relation to a writ.

ORDER 8

ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS

(There is no Order 8)

ORDER 9

PETITIONS: GENERAL PROVISIONS

(There is no Order 9)

ORDER 10

SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS

General provisions (O. 10, r. 1)

1. (1) Subject to the provisions of any written law and these Rules, a writ shall be served personally on each defendant or sent to each defendant by prepaid A.R. registered post addressed to his last known address and in so far as is practicable, the first attempt at service must be made not later than one month from the date of issue of the writ.

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

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

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

Service of writ on agent of overseas principal (O. 10, r. 2)

2. (1) Where the Court is satisfied on an *ex parte* application that—

(a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or by a body corporate having a registered office or a place of business within the jurisdiction;

(b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate; and

(c) at the time of the application either the agent's authority has not been determined or he is still in business relations with his principal,

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

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

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

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

3. (1) Where—

(a) a contract contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Court has jurisdiction to hear and determine any such action; and

(b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner or at such place (whether within or out of the jurisdiction) as may be so specified,

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

(2) A notice of a writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant in accordance with paragraph (1) unless leave to serve such notice out of the jurisdiction has been granted under Order 11, rule 1 or 2.

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

4. Where a writ is endorsed with a claim for the possession of immovable property, the Court may—

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(a) if satisfied on an *ex parte* application that no person appears to be in possession of the immovable property and that service cannot be otherwise effected on any defendant, authorize service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the immovable property; or

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

Service of originating summons (O. 10, r. 5)

5. Rules 1 to 4 (except rule 1(3) and (4)) shall apply with the necessary modifications in relation to an originating summons as they apply in relation to a writ.

ORDER 11

SERVICE OF PROCESS OUT OF THE JURISDICTION

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

1. (1) Where the writ does not contain any claim for damage, loss of life or personal injury arising out of—

(a) a collision between ships;

(b) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or

(c) non-compliance on the part of one or more of two or more ships, with the collision regulations made under section 252 of the Merchant Shipping Ordinance 1952 [*Ord. 70/1952*],

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service of a notice of a writ out of the jurisdiction is permissible with the leave of the Court in the following cases:

(A) if the whole subject matter of the action begun by the writ is immovable property situated within the jurisdiction (with or without rents or profits), or the perpetuation of testimony relating to immovable property so situated;

(B) if an act, deed, will, contract, obligation or liability affecting immovable property situated within the jurisdiction is sought to be construed, rectified, set aside or enforced in the action begun by the writ;

(C) if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident or carrying on business within the jurisdiction;

(D) if the action begun by the writ is for the administration of the estate of a person who died domiciled within the jurisdiction or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;

(E) if the action begun by the writ is for the execution, as to property situated within the jurisdiction, of the trusts of a written instrument, being trusts that ought to be executed according to law and of which the person to be served with the writ is a trustee or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;

(F) if the action begun by the writ is brought against a defendant to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which—

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(i) was made within the jurisdiction;

(ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or

(iii) is by its terms, or by implication, governed by the law of Malaysia;

(G) if the action begun by writ is brought against a defendant in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;

(H) if the action begun by the writ is founded on a tort committed within the jurisdiction;

(I) if in the action begun by the writ an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction, whether or not damages are also claimed in respect of a failure to do or the doing of that thing;

(J) if the action begun by the writ being properly brought against a person duly served within the jurisdiction, a person out of the jurisdiction is a necessary or proper party thereto;

(K) if the action begun by the writ is either by a charge of property situated within the jurisdiction, other than immovable property, and seeks the sale of the property, the foreclosure of the charge or delivery by the chargor of possession of the property but not an

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order for payment of any moneys due under the charge or by a chargor of property so situated, other than immovable property, and seeks redemption of the charge, reconveyance of the property or delivery by the chargee of possession of the property but not a personal judgment;

(L) if the action begun by the writ is brought under the provisions of any written law relating to carriage by air;

(M) if the claim is brought to enforce any judgment or arbitral award.

Service out of the jurisdiction in certain actions of contract (O. 11, r. 2)

2. Where it appears to the Court that a contract contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract, the Court may grant leave for service out of the jurisdiction of the notice of the writ by which an action in respect of the contract is begun.

Leave for service of notice of writ (O. 11, r. 3)

3. A notice of a writ for service out of the jurisdiction shall be in Form 7.

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

4. (1) An application for the grant of leave under rule 1 or 2 shall be supported by an affidavit in Form 8 stating the grounds on which the application is made and that in the deponent's belief, the plaintiff has a good cause of action, and showing in what place or country the defendant is, or probably may be found.

(2) Such leave shall not be granted unless it is made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

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(3) An order in Form 9 granting, under rule 1 or 2, leave to serve a notice of a writ out of the jurisdiction shall limit a time within which the defendant to be served must enter appearance.

Service of notice of writ abroad: General (O. 11, r. 5)

5. (1) Subject to the following provisions of this rule, Order 10, rule 1 and Order 62, rule 5 shall apply in relation to the service of a notice of a writ notwithstanding that the notice is to be served out of the jurisdiction.

(2) Nothing in this rule or in any order or direction of the Court made pursuant to rule 5(1) shall authorize or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.

(3) A notice of a writ which is to be served out of the jurisdiction need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected.

(4) Where a certificate under the following provisions of this rule is produced in relation to the service of the notice of a writ in accordance with rule 6 or 7, Order 10, rule 1(4) shall not apply.

(5) An official certificate stating that a notice of a writ as regards which rule 6 has been complied with has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate—

(a) by a consular authority in that country;

(b) by the government or judicial authorities of that country; or

(c) by any other authority designed in respect of that country under the Hague Convention,

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shall be evidence of the facts so stated.

(6) An official certificate by the Minister stating that the notice of a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.

(7) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.

(8) Where the defendant is in Singapore or Brunei, the notice of a writ may be sent by post or otherwise by the Registrar to the Magistrate, Registrar, or other appropriate officer of any Court exercising civil jurisdiction in the area in which the person to be served is said to be or to be carrying on business for service on the defendant, and if it is returned with an endorsement of service and with an affidavit of such service, it shall be deemed to have been duly served.

Service of notice of writ abroad through foreign governments, judicial authorities and Malaysian consuls or by plaintiff (O. 11, r. 6)

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

(a) through the judicial authorities of that country; or

(b) subject to any provision of the Civil Procedure Convention as to the nationality of persons who may be so served—

(i) through a Malaysian consular authority in that country; or

(ii) by the plaintiff or his agent.

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(2) Where, in accordance with these Rules notice of a writ is to be served on a defendant in any country with respect to which there does not subsists a Civil Procedure Convention providing for service in that country of process of the Court, the notice may be served—

(a) through the government of that country, where that government is willing to effect service; or

(b) except where service through a consular authority or by the plaintiff or his agent is prohibited by the law of that country—

(i) through a Malaysian consular authority in that country; or

(ii) by the plaintiff or his agent.

(3) Where a person intends to serve notice of a writ in any country—

(a) through the judicial authorities of that country under paragraph (1);

(b) through a Malaysian consular authority under paragraph (1) or (2); or

(c) through the government of that country under paragraph 2,

that person shall lodge in the Registry a request in Form 10 for service of notice of the writ by that method, together with a copy of the notice and an additional copy thereof for each person to be served.

(4) Every copy of a notice lodged under paragraph (3) shall be accompanied by a translation of the notice in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of

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those languages which is appropriate to the place in that country where service is to be effected:

Provided that this paragraph shall not apply in relation to a copy of a notice which is to be served in a country where English is the official language or one of the official languages, or is to be served in any country by a Malaysian consular authority on a Malaysian citizen, unless the service is to be effected under paragraph (1) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

(5) Every translation lodged under paragraph (4) shall be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, address and qualifications for making the translation.

(6) The documents duly lodged under paragraph (3) shall be sent by the Registrar to the Secretary General of the Ministry of Foreign Affairs with a request that the Secretary General arranges for the writ to be served in the manner referred to in paragraph (3) or, where an alternative manner is indicated, by any of the manner as is most convenient.

Service of notice of writ in certain actions under certain written law (O. 11, r. 7)

7. (1) Where a person to whom leave has been granted under rule 1 to serve notice of a writ on a High Contracting Party to the Warsaw Convention, being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, intends to have the notice served on that Party, he shall lodge in the Registry—

(a) a request for service to be arranged by the Minister;

(b) a copy of the notice; and

(c) except where English is the official language or one of the official languages of the High Contracting Party, a translation of the notice

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in the official language or one of the official languages of the High Contracting Party.

(2) Rule 6(5) shall apply in relation to a translation lodged under paragraph (1) as it applies in relation to a translation lodged under rule 6(4).

(3) The documents duly lodged under this rule shall be sent by the Registrar to the Secretary General of the Ministry of Foreign Affairs with a request that he arranges for the notice to be served on the High Contracting Party or the government in question, as the case may be.

Undertaking to pay expenses of service incurred by Minister (O. 11, r. 8)

8. Every request lodged under rule 6(3) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Minister in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the office of the Minister and to produce a receipt for the payment to the proper officer in the Registry.

Service of originating summons (O. 11, r. 9)

9. (1) Subject to paragraph (2), service out of the jurisdiction of an originating summons is permissible with the leave of the Court.

(2) Where any proceedings begun by an originating summons might have been begun by writ, service out of the jurisdiction of the originating summons is permissible as aforesaid only if service of the notice of the writ out of the jurisdiction would be permissible had the proceedings been begun by writ.

(3) *(There is no paragraph (3))*

(4) Service out of the jurisdiction of any notice of application or order issued, given or made in any proceedings is permissible with the leave of the Court.

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

(6) *(There is no paragraph (6))*

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

ORDER 12

ENTRY OF APPEARANCE TO WRIT

Mode of entering appearance (O. 12, r. 1)

1. (1) Subject to paragraph (2) and Order 76, rule 2, a defendant to an action begun by writ may, whether or not he is sued as a trustee or personal representative or in any other representative capacity, enter an appearance in the action and defend the action by a solicitor or in person.

(2) Except as expressly provided by any written law or any practice direction for the time being issued by the Registrar, a defendant to an action which is a body corporate may not enter an appearance in the action or defend the action otherwise than by a solicitor.

(3) An appearance is entered by properly completing a memorandum of appearance, as defined in rule 2, and a copy thereof, and handing them in at the Registry.

(4) If two or more defendants to an action enter an appearance by the same solicitor and at the same time, only one memorandum of appearance needs to be completed and delivered for those defendants.

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Memorandum of appearance (O. 12, r. 2)

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

(2) A memorandum of appearance shall be in Form 11 and both the memorandum of appearance and the copy thereof required for entering an appearance shall be signed by the solicitor by whom the defendant appears or, if the defendant appears in person, by the defendant.

(3) A memorandum of appearance shall specify—

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

(b) in the case of a defendant appearing by a solicitor, the business address of his solicitor within the jurisdiction, and where the defendant enters an appearance in person, the address within the jurisdiction specified under subparagraph (*a*) shall be his address for service, but otherwise the business address of his solicitor shall be his address for service.

(4) If the memorandum of appearance does not specify the defendant's address for service or the Court is satisfied that any address specified in the memorandum of appearance is not genuine, the Court may, on an application by the plaintiff set aside the appearance or order the defendant to give an address or a genuine address for service, as the case may be, and may in any case direct that the appearance shall nevertheless have effect for the purposes of Order 10, rule 1(3) and Order 62, rule 10.

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Procedure on receipt of memorandum of appearance (O. 12, r. 3)

3. (1) On receiving the memorandum of appearance and a copy thereof, an officer of the Registry shall in all cases affix to a copy of the memorandum of appearance an official stamp showing the date on which he received those documents and return that copy of the memorandum.

(2) Where the defendant enters an appearance, he shall on the date on which he enters the appearance send a copy of the memorandum of appearance by post to the plaintiff, if the plaintiff sues in person, but otherwise to the plaintiff's solicitor, at the plaintiff's address for service.

Time limited for appearing (O. 12, r. 4)

4. References in these Rules to the time limited for appearing are references—

(a) in the case of a writ served, whether within the local jurisdiction of each High Court of Malaya or outside such local jurisdiction but within the jurisdiction of Malaya, to fourteen days after service of the writ or, where that time has been extended by or by virtue of these Rules, to that time as so extended; and

(b) in the case of a writ served within Sabah and Sarawak, to fourteen days after service of the writ or in the case of a defendant whose place of residence or if an incorporated society whose registered office of business is not within the Division or Residency in which is situated the Registry out of which the writ of summons was issued, twenty days after the service of the writ or where that time has been extended by or by virtue of these Rules, to that time as so extended; and

(c) in the case of a writ served out of the jurisdiction, to fourteen days after service of the writ as provided for in Order 10, rule 2 or Order 11, rule 2 or to such extended time as the Court may otherwise allow.

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Late appearance (O. 12, r. 5)

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

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

Conditional appearance (O. 12, r. 6)

6. *(There is no rule 6)*

Application to set aside writ (O. 12, r. 7)

7. *(There is no rule 7)*

Appearance to originating summons (O. 12, r. 8)

8. *(There is no rule 8)*

Appearance not to constitute a waiver (O. 12, r. 9)

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

Dispute as to jurisdiction (O. 12, r. 10)

10. (1) A defendant who intends to dispute the jurisdiction of the Court in the proceedings by reason of any irregularity as is mentioned in rule 9 or on any other ground shall enter an appearance and, within the time limited for serving a defence, apply to the Court for—

(a) an order setting aside the writ or service of the writ on him;

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(b) an order declaring that the writ has not been duly served on him;

(c) the discharge of any order giving leave to serve the writ on him out of the jurisdiction;

(d) the discharge of any order extending the validity of the writ for the purpose of service;

(e) the protection or release of any property of the defendant seized or threatened with seizure in the proceedings;

(f) the discharge of any order made to prevent any dealing with any property of the defendant;

(g) a declaration that in the circumstances of the case the Court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action; or

(h) such other relief as may be appropriate.

(2) A defendant who wishes to contend that the Court should not assume jurisdiction over the action on the ground that Malaysia is not the proper forum for the dispute shall enter an appearance and, within the time limited for serving a defence, apply to the Court for an order to stay the proceedings.

(3) An application under paragraph (1) or (2) shall be made by notice of application supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit shall be served with the notice of application.

(4) Upon the hearing of an application under paragraph (1) or (2), the Court may make such order as it thinks fit and may give such directions for its disposal, as may be appropriate, including directions for the trial thereof as a preliminary issue.

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(5) A defendant who makes an application under paragraph (1) shall not be treated as having submitted to the jurisdiction of the Court by reason of his having entered an appearance and if the Court makes no order on the application or dismisses it, paragraph (6) shall apply as if the defendant had not made any such application.

(6) Except where the defendant makes an application in accordance with paragraph (1), the appearance by a defendant shall, unless the appearance is withdrawn by leave of the Court under Order 21, rule 1, be treated as a submission by the defendant to the jurisdiction of the Court in the proceedings.

(7) Order 18, rule 2(1) does not apply to any defendant making an application under rule 1, unless the application is dismissed and, in which case, the defendant shall serve his defence within fourteen days after the dismissal of the application or within such other period as the Court may order.

Application by defendant where writ not served (O. 12, r. 11)

11. (1) Any person named as a defendant in a writ which has not been served on him may serve on the plaintiff a notice requiring the plaintiff within a specified period that is not less than fourteen days after service of the notice either to serve the writ on the defendant or to discontinue the action against him.

(2) Where the plaintiff fails to comply with a notice under paragraph (1) within the time specified, the Court may, on the application of the defendant by notice of application, order the action to be dismissed or make such other order as the Court thinks fit.

(3) A notice of application under paragraph (2) shall be supported by an affidavit verifying the facts on which the application is based and stating that the defendant intends to contest the proceedings and a copy of the affidavit must be served with the notice of application.

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(4) Where the plaintiff serves the writ in compliance with paragraph (1) or with an order under paragraph (2), the defendant shall enter an appearance within the time limited for so doing.

No appearance to originating summons (O. 12, r. 12)

12. No appearance is required for an originating summons.

ORDER 13

DEFAULT OF APPEARANCE TO WRIT

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

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

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest accruing after the date of the writ at an unspecified rate, but any such interest shall be computed from the date of the writ to the date of entering judgment at the rate as may be specified under Order 42, rule 12.

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

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

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Claim in detinue (O. 13, r. 3)

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

(a) interlocutory judgment against the defendant for the delivery of the property or their value to be assessed and costs; or

(b) interlocutory judgment for the value of the property to be assessed and costs,

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

Claim for possession of immovable property (O. 13, r. 4)

4. (1) Where a writ is endorsed with a claim against a defendant for possession of immovable property only, then, if that defendant fails to enter an appearance the plaintiff may, after the time limited for appearing and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 83, rule 1, enter judgment for possession of the immovable property as against that defendant and costs, and proceed with the action against the other defendants, if any.

(2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless judgment for possession of the immovable property has been entered against all the defendants.

Mixed claims (O. 13, r. 5)

5. Where a writ issued against any defendant is endorsed with two or more of the claims mentioned in the foregoing rules and no other claim, then, if that defendant fails to enter an appearance, the plaintiff may, after the time limited for appearing, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under these Rules if that were the only claim endorsed on the writ, and proceed with the action against the other defendants, if any.

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Other claims (O. 13, r. 6)

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

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

(3) An application for leave to enter judgment under paragraph (2) shall be by notice of application which must, unless the Court otherwise orders, and notwithstanding anything in Order 62, rule 10, be served on the defendant against whom it is sought to enter judgment.

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

7. (1) A judgment shall not be entered against a defendant under this Order unless—

(a) the plaintiff produces a certificate of non-appearance in Form 12; and

(b) either an affidavit is filed by or on behalf of the plaintiff proving due service of the writ on the defendant, or the plaintiff produces the writ endorsed by the defendant's solicitor with a statement that he accepts service of the writ on behalf of the defendant.

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(2) Where an application is made to the Court for an order affecting a party who has failed to enter an appearance, the Court may require to be satisfied in such manner as it thinks fit that the party is in default of appearance.

Setting aside judgment (O. 13, r. 8)

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

ORDER 14

SUMMARY JUDGMENT

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

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

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

(a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or

(b) a claim by the plaintiff based on an allegation of fraud.

(3) This Order does not apply to an action to which Order 81 applies.

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

2. (1) An application under rule 1 must be supported by an affidavit in Form 13 verifying the facts on which the claim, or the part of a claim, to which the application relates is based and stating that in the deponent's belief there is no defence to that claim or part, as the case may be, or no defence except as to the amount of damages claimed.

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

(3) The notice of application, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant within fourteen days from the date of receipt of the sealed notice of application by the applicant.

(4) Order 32, rule 13(2) shall apply *mutatis mutandis* to all affidavits in respect of an application under this rule.

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

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

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

Leave to defend (O. 14, r. 4)

4. (1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

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(2) Rule 2(2) applies for the purposes of this rule as it applies for the purposes of that rule.

(3) The Court may give a defendant against whom such an application is made leave to defend the action with respect to the claim, or the part of a claim, to which the application relates either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

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

(a) to produce any document; and

(b) if it appears to the Court that there are special circumstances which make it desirable that he should do so, to attend and be examined under oath.

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

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

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

(a) references to the plaintiff and defendant shall be construed as references to the defendant and plaintiff respectively;

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(b) the words "any counterclaim made or raised by the defendant in" in rule 3(2) shall be omitted; and

(c) the references in rule 4(3) to the action shall be construed as a reference to the counterclaim to which the application under this rule relates.

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

Directions (O. 14, r. 6)

6. (1) Where the Court—

(a) orders that a defendant or plaintiff has leave (whether conditional or unconditional) to defend an action or counterclaim, as the case may be, with respect to a claim or a part of a claim; or

(b) gives judgment for a plaintiff or a defendant on a claim or part of a claim but also orders that execution of the judgment be stayed pending the trial of a counterclaim or of the action, as the case may be,

the Court may give directions as to the further conduct of the action and Order 34 shall apply as if it was an application under rule 1 of this Order or rule 5 thereof, as the case may be.

(2) In particular, and if the parties consent, the Court may direct that the claim in question and any other claim in the action be tried by the Registrar under these Rules relating to the trial of causes or matters or questions or issues by the Registrar.

Costs (O. 14, r. 7)

7. (1) If the plaintiff makes an application under rule 1 where the case is not within this Order or if it appears to the Court that the plaintiff knew that the defendant

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relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 59, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may require the costs to be paid by him forthwith.

(2) The Court shall have the same power to dismiss an application under rule 5 as it has under paragraph (1) to dismiss an application under rule 1, and that paragraph shall apply accordingly with the necessary modifications.

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

8. (1) Where on an application under rule 1 the plaintiff obtains judgment on a claim or a part of a claim against any defendant, he may proceed with the action in respect of any other claim or in respect of the remainder of the claim or against any other defendant.

(2) Where on an application under rule 5 a defendant obtains judgment on a claim or a part of a claim made in a counterclaim against the plaintiff, he may proceed with the counterclaim in respect of any other claim or in respect of the remainder of the claim or against any other defendant to the counterclaim.

Judgment for delivery up of movable property (O. 14, r. 9)

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

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

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

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

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

ORDER 14A
DISPOSAL OF CASE ON POINT OF LAW

Determination of questions of law or construction (O. 14A, r. 1)

1. (1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that—

(a) such question is suitable for determination without the full trial of the action; and

(b) such determination will finally determine the entire cause or matter or any claim or issue therein.

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

(3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question.

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

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

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Manner in which applications under rule 1 may be made (O. 14A, r. 2)

2. An application under rule 1 may be made by a notice of application or, notwithstanding Order 32, rule 1, may be made orally in the course of any interlocutory application to the Court.

ORDER 15

CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

Joinder of causes of action (O. 15, r. 1)

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

(a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all causes of action;

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

(c) with the leave of the Court.

(2) An application for leave under this rule shall be made by *ex parte* notice of application supported by affidavit before the issue of the writ or originating summons and the affidavit must state the grounds of the application.

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

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

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

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

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

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

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

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

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

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(4) Where in accordance with paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, Order 10 (except rule 1(4)), Orders 11 to 13 and Order 70, rule 3, shall, subject to paragraph (3), apply in relation to the counterclaim and the proceedings arising from it as if—

(a) the counterclaim were a writ and the proceedings arising from it an action; and

(b) the party making the counterclaim is a plaintiff and the party against whom it is made a defendant in that action.

(5) A copy of a counterclaim required to be served on a person who is not already a party to the action shall be endorsed with a notice, in Form 14, addressed to that person—

(a) stating the effect of Order 12, rule 1, as applied by paragraph (4); and

(b) stating that he may enter an appearance in Form 15 and explaining how he may do so.

Joinder of parties (O. 15, r. 4)

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

(a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and

(b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

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(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled shall, subject to the provisions of any written law and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff shall, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant. This paragraph does not apply to a probate action.

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

Court may order separate trials (O. 15, r. 5)

5. (1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

Misjoinder and non-joinder of parties (O. 15, r. 6)

6. (1) A cause or matter shall not be defeated by reason of the misjoinder or non-joinder of any party, and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

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(2) Subject to this rule, at any stage of the proceedings in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application—

(a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(b) order any of the following persons to be added as a party, namely—

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

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

(4) A person shall not be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.

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Proceedings against estates (O. 15, r. 6A)

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

(2) Without prejudice to the generality of paragraph (1), an action brought against "the personal representatives of A. B. deceased" shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) An action purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.

(4) In any such action as is referred to in paragraph (1) or (3)—

(a) the plaintiff shall, during the period of validity for service of the summons, apply to the Court for an order appointing a person to represent the estate of the deceased for the purpose of the proceedings or, if a grant of probate or administration has been made for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

(b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph *(a)* and allow such amendments, if any, to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

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

(5A) Where an order is made under paragraph (4) appointing the Official Administrator to represent the estate of the deceased, the appointment shall be limited to his accepting service of the writ or originating summons by which the action was begun unless, either on making such an order or on a subsequent application, the Court, with the consent of the Official Administrator, directs that the appointment shall extend to taking further steps in the proceedings.

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

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

Change of parties by reason of death (O. 15, r. 7)

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

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

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(3) An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record, or on the same side but in a different capacity; but—

(a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side; and

(b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this rule shall, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party in accordance with the order, and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun.

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

Provisions consequential on making of order under rule 6 or 7 (O. 15, r. 8)

8. (1) Where an order is made under rule 6, the writ by which the action in question was begun shall be amended accordingly and shall be endorsed with—

(a) a reference to the order in pursuance of which the amendment is made; and

(b) the date on which the amendment is made,

and the amendment shall be made within such period as may be specified in the order or, if no period is so specified, within fourteen days after the making of the order.

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(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to the service of a writ of summons shall apply accordingly to the service of the amended writ on him.

(3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to entry of appearance shall apply accordingly to entry of appearance by him, subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limit for appearing shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is sealed with the seal of the Court. The entry of appearance shall be in Form 16.

(4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until—

(a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him; or

(b) where the order is made under rule 7, the order has been served on him under rule 7(4) or, if the order is not required to be served on him, the order has been sealed with the seal of the Court,

and where in accordance with the foregoing provision a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the previous party, except that an entry of appearance by the previous party is not dispense with an entry of appearance by the new party in Form 16.

(5) Paragraphs (1) to (4) shall apply in relation to an action begun by originating summons as they apply to an action begun by writ.

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

9. (1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that, unless the action is proceeded with within such time as may be specified in the order, the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless the Court is satisfied that due notice of the application has been given to the personal representatives, if any, of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, shall be notified.

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

Actions for possession of immovable property (O. 15, r. 10)

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

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

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

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Relator actions (O. 15, r. 11)

11. Before the name of any person is used in any action as a relator, that person shall give a written authorization so to use his name to his solicitor and the authorization shall be filed in the Registry.

Representative proceedings (O. 15, r. 12)

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

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

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

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

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

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

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

13. (1) In any proceedings concerning—

(a) the administration of the estate of a deceased person;

(b) a property subject to a trust; or

(c) the construction of a written instrument, including a statute,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class of persons who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by paragraph (1) are as follows:

(a) that the person, the class of persons or some members of the class of persons, cannot be ascertained or cannot readily be ascertained;

(b) that the person, class of persons or some members of the class of persons, though ascertained, cannot be found;

(c) that, though the person or the class of persons and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be

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determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which paragraph (1) applies the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class of persons represented by the person or persons so appointed.

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

(a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise; or

(b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

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

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

13A. (1) At any stage in an action to which this rule applies, the Court may, on the application of any party or of its own motion, direct that a notice of the action be served on any person who is not a party thereto but who will or may be affected by any judgment given therein.

(2) An application under this rule may be made by *ex parte* notice of application supported by an affidavit stating the grounds of the application.

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(3) Every notice of an action under this rule shall be in Form 17 and the copy to be served shall be a sealed copy accompanied by a copy of the summons and other pleadings served in the action.

(4) A person may, within fourteen days of service on him of a notice under this rule, enter an appearance and shall thereupon become a party to the action, but in default of such appearance and subject to paragraph (5) he is bound by any judgment given in the action as if he were a party thereto.

(5) If at any time after the service of such notice on any person the writ or originating summons is amended so as substantially to alter the relief claimed, the Court may direct that the judgment does not bind such person unless a summons is issued and served upon him under this rule.

(6) This rule applies to any action relating to—

(a) the estate of a deceased person; or

(b) any property subject to a trust.

Representation of beneficiaries by trustees (O. 15, r. 14)

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

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

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

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

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

Declaratory judgment (O. 15, r. 16)

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

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

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

Petition to sue, defend or proceed as a pauper (O. 15, r. 18)

18. *(There is no rule 18)*

No Court fees to be charged (O. 15, r. 19)

19. *(There is no rule 19)*

Pauper's solicitor not to take fees (O. 15, r. 20)

20. *(There is no rule 20)*

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Leave of Court or Judge to discontinue, settle or compromise (O. 15, r. 21)

21. *(There is no rule 21)*

Originating summons to be signed by solicitor (O. 15, r. 22)

22. *(There is no rule 22)*

Costs (O. 15, r. 23)

23. *(There is no rule 23)*

Solicitor's fees out of any money received by pauper (O. 15, r. 24)

24. *(There is no rule 24)*

Appeal as a pauper (O. 15, r. 25)

25. *(There is no rule 25)*

Deprivation of privilege as a pauper (O. 15, r. 26)

26. *(There is no rule 26)*

ORDER 16

THIRD PARTY AND SIMILAR PROCEEDINGS

Third party notice (O. 16, r. 1)

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

(a) claims against a person not already a party to the action any contribution or indemnity;

(b) claims against such a person any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

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(c) requires that any question or issue relating to or connected with the original subject matter of the action should be determined not only as between the plaintiff and the defendant but also as between either or both of them and a person not already a party to the action,

then, subject to paragraph (2), the defendant may issue a notice in Form 18 or 19, whichever is appropriate (which is referred to as a "third party notice" in this Order), containing a statement of the nature of the claim made against him and, as the case may be, either of the nature and grounds of the claim made by him or of the question or issue required to be determined.

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

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

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

2. (1) An application for leave to issue a third party notice may be made by way of *ex parte* notice of application in Form 20 but the Court may direct the application to be served.

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

(a) the nature of the claim made by the plaintiff in the action;

(b) the stage which proceedings in the action have reached;

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(c) the nature of the claim made by the applicant or particulars of the question or issue required to be determined, as the case may be, and the facts on which the proposed third party notice is based; and

(d) the name and address of the person against whom the third party notice is to be issued.

Issue, service of and entry of appearance to third party notice (O. 16, r. 3)

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

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

(3) Subject to paragraphs (1) and (2), Order 6, rule 6(3), Order 10 (except rule 1(4)), Order 11, Order 12 and Order 70, rule 3 shall apply in relation to a third party notice and to the proceedings begun thereby as if —

(a) the third party notice is a writ and the proceedings begun thereby an action; and

(b) the defendant issuing the third party notice is a plaintiff and the person against whom it is issued a defendant in that action.

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

4. (1) If the third party enters an appearance in Form 21, the defendant who issued the third party notice shall, by a notice of application to be served on all the other parties to the action, apply to the Court for directions.

(2) If no application is served on the third party under paragraph (1), the third party may, not earlier than seven days after entering an appearance, by a notice of

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application in Form 22 to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

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

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

(b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or

(c) dismiss the application and terminate the proceedings on the third party notice,

and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

(4) On an application for directions under this rule, the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.

(5) Any order made or direction given under this rule shall be in Form 23 and may be varied or rescinded by the Court at any time.

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

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

(a) he shall be deemed to admit any claim stated in the third party notice and shall be bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice; and

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

(2) If a third party or the defendant by whom a third party notice was issued makes default in serving any pleading which he is ordered to serve, the Court may, on an application by a notice of application of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he is entitled to on the pleadings or may make such other order as may appear to the Court necessary to do justice between the parties.

(3) The Court may set aside or vary a judgment entered under subparagraph (1)*(b)* or paragraph (2) on such terms, if any, as it thinks just.

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

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

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Judgment between defendant and third party (O. 16, r. 7)

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

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

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

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

(a) claims against a person who is already a party to the action any contribution or indemnity;

(b) claims against such a person any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) requires that any question or issue relating to or connected with the original subject matter of the action should be determined not only as between the plaintiff and himself but also as between either or both of them and some other person who is already a party to the action,

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

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

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

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

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

9. (1) Where a defendant has served a third party notice and the third party makes such a claim or requirement as is mentioned in rule 1 or rule 8, this Order shall, with the modification mentioned in paragraph (2) and any other necessary modifications, apply as if the third party is a defendant and similarly where any further person to whom, in accordance with this rule, this Order applies as if he were a third party makes such a claim or requirement.

(2) The modification referred to in paragraph (1) is that paragraph (3) shall have effect in relation to the issue of a notice under rule 1 by a third party in substitution for rule 1(2).

(3) A third party may not issue a notice under rule 1 without the leave of the Court unless he issues the notice before the expiration of fourteen days after the time limited for appearing to the notice issued against him.

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

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

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

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

ORDER 17

INTERPLEADER

Entitlement to relief by way of interpleader (O. 17, r. 1)

1. (1) Where—

(a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or

(b) a claim is made to any money, goods or chattels taken or intended to be taken by the Sheriff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,

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the person under liability or, subject to rule 2, the Sheriff may apply to the Court for relief by way of interpleader.

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

Claim to goods taken in execution (O. 17, r. 2)

2. (1) Any person making a claim to or in respect of any money, goods or other movable property taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such goods or property, shall give notice of his claim in Form 24 to the Sheriff charged with the execution of the process and shall include in his notice a statement of his address, and that address must be his address for service.

(2) On receipt of a claim made under this rule, the Sheriff shall forthwith give notice thereof in Form 25 to the execution creditor and the execution creditor shall, within four days after receiving the notice, give notice in Form 26 to the Sheriff informing him whether he admits or disputes the claim. An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable to the Sheriff for any fees and expenses incurred by the Sheriff before receipt of that notice.

(3) Where—

(a) the Sheriff receives a notice from an execution creditor under paragraph (2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice; and

(b) the claim under this rule is not withdrawn,

the Sheriff may apply to the Court for relief under this Order.

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(4) The Sheriff who receives a notice from an execution creditor under paragraph (2) admitting a claim under this rule shall withdraw from possession of the money, goods or other movable property claimed.

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

3. (1) An application for relief under this Order shall be made by originating summons unless made in a pending action, in which case it shall be made by a notice of application in Form 27 or 28, whichever is appropriate.

(2) Subject to paragraph (3), an originating summons under this rule shall be supported by evidence that the applicant—

(a) claims no interest in the subject matter in dispute other than for charges or costs;

(b) does not collude with any of the claimants to that subject matter; and

(c) is willing to pay or transfer that subject matter into Court or to dispose of it as the Court may direct.

(3) Where the applicant is a Sheriff, he shall not provide such evidence as is referred to in paragraph (2) unless directed by the Court to do so.

Service of summons and notice of application (O. 17, r. 4)

4. (1) Unless the Court otherwise orders, the originating summons or a notice of application ordered under rule 3 shall be served at least seven days before the return day.

(2) The originating summons referred to in paragraph (1) must be served personally.

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(3) The notice of application referred to in paragraph (1) need not be served personally unless ordered by the Court.

(4) The notice of application referred to in paragraph (1) shall be in one of the forms in Form 29.

Powers of Court hearing originating summons or notice of application (O. 17, r. 5)

5. (1) Where on the hearing of the originating summons or a notice of application under this Order all persons making the adverse claims to the subject matter in dispute ("claimants") appear, the Court may order—

(a) that any claimant be made a defendant in any action pending with respect to the subject matter in dispute in substitution for or in addition to the applicant for relief under this Order; or

(b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which is to be defendant.

(2) Where—

(a) the applicant on an originating summons or a notice of application under this Order is the Sheriff;

(b) all the claimants consent or any of them so requests; or

(c) the question at issue between the claimants is a question of law and the facts are not in dispute,

the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.

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(3) Where a claimant, having been duly served with an originating summons or a notice of application for relief under this Order, does not appear on the hearing of the originating summons or a notice of application or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant and all persons claiming under him, forever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

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

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

Power to stay proceedings (O. 17, r. 7)

7. Where a defendant to an action applies for relief under this Order in the action, the Court may by order stay all further proceedings in the action.

Withdrawal or admission (O. 17, r. 7A)

7A. Where before the hearing of an originating summons or a notice of application under this Order—

(a) the claimant files a notice that he withdraws his claim and at the same time gives notice of withdrawal to the execution creditor; or

(b) the execution creditor files an admission of the title of the claimant and at the same time gives notice of the admission to the claimant,

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the property seized or the proceeds of sale thereof or any money paid into Court in the interpleader proceedings shall be dealt with as if the claim had not been made or as if the execution had been withdrawn, and the Court may make such order as to costs, fees, charges and expenses as may be just.

Other powers (O. 17, r. 8)

8. Subject to the foregoing rules of this Order, the Court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

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

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

Discovery (O. 17, r. 10)

10. Orders 24 and 26 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

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

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

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

(3) The judgment shall be in one of the forms in Form 30.

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ORDER 18

PLEADINGS

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

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

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

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

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

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

3. (1) A plaintiff on whom a defendant serves a defence shall serve a reply on that defendant if it is needed for compliance with rule 8; and if no reply is served, rule 14(1) will apply.

(2) A plaintiff on whom a defendant serves a counterclaim shall, if he intends to defend it, serve on that defendant a defence to the counterclaim.

(3) Where a plaintiff serves both a reply and a defence to the counterclaim on any defendant, he shall include them in the same document.

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(4) A reply to any defence shall be served by the plaintiff before the expiration of fourteen days after the service on him of that defence, and a defence to the counterclaim shall be served by the plaintiff before the expiration of fourteen days after the service on him of the counterclaim to which it relates.

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

4. Pleadings subsequent to a reply or a defence to a counterclaim shall not be served except with the leave of the Court.

Service of pleadings during Court vacation (O. 18, r. 5)

5. *(There is no rule 5)*

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

6. (1) Every pleading in an action shall bear on its face—

(a) the year in which the writ in the action was issued and the number of the action;

(b) the title of the action; and

(c) the description of the pleading.

(2) Every pleading shall, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers shall be expressed in a pleading in figures and not in words.

(4) Every pleading of a party shall be endorsed—

(a) where the party sues or defends in person, with his name and address;

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(b) in any other case, with the name or firm and business address of the solicitor by whom it was served.

(5) Every pleading of a party shall be signed by the party's solicitor or by the party, if he sues or defends in person.

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

7. (1) Subject to the provisions of this rule and rules 10, 11 and 12, every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement shall be as brief as the nature of the case admits.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading shall, if material, be briefly stated, and the precise words of the document or conversation shall not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

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

Matters which shall be specifically pleaded (O. 18, r. 8)

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

(a) which he alleges makes any claim or defence of the opposite party not maintainable;

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(b) which, if not specifically pleaded, might take the opposite party by surprise; or

(c) which raises issues of fact not arising out of the preceding pleading.

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

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

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

Departure (O. 18, r. 10)

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

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

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

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

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

12. (1) Subject to paragraph (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words—

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and

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(b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

(1A) No party shall quantify any claim or counterclaim for general damages.

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

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

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

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

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

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

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless the Court

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is of the opinion that there were sufficient reasons for an application by letter not having been made.

(7) The particulars requested or ordered and supplied shall be served in accordance with Form 31.

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

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

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

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

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

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

14. (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.

(2) Subject to paragraph (3)—

(a) there is at the close of pleadings an implied joinder of issue on the pleading last served; and

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(b) a party may in his pleading expressly join issue on the next preceding pleading.

(3) There can be no joinder of issue, implied or express, on a statement of claim or counterclaim.

(4) A joinder of issue operates as a denial of every material allegation of fact made in the pleading on which there is an implied or express joinder of issue unless, in the case of an express joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the express joinder of issue operates as a denial of every other such allegation.

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

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

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

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

16. (1) Where in any action a defence of tender before action is pleaded, the defendant shall pay to the solicitors for the plaintiff the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until the said payment has been made.

(2) A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money to the solicitors for the defendant making the counterclaim in accordance with rule 1, and that rule shall apply accordingly with the necessary modifications.

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

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

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

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

(a) rule 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and making the defendant a plaintiff; and

(b) rules 8(2), 16 and 17 shall, with the necessary modifications, apply to a defence to a counterclaim as they apply to a defence.

Striking out pleadings and endorsements (O. 18, r. 19)

19. (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that—

(a) it discloses no reasonable cause of action or defence, as the case may be;

(b) it is scandalous, frivolous or vexatious;

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

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(2) No evidence shall be admissible on an application under subparagraph (1)*(a)*.

(3) This rule shall, as far as applicable, apply to an originating summons as if it were a pleading.

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

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

(a) at the expiration of fourteen days after service of the reply or, if there is no reply but only a defence to a counterclaim, after service of the defence to the counterclaim; or

(b) if neither a reply nor a defence to the counterclaim is served, at the expiration of fourteen days after service of the defence.

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

Filing of pleadings (O. 18, r. 21)

21. Every pleading shall be filed in the Registry.

Trial without pleadings (O. 18, r. 22)

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

(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be

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so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree to such a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2) or where it dismisses an application for such an order, it may give such directions as to the further conduct of the action as may be appropriate and Order 34 shall apply.

Saving for defence under Merchant Shipping laws (O. 18, r. 23)

23. Nothing in Order 70, rules 35 to 38, shall be taken as limiting the right of any ship owner or other person to reply by way of defence on any provision of the Merchant Shipping Ordinance 1952 or the Merchant Shipping (Oil Pollution) Act 1994 [*Act 515*] which limits the amount of the liability in connection with a ship or other property.

ORDER 19

DEFAULT OF PLEADINGS

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

1. Where the plaintiff is required by these Rules to serve a statement of claim on a defendant and he fails to serve it on him, the defendant may, after the expiration of the period fixed under these Rules for service of the statement of claim, apply to the Court for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

Default of defence: Claim for liquidated demand (O. 19, r. 2)

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

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

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

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

Default of defence: Claim in detinue (O. 19, r. 4)

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

(a) interlocutory judgment against that defendant for the delivery of the property or its value to be assessed and costs; or

(b) interlocutory judgment for the value of the property to be assessed and costs,

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

Default of defence: Claim for possession of immovable property (O. 19, r. 5)

5. (1) Where the plaintiff's claim against a defendant is for possession of immovable property only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed under these Rules for service of the defence, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 83, rule 1, enter judgment for possession of the immovable property as against that defendant and for costs, and proceed with the action against the other defendants, if any.

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(2) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless judgment for possession of the immovable property has been entered against all the defendants.

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

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

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

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

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

(a) if his claim against the defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against that defendant, and proceed with the action against the other defendants; or

(b) set down the action by notice of application for judgment against the defendant in default at the time when the action is set down for trial, or is set down by notice of application for judgment, against the other defendants.

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(3) An application under paragraph (1) shall be by notice of application.

Default of defence to counterclaim (O. 19, r. 8)

8. A defendant who counterclaims against a plaintiff shall be treated for the purposes of rules 2 to 7 as if he were a plaintiff who had made against a defendant the claim made in the counterclaim and, accordingly, where the plaintiff or any other party against whom the counterclaim is made fails to serve a defence to the counterclaim, those rules shall apply as if the counterclaim were a statement of claim, the defence to the counterclaim a defence and the parties making the counterclaim and against whom it is made were plaintiffs and defendants respectively, and as if references to the period fixed under these Rules for service of the defence are references to the period so fixed for service of the defence to the counterclaim.

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

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

ORDER 20

AMENDMENTS

Amendment of writ without leave (O. 20, r. 1)

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

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

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

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(a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued;

(b) the addition or substitution of a new cause of action; or

(c) without prejudice to rule 3(1), an amendment of the statement of claim, if any, endorsed on the writ,

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

Amendment of appearance (O. 20, r. 2)

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

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

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

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

(a) the defendant, if he has already served a defence on the plaintiff, may amend his defence; and

(b) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these Rules for service of his defence or a period of fourteen days after the amended statement of claim is served on him, whichever expires later.

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(3) Where an amended defence is served on the plaintiff by a defendant—

(a) the plaintiff, if he has already served a reply on that defendant, may amend his reply; and

(b) the period for service of his reply or amended reply, as the case may be, shall be fourteen days after the amended defence is served on him.

In paragraphs (2) and (3), references to a defence and a reply include references to a counterclaim and a defence to a counterclaim, respectively.

(4) Where an amended counterclaim is served by a defendant on a party, other than the plaintiff, against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim is a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.

(5) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under paragraphs (1) to (5), he shall be taken to rely on it in answer to the amended pleading, and Order 18, rule 14(2) shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

Application for disallowance of amendment made without leave (O. 20, r. 4)

4. (1) Within fourteen days after the service on a party of a writ amended under rule 1(1) or of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.

(2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or rule 3(1) leave to make

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the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

(3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

Amendment of writ or pleading with leave (O. 20, r. 5)

5. (1) Subject to Order 15, rules 6, 6A, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such a manner, if any, as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of the issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

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

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a

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cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

Amendment of writ and pleadings in Court vacation (O. 20, r. 6)

6. *(There is no rule 6)*

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

7. Rule 5 shall have effect in relation to an originating summons as it has effect in relation to a writ.

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

8. (1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner, if any, as it may direct.

(2) This rule does not have effect in relation to a judgment or order.

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

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

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

10. (1) Where the amendments authorized under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorized,

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shall be prepared and, in the case of a writ, reissued, but, except as aforesaid and subject to any direction given under rule 5 or 8, the amendments so authorized may be effected by making in writing the necessary alterations of the document, and in the case of a writ, causing it to be resealed and filing a copy thereof.

(2) A writ, pleading or other document which has been amended under this Order shall be endorsed with a statement that it has been amended, specifying the date on which it was amended and by whom the order, if any, authorizing the amendment was made and the date thereof or, if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

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

11. Clerical mistakes in judgment or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court by a notice of application without an appeal.

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

12. (1) Notwithstanding the provisions of this Order, any pleading in any cause or matter may, by written agreement of all parties, be amended before commencement of the trial.

(2) The amended pleading under paragraph (1) shall be filed at the Registry and served on all parties within fourteen days of the amendment.

(3) This rule shall not have effect in relation to an amendment which consists of the addition, omission or substitution of a party.

ORDER 21

WITHDRAWAL AND DISCONTINUANCE

Withdrawal of appearance (O. 21, r. 1)

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

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

2. (1) The plaintiff in an action begun by writ may, without the leave of the Court, discontinue the action or withdraw any particular claim made by him therein, as against any or all of the defendants at any time not later than fourteen days after the service of the defence on him or, if there are two or more defendants, of the defence last served, by serving a notice in Form 32 to that effect on the defendant concerned.

(2) A defendant may, without the leave of the Court—

(a) withdraw his defence or any part of it at any time; or

(b) discontinue a counterclaim, or withdraw any particular claim made by him therein, as against any or all of the parties against whom it is made, at any time not later than fourteen days after—

(i) the service on him of a defence to the counterclaim; or

(ii) if the counterclaim is made against two or more parties, of the defence to the counterclaim last served on him,

by serving a notice in Form 32 to that effect on the plaintiff or any other party concerned.

(3) Where there are two or more defendants to an action and not all of them serve a defence on the plaintiff, and the period fixed by or under these Rules for the service of the defence by any of those defendants expires after the latest date on which any other defendant serves his defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period. This paragraph shall apply in relation to a counterclaim as it applies in relation to an action with the references to a defence, to the plaintiff and to paragraph (1) substituted with the references to a defence to the counterclaim, to the defendant and to paragraph (2) respectively.

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

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

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

(2) An application for leave under this rule shall be made by a notice of application.

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

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

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

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

(2) An application for an order under this rule may be made by a notice of application.

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Withdrawal of notice of application (O. 21, r. 6)

6. A party who has taken out a notice of application in a cause or matter may not withdraw it without the leave of the Court.

ORDER 22

PAYMENT INTO AND OUT OF COURT

(There is no Order 22)

ORDER 22A

INTERIM PAYMENTS

Interpretation (O. 22A, r. 1)

1. In this Order—

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

Application for interim payment (O. 22A, r. 2)

2. (1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to acknowledge service has expired, apply to the Court for an order requiring the defendant to make an interim payment.

(2) An application under this rule shall be made by a notice of application in Form 33 but may be included in an application for summary judgment under Order 14.

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(3) An application under this rule shall be supported by an affidavit which shall—

(a) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;

(b) exhibit any documentary evidence relied on by the plaintiff in support of the application; and

(c) if the plaintiff's claim is made under Part III of the Civil Law Act 1956 [*Act 67*], contain the full particulars of the person for whom and on whose behalf the action is brought and of the nature of the claim in respect of which damages are sought to be recovered.

(4) The notice of application and a copy of the affidavit in support and any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than fourteen clear days before the return day.

(5) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

Order for interim payment in respect of damages (O. 22A, r. 3)

3. (1) If, on the hearing of an application under rule 2 in an action for damages, the Court is satisfied that—

(a) the defendant against whom the order is sought has admitted liability for the plaintiff's damages;

(b) the plaintiff has obtained judgment against the defendant for damages to be assessed; or

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(c) if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the defendant or, where there are two or more defendants, against any of them,

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

(2) An order shall not be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories:

(a) a person who is insured in respect of the plaintiff's claim;

(b) a public authority; or

(c) a person whose means and resources are such as to enable him to make the interim payment.

Order for interim payment in respect of sums other than damages (O. 22A, r. 4)

4. If, on the hearing of an application under rule 2, the Court is satisfied that—

(a) the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid;

(b) the plaintiff's action includes a claim for possession of land and, if the action proceeded to trial, the defendant would be held liable to pay to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, even if a final judgment or order were given or made in favour of the defendant; or

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(c) if the action proceeded to trial, the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,

the Court may, if it thinks fit, and without prejudice to any contention of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set off, cross-claim or counterclaim on which the defendant may be entitled to rely.

Manner of payment (O. 22A, r. 5)

5. (1) The amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into Court, and where the amount is paid into Court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(2) An application under the preceding paragraph for money in Court to be paid out shall be served on the other party.

(3) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

(4) Where a payment is ordered in respect of the defendant's use and occupation of land, the order may provide for periodical payments to be made during the pendency of the action.

Directions on application under rule 2 (O. 22A, r. 6)

6. Where an application is made under rule 2, the Court may give directions as to the further conduct of the action, and, so far as may be applicable, Order 34 shall apply.

Non-disclosure of interim payment (O. 22A, r. 7)

7. The fact that an order has been made under rule 3 or 4 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to

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an order, shall be made to the Court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

Payment into Court in satisfaction (O. 22A, r. 8)

8. *(There is no rule 8)*

Adjustment on final judgment or order or on discontinuance (O. 22A, r. 9)

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

(a) an order for the repayment by the plaintiff of all or part of the interim payment, with or without interest; but where interest is ordered, it shall not exceed fifty percent of the rate as specified under Order 42, rule 12;

(b) an order for the payment to be varied or discharged; or

(c) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

Counterclaims and other proceedings (O. 22A, r. 10)

10. The preceding rules in this Order shall apply, with the necessary modifications, to any counterclaim where one party seeks an order for an interim payment to be made by another.

No order against the Government (O. 22 A, r. 11)

11. An order for interim payment shall not be made against the Government.

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ORDER 22B

OFFER TO SETTLE

Offer to settle (O. 22B, r. 1)

1. A party to any proceedings may serve on any other party an offer to settle in Form 34.

Timing (O. 22B, r. 2)

2. An offer to settle may be made at any time before the Court disposes of the matter.

Time for acceptance and withdrawal (O. 22B, r. 3)

3. (1) Where an offer to settle specifies a time within which the offer may be accepted and it is not accepted or withdrawn within that time, the offer shall be deemed to have been withdrawn when the time expires.

(2) Where an offer to settle does not specify a time for acceptance, the offer may be accepted at any time before the Court disposes of the matter.

(3) The notice of withdrawal of the offer shall be in Form 35.

Without prejudice rule (O. 22B, r. 4)

4. An offer to settle is deemed to be an offer of compromise made without prejudice save as to costs.

Non-disclosure (O. 22B, r. 5)

5. (1) An offer to settle shall not be filed and a statement of the fact that such an offer has been made shall not be contained in any pleading or affidavit.

(2) Where an offer to settle is not accepted, any communication in respect of the offer shall not be made to the Court at the hearing of the proceeding until all questions of liability and the relief to be granted, other than costs, have been determined.

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Manner of acceptance (O. 22B, r. 6)

6. (1) An offer to settle shall be accepted by serving an acceptance of offer in Form 36 on the party who made the offer.

(2) Where an offer is accepted, the Court may incorporate any of its terms into a judgment.

Party under disability (O. 22B, r. 7)

7. A party under disability may make, withdraw and accept an offer to settle, but no acceptance of an offer made by him and no acceptance by him of an offer made by another party is binding on him until the settlement has been approved as provided in Order 76, rule 10.

Compliance with an accepted offer to settle (O. 22B, r. 8)

8. Where a party to an accepted offer to settle fails to comply with any of the terms of the accepted offer, the other party may—

(a) make an application to a Judge for judgment in the terms of the accepted offer; or

(b) continue the proceeding as if there had been no accepted offer to settle.

Costs (O. 22B, r. 9)

9. (1) Where an accepted offer to settle does not provide for costs, each party shall bear his own costs.

(2) Where an offer to settle made by a defendant—

(a) is not withdrawn and has not expired before the disposal of the claim; and

(b) is not accepted by the plaintiff, and the plaintiff obtains judgment not more favourable than the terms of the offer to settle,

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the plaintiff is entitled to costs to the date the offer was served and the defendant is entitled to costs from that date.

(3) Any interest awarded in respect of the period before service of the offer to settle is to be considered by the Court in determining whether the plaintiff's judgment is more favourable than the terms of the offer to settle.

(4) Any interest awarded in respect of the period after service of the offer to settle is not to be considered by the Court in determining whether the plaintiff's judgment is more favourable than the terms of the offer to settle.

Joint and several liability (O. 22B, r. 10)

10. Where there are two or more defendants, the plaintiff may offer to settle with any defendant and any defendant may offer to settle with the plaintiff, but where the defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a claim and rights of contribution or indemnity may exist between the defendants, the cost consequences prescribed by rule 9 do not apply to an offer to settle unless—

(a) in the case of an offer made by the plaintiff, the offer is made to all the defendants, and is an offer to settle the claim against all the defendants; or

(b) in the case of an offer made to the plaintiff—

(i) the offer is an offer to settle the plaintiff's claim against all the defendants and to pay the costs of any defendant who does not join in making the offer; or

(ii) the offer is made by all the defendants and is an offer to settle the claim against all the defendants, and, by the terms of the offer, they are made jointly and severally liable to the plaintiff for the whole of the offer.

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Offer to contribute (O. 22B, r. 11)

11. (1) Where two or more defendants are alleged to be jointly or jointly and severally liable to the plaintiff in respect of a claim, any defendant may make to any other defendant an offer to contribute in Form 37 towards a settlement of the claim.

(2) The Court may take into account an offer to contribute in determining whether another defendant should be ordered—

(a) to pay the costs of the defendant who made the offer; or

(b) to indemnify the defendant who made the offer for any costs he is liable to pay to the plaintiff,

or to do both.

(3) Rules 2 to 10 shall apply to an offer to contribute as if it were an offer to settle.

Counterclaims and third party claims (O. 22B, r. 12)

12. Rules 1 to 11 shall apply, with the necessary modifications, to counterclaims and third party claims.

ORDER 23

SECURITY FOR COSTS

Security for costs of action (O. 23, r. 1)

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

(a) that the plaintiff is ordinarily resident out of the jurisdiction;

(b) that the plaintiff (not being a plaintiff who is suing in a representative capacity) is a nominal plaintiff who is suing for the

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benefit of some other person and that there is reason to believe that he will be unable to pay the costs of the defendant if ordered to do so;

(c) subject to paragraph (2), that the plaintiff's address is not stated in the writ or originating summons or is incorrectly stated therein; or

(d) that the plaintiff has changed his address during the course of the proceedings with a view to evading the consequences of the litigation,

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

(2) The Court shall not require a plaintiff to give security by reason only of subparagraph (1)*(c)* if he satisfies the Court that the failure to state his address or the misstatement thereof was made innocently and without an intention to deceive.

(2A) Where, on the application of a defendant to an action or other proceedings in the Court, it appears to the Court that—

(a) a party, who is not a party to the action or proceedings (which is referred to as a "non-party"), has assigned the right to the claim to the plaintiff with a view to avoid his liability for costs; or

(b) the non-party has contributed or agreed to contribute to the plaintiff's costs in return for a share of any money or property which the plaintiff may recover in the action or proceedings,

and the non-party is a person against whom a costs order may be made, then, if, having regard to all the circumstances of the case, the Court thinks it just to do so, it may order

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the non-party to give such security for the defendant's costs of the action or other proceedings as the Court thinks just.

(2B) An application for an order under paragraph (2A) shall be made by a notice of application, which shall be served on the non-party personally and on every party to the proceedings.

(2C) A copy of the supporting affidavit shall be served with the notice of application on every person on whom the notice of application is required to be served.

(3) The references in the foregoing paragraphs to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceedings in question, including the proceedings on a counterclaim.

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

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

Saving for written law (O. 23, r. 3)

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

ORDER 24

DISCOVERY AND INSPECTION OF DOCUMENTS

Mutual discovery of documents (O. 24, r. 1)

1. *(There is no rule 1)*

Discovery by parties without order (O. 24, r. 2)

2. *(There is no rule 2)*

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

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

(2) *(There is no paragraph (2))*

(3) *(There is no paragraph (3))*

(4) The documents which a party to a cause or matter may be ordered to discover under paragraph (1) are as follows:

(a) the documents on which the party relies or will rely; and

(b) the documents which could—

(i) adversely affect his own case;

(ii) adversely affect another party's case; or

(iii) support another party's case.

Order for determination of issues before discovery (O. 24, r. 4)

4. Where on an application for an order under rule 3, it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order for that issue or question to be determined first and give such other directions as may be necessary.

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

5. (1) A list of documents made in compliance with rule 3 shall be in Form 38, and shall enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any document is privileged from production, the claim shall be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents shall be in Form 39.

(4) Unless otherwise agreed by the parties, a party preparing his list of documents shall cause to be bound and paginated all documents disclosed in Schedule 1 Part 1 to be intituled "List of Documents" and shall file and serve copies of the same on all the parties to the action whereupon the documents shall be deemed to have been inspected.

(5) Non-compliance with paragraph (4) shall preclude the party aforesaid from tendering any such document at the trial, save and except by the leave of the Court.

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

6. (1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required in accordance with paragraph (1) to supply a copy of a list of documents shall supply it free of charge on a request made by the party entitled to it.

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(3) Where in an action begun by originating summons, the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule, "list of documents" includes an affidavit verifying a list of documents.

Order for discovery of particular documents (O. 24, r. 7)

7. (1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 3.

(3) An application for an order under this rule shall be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application, and that it falls within one of the following descriptions:

(a) a document on which the party relies or will rely;

(b) a document which could—

(i) adversely affect his own case;

(ii) adversely affect another party's case; or

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(iii) support another party's case; and

(c) a document which may lead the party seeking discovery of it to a series of inquiry resulting in his obtaining information which may—

(i) adversely affect his own case;

(ii) adversely affect another party's case; or

(iii) support another party's case.

(4) An order under this rule shall not be made in any cause or matter in respect of any party before an order under rule 3 has first been obtained in respect of that party, unless, in the opinion of the Court, the order is necessary or desirable.

Discovery against other person (O. 24, r. 7A)

7A. (1) An application for an order for the discovery of documents before the commencement of proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the originating summons.

(2) An application after the commencement of proceedings for an order for the discovery of documents by a person who is not a party to the proceedings shall be made by a notice of application, which shall be served on that person personally and on every party to the proceedings.

(3) An originating summons under paragraph (1) or a notice of application under paragraph (2) shall be supported by an affidavit which shall—

(a) in the case of an originating summons under paragraph (1), state the grounds for the application, the material facts pertaining to the intended proceedings and whether the person against whom the

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order is sought is likely to be party to subsequent proceedings in Court; and

(b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of the claim made or likely to be made in the proceedings or the identity of the likely parties to the proceedings, or both, and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(4) A copy of the supporting affidavit shall be served with the originating summons or the notice of application on every person on whom the originating summons or the notice of application is required to be served.

(5) An order for the discovery of documents before the commencement of proceedings or for the discovery of documents by a person who is not a party to the proceedings may be made by the Court for the purpose of or with a view to identifying possible parties to any proceedings in such circumstances where the Court thinks it just to make such an order, and on such terms as it thinks just.

(6) An order for the discovery of documents may—

(a) be made conditional on the applicant giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just; and

(b) require the person against whom the order is made to make an affidavit stating whether the documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become of them.

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(7) A person shall not be compelled by such an order to produce any document which he could not be compelled to produce—

(a) in the case of an originating summons under paragraph (1), if the subsequent proceedings had already been commenced; or

(b) in the case of a notice of application under paragraph (2), if he had been served with a subpoena to produce documents at the trial.

(8) For the purposes of rules 10 and 11, an application for an order under this rule shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

(9) Unless the Court orders otherwise, where an application is made in accordance with this rule for an order, the person against whom the order is sought shall be entitled to his costs of the application, and of complying with any order made thereon on an indemnity basis.

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

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

Duty to discover continues throughout proceedings (O. 24, r. 8A)

8A. After the making of any order under rule 3 or 7, the party required to give discovery under any such order shall remain under a duty to continue to give discovery of all documents falling within the ambit of such order until the proceedings in which the order was made are concluded.

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

9. A party who has served a list of documents on any other party in compliance with rule 3 shall allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly he shall, when he serves the list on the other party, also serve on him a notice in Form 40 stating a time within seven days after the service thereof at which the documents may be inspected at a place specified in the notice.

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

10. (1) Any party to a cause or matter shall be entitled at any time to serve a notice in Form 41 on any other party in whose pleadings or affidavits reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies of that document.

(2) The party on whom a notice is served under paragraph (1) must, within four days after service of the notice, serve on the party giving the notice, a notice in Form 42 stating a time within seven days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which of the documents he objects to produce and on what ground.

Order for production for inspection (O. 24, r. 11)

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

(a) fails to serve a notice under rule 9 or, as the case may be, rule 10(2);

(b) objects to produce any document for inspection; or

(c) offers to inspect at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,

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then, subject to rule 13(1), the Court may, on the application of the party entitled to inspect, make an order in Form 43 for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

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

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

Order for production to Court (O. 24, r. 12)

12. (1) At any stage of the proceedings in any cause or matter the Court may, subject to rule 13(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter that falls within one of the following descriptions:

(a) documents on which the party relies or will rely;

(b) documents which could—

(i) adversely affect a party's case; or

(ii) support a party's case; and

(c) documents which may lead to a series of inquiry resulting in the obtaining of information which may—

(i) adversely affect a party's case; or

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(ii) support a party's case.

(2) The Court may deal with the documents when produced in pursuance of an order made under paragraph (1) in such manner as it thinks fit.

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

13. (1) An order for the production of any documents for inspection or to the Court shall not be made under any of the foregoing rules unless the Court is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

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

Production of business books (O. 24, r. 14)

14. (1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

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Disclosure subject to law (O. 24, r. 15)

15. The foregoing provisions of this Order are subject to any written law or any rule of law which authorizes or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

Failure to comply with requirement for discovery (O. 24, r. 16)

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

(2) *(There is no paragraph (2))*

(3) *(There is no paragraph (3))*

(4) *(There is no paragraph (4))*

(5) A party who is required by any rule in this Order, or by any order made thereunder, to make a discovery of documents or to produce any document for the purpose of inspection or any other purpose, but who fails to comply with any provision of that rule or with that order, as the case may be, may not rely on those documents save with the leave of the Court.

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

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

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ORDER 25

SUMMONS FOR DIRECTIONS

(There is no Order 25)

ORDER 26

INTERROGATORIES

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

1. (1) A party to any cause or matter may apply in Form 44 to the Court for an order—

(a) giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter; and

(b) requiring that other party to answer the interrogatories on affidavit within a specific period of time which shall not be less than fourteen days from the date of service of the interrogatories.

(2) A copy of the proposed interrogatories in Form 45 shall be served together with the application for such leave.

(3) On the hearing of an application under this rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs; and in deciding whether to give leave, the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.

(4) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

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(5) If an order is made, it shall be in Form 46 and shall be served by the applicant on the party against whom it is made.

(6) Interrogatories shall be answered by affidavit in Form 47 and the affidavit shall be filed and a copy thereof served on the party interrogating within the time specified in the order.

Discovery by interrogatories without leave of Court (O. 26, r. 2)

2. A party to any cause or matter may at any time before the close of pleadings without the leave of the Court deliver interrogatories relating to any matter in question between the parties.

Interrogatories where party is a body of persons (O. 26, r. 3)

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

Statement as to party required to answer (O. 26, r. 4)

4. Where interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, a note at the end of the interrogatories shall state which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

Objection to answer on ground of privilege (O. 26, r. 5)

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

Insufficient answer (O. 26, r. 6)

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

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(2) Where any person, on whom interrogatories without order have been served, answers any of them insufficiently, the party serving the interrogatories may ask for further and better particulars of the answer given.

Failure to comply with order (O. 26, r. 7)

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

(2) If a party against whom an order is made under rule 1 or 6 fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

Use of answer to interrogatories at trial (O. 26, r. 8)

8. A party may put in evidence at the trial of a cause or matter, or of any issue therein, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if it is of the opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the Court may direct that the other answer or part thereof shall be put in evidence.

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Revocation and variation of orders (O. 26, r. 9)

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

ORDER 27

ADMISSIONS

Admission of case of other party (O. 27, r. 1)

1. Without prejudice to Order 18, rule 13, a party to a cause or matter may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

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

2. (1) A party to a cause or matter may not later than fourteen days after the cause or matter is set down for trial serve on any other party a notice requiring him to admit, for the purpose of that cause or matter only, the facts specified in the notice.

(2) An admission made in compliance with a notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him on such terms as it thinks just.

(3) A notice to admit facts under paragraph (1) shall be in Form 48 and an admission of facts under paragraph (2) in Form 49.

Judgment on admission of facts (O. 27, r. 3)

3. (1) Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to,

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without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

(2) An application for a judgment or order under this rule shall be made by a notice of application.

Admission and production of documents specified in list of documents (O. 27, r. 4)

4. (1) Subject to paragraph (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of documents is served in pursuance of any provision or order made under Order 24 shall, unless the Court otherwise orders, be deemed to admit—

(a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and

(b) that any document described therein as a copy is a true copy.

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

(2) If before the expiration of fourteen days after the inspection of the documents specified in a list of documents or after the time limited for the inspection of those documents expires, whichever is the later, the party to whom the list is served serves on the party whose list it is a notice stating, in relation to any documents specified therein, that he does not admit the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under paragraph (1).

(3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of any provision of Order 24 or any order made thereunder shall be deemed to have been served by that other party with a notice requiring him to

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produce at the trial of the cause or matter such of the documents specified in the list as are in his possession, custody or power.

(4) The foregoing provisions of this rule apply in relation to any affidavit made in compliance with an order under Order 24, rule 7, as they apply in relation to a list of documents served in pursuance of any provision of that Order or any order made thereunder.

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

5. (1) Except where rule 4(1) applies, a party to a cause or matter may, within fourteen days after the cause or matter is set down for trial, serve on any other party a notice requiring him to admit the authenticity of the documents specified in the notice.

(2) If a party on whom a notice under paragraph (1) is served desires to challenge the authenticity of any document therein specified he shall, within fourteen days after service of the notice, serve on the party by whom it was given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document is deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the documents specified in the notice at the trial of the cause or matter.

(5) A notice to admit, a notice of non-admission and a notice to produce documents shall be in Forms 50, 51 and 52 respectively.

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ORDER 28

ORIGINATING SUMMONS PROCEDURE

Application (O. 28, r. 1)

1. This Order applies to originating summons.

Fixing time for attendance of parties before Court (O. 28, r. 2)

2. *(There is no rule 2)*

Notice of first hearing (O. 28, r. 3)

3. *(There is no rule 3)*

Hearing of originating summons (O. 28, r. 3A)

3A. An originating summons shall be heard in Chambers, subject to any express provision of these Rules, any written law, any direction of the Court or any practice direction for the time being issued by the Registrar.

Dispute as to jurisdiction (O. 28, r. 3B)

3B. (1) A defendant who wishes to dispute the jurisdiction of the Court in the proceedings by reason of any irregularity in the originating summons or service thereof or in any order giving leave to serve the originating summons out of the jurisdiction or extending the validity of the originating summons for the purpose of service or on any other ground shall, within twenty-one days after the service of the originating summons and supporting affidavit or affidavits on him, apply to the Court for—

(a) an order setting aside the originating summons or service of the originating summons on him;

(b) an order declaring that the originating summons has not been duly served on him;

(c) the discharge of any order giving leave to serve the originating summons on him out of the jurisdiction;

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(d) the discharge of any order extending the validity of the originating summons for the purpose of service;

(e) the protection or release of any property of the defendant seized or threatened with seizure in the proceedings;

(f) the discharge of any order made to prevent any dealing with any property of the defendant;

(g) a declaration that in the circumstances of the case the Court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action; or

(h) such other relief as may be appropriate.

(2) A defendant who wishes to contend that the Court should not assume jurisdiction over the action on the ground that Malaysia is not the proper forum for the dispute shall, within twenty-one days after the service of the originating summons and supporting affidavit or affidavits on him, apply to the Court for an order staying the proceedings.

(3) An application under paragraph (1) or (2) shall be made by a notice of application supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit shall be served with the notice of application.

(4) On the hearing of an application under paragraph (1) or (2), the Court may make such order as it thinks fit and may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a preliminary issue.

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Supporting affidavits (O. 28, r. 3C)

3C. (1) Unless otherwise provided in any written law, where the plaintiff intends to adduce evidence in support of an originating summons, he shall do so by affidavit and shall file the affidavit or affidavits and serve a copy thereof on every defendant not later than seven days after the service of the originating summons.

(2) Unless otherwise provided in any written law, in the case of an *ex parte* originating summons, the applicant shall file a supporting affidavit or affidavits at the time of filing the originating summons.

(3) Where the defendant intends to adduce evidence with reference to the originating summons served on him, he shall also do so by affidavit and the affidavit or affidavits shall be filed and a copy thereof shall be served on the plaintiff not later than twenty-one days after being served with a copy of the affidavit or affidavits by the plaintiff under paragraph (1).

(4) Unless otherwise directed by the Court, a party intending to reply to an affidavit served on him shall file his affidavit and serve it on the other party within fourteen days from the date the affidavit he intends to reply was served on him.

Directions by Court (O. 28, r. 4)

4. (1) The Court hearing an originating summons may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the Court, if satisfied that it is just to do so, may rehear the originating summons.

(2) Unless on the first hearing of an originating summons the Court disposes of the originating summons altogether or orders the cause or matter begun by it to be transferred to a Subordinate Court or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

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(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the originating summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the originating summons on oral evidence or mainly on oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the originating summons shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any other directions.

Adjournment of originating summons (O. 28, r. 5)

5. The hearing of an originating summons by the Court may, if necessary, be adjourned from time to time to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

Applications affecting party in default of appearance (O. 28, r. 6)

6. *(There is no rule 6)*

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

7. (1) A defendant to an action begun by originating summons who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter, whenever and however arising, may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule shall at the first or any resumed hearing of the originating summons by the Court, but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 4 or 8.

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(3) If it appears on the application of a plaintiff against whom a counterclaim is made under this rule that the subject matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

Continuation of proceedings as if cause or matter begun by writ (O. 28, r. 8)

8. (1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that pleadings shall be delivered or that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) Where the Court decides to make such an order referred to in rule (1), Order 34 shall apply with the necessary modifications.

(3) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(4) Any reference in these Rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

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

9. Except where the Court disposes of a cause or matter begun by originating summons or orders it to be transferred to a Subordinate Court or makes an order in relation to it under rule 8 or other provisions of these Rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make an order for the hearing or trial thereof in accordance with this rule.

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Failure to prosecute proceedings with despatch (O. 28, r. 10)

10. (1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall apply, with any necessary modifications, in relation to a defendant by whom a counterclaim is made under rule 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, paragraphs (1) and (2) shall not apply in relation to the cause or matter after the making of the order.

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

11. Order 34, rule 12, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

ORDER 29

INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY

Application for injunction (O. 29, r. 1)

1. (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's originating process, counterclaim or third party notice, as the case may be.

(2) Such application may be made by a notice of application supported by an affidavit and where the case is one of urgency, may be made *ex parte*.

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(2A) The affidavit in support of an application made *ex parte* must contain a clear and concise statement of—

(a) the facts giving rise to the claim;

(b) the facts giving rise to the application for interim injunction;

(c) the facts relied on to justify the application *ex parte*, including details of any notice given to the other party or, if notice has not been given, the reason for not giving notice;

(d) any answer by the other party (or which he is likely to assert) to the claim or application;

(e) any facts which may lead the Court not to grant the application *ex parte* or at all;

(f) any similar application made to another Judge, and the order made on that application; and

(g) the precise relief sought.

(2B) Unless earlier revoked or set aside, an interim injunction obtained on an *ex parte* application shall automatically lapse twenty-one days from the date it was granted.

(2BA) An *ex parte* interim injunction must be served within seven days of the date of the order, and the Court when granting the order must fix a date to hear the application *inter partes* within fourteen days from the date of the order.

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(2C) A Court shall not grant an injunction on an *ex parte* application if the effect is to stop the holding or progress of a meeting of a body corporate, a society, an association, a union, an organization, a club or any other body of persons however constituted or named.

(3) The plaintiff may not make such an application before the issue of the originating process except where the case is one of urgency, and in that case—

(a) the injunction applied for may be granted on such terms, if any, as the Court thinks fit; and

(b) if the originating process is not issued within two days of the granting of the injunction, or such other period as the Court thinks fit, the Court shall, on application by a defendant, discharge the injunction.

(4) An order for interim injunction shall be in Form 53.

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

2. (1) On the application of any party to a cause or matter, the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out, the Court may by the order authorize any person to enter upon any immovable property in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into Court or otherwise secured.

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(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule shall be made by way of a notice of application.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he enters an appearance.

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

3. (1) Where the Court considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorize or require—

(a) any sample to be taken of any property which is the subject matter of the cause or matter or as to which any question may arise therein;

(b) any observation to be made on such property; or

(c) any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out, the Court may by the order authorize any person to enter upon any immovable property in the possession of any party to the cause or matter.

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

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

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

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

Order for early trial (O. 29, r. 5)

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

Recovery of movable property subject to lien (O. 29, r. 6)

6. Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific movable property and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings, if any, or by affidavit or otherwise to its satisfaction, may order—

(a) the party seeking to recover the property be at liberty to pay into Court, to abide the event of action, the amount of money in respect of which the security is claimed and such further sum, if any, for interest and costs as the Court may direct; and

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(b) upon such payment being made, the property claimed be given up to the party claiming it, but subject to the provisions of the Exchange Control Act 1953.

Directions (O. 29, r. 7)

7. Where an application is made under any of the provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

Income of property pending trial (O. 29, r. 8)

8. Where any movable or immovable property forms the subject matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the movable property be transferred or delivered to any or all such parties.

ORDER 30

RECEIVERS

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

1. (1) An application for the appointment of a receiver may be made by notice of application.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant intends to apply for the immediate grant of such injunction, he may do so *ex parte* by a notice of application supported by an affidavit.

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(4) The Court hearing an application under paragraph (3) may grant an injunction, restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a notice of application for the appointment of the receiver and may require such a notice of application, returnable on such date as the Court may direct, to be issued.

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

2. (1) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.

(2) Where in accordance with paragraph (1), or of any judgment or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule and he shall give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee or, if the amount for which the security is to be given does not exceed ten thousand ringgit, by an undertaking in Form 54.

(4) The guarantee or undertaking shall be filed in the Registry.

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

3. A person appointed receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

Receiver's accounts (O. 30, r. 4)

4. (1) A receiver shall submit accounts to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.

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(2) Unless the Court otherwise directs, each account submitted by a receiver shall be accompanied by an affidavit verifying it in Form 55.

(3) The receiver's accounts and affidavit, if any, shall be left at the Registry, and the plaintiff or party having the conduct of the cause or matter shall thereupon obtain an appointment for the purpose of passing such account.

(4) The passing of a receiver's account shall be certified by the Registrar.

Payment of balance by receiver (O. 30, r. 5)

5. The days on which a receiver shall pay into Court the amounts shown by his account as due from him, or such part thereof as the Court may certify as proper to be paid in by him, shall be fixed by the Court.

Default by receiver (O. 30, r. 6)

6. (1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in Chambers to show cause for the failure, and the Court may, either in Chambers or after adjournment into Court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into Court on the date fixed by the Court any sum shown by his account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into Court, charge him with interest at such rate as the Chief Justice may from time to time direct on that sum while in his possession as receiver.

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ORDER 31

SALES OF IMMOVABLE PROPERTY BY ORDER OF COURT

Power to order sale of immovable property (O. 31, r. 1)

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

Manner of carrying out sale (O. 31, r. 2)

2. (1) Where an order is made, whether in Court or in Chambers, directing any immovable property to be sold, the Court may permit the party or person having the conduct of the sale to sell the property in such manner as he thinks fit, or may direct that the property be sold in such manner as the Court may either by the order or subsequently direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court directs.

(2) *(There is no paragraph (2))*

(3) *(There is no paragraph (3))*

(4) The Court may give such directions as it thinks fit for the purpose of effecting the sale, including without prejudice to the generality of the foregoing words, directions—

(a) appointing the party or person who is to have the conduct of the sale;

(b) fixing the manner of sale, whether by contract conditional on the approval of the Court, private treaty, public auction, tender or some other manner;

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(c) fixing a reserve or minimum price;

(d) requiring payment of the purchase money into Court or to trustees or other persons;

(e) for settling the particulars and conditions of sale;

(f) for obtaining evidence of the value of the property;

(g) fixing the security, if any, to be given by the auctioneer, if the sale is to be by public auction, and the remuneration to be allowed him; and

(h) requiring the title to be referred to a solicitor for his opinion thereon and to settle the particulars and conditions of sale.

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

3. (1) If either the Court has directed payment of the purchase money into Court or the Court so directs, the result of a sale by order of the Court shall be certified in Form 56—

(a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and

(b) in any other case, by the solicitor of the party or person having the conduct of the sale,

and the Court may require the certificate to be verified by the affidavit of the auctioneer or solicitor, as the case may be.

(2) The solicitor of the party or person having the conduct of the sale shall file the certificate and affidavit, if any, in the Registry.

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

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

Reference of matters to a solicitor (O. 31, r. 5)

5. The Court may refer to a solicitor—

(a) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on the assignment or charge thereof, or with a view to the sale thereof;

(b) any matter relating to the settlement of a draft of a transfer, conveyance, assignment, charge, settlement or other instrument; and

(c) any other matter as it thinks fit,

and may act upon his opinion in the matter referred.

Objection to opinion of solicitor (O. 31, r. 6)

6. Any party may object to the opinion given by the solicitor on a reference under rule 5, and if he does so the point in dispute shall be determined by the Judge either in Chambers or in Court as he thinks fit.

ORDER 32

APPLICATIONS AND PROCEEDINGS IN CHAMBERS

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

1. Every application in Chambers shall be made by notice of application in Form 57.

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Issue of notice of application (O. 32, r. 2)

2. (1) The issue of a notice of application by which an application in Chambers is to be made takes place on its being sealed by an officer of the Registry.

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

Service of notice of application (O. 32, r. 3)

3. A notice of application asking only for the extension or abridgement of any period of time may be served on the day before the day specified in the notice of application for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these rules otherwise provides, a notice of application shall be served on every other party not less than two clear days before the day so specified.

Adjournment of hearing (O. 32, r. 4)

4. (1) The hearing of a notice of application may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the notice of application was taken out may restore it to the list on two clear days' notice to all the other parties on whom the notice of application was served.

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

5. (1) When any party to a notice of application fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it is expedient to do so.

(2) Before proceeding in the absence of any party, the Court may require to be satisfied that the notice of application or, as the case may be, the notice of the time appointed for the resumed hearing was duly served on that party.

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(3) Where the Court hearing an application proceeded in the absence of a party, then, whether or not an order made on the hearing has been perfected, the Court, if satisfied that it is just to do so, may re-hear the application.

(4) Where a notice of application has been dismissed without a hearing by reason of the failure of the party who took out the notice of application to attend the hearing, the Court, if satisfied that it is just to do so, may allow the notice of application to be restored to the list.

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

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

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

7. *(There is no rule 7)*

Application for leave to institute certain proceedings (O. 32, r. 8)

8. *(There is no Rule 8)*

Jurisdiction of Registrar (O. 32, r. 9)

9. The Registrar shall have power to transact all such business and exercise all such authority and jurisdiction as under the Act or these Rules may be transacted and exercised by a Judge in Chambers except such business, authority and jurisdiction as the Chief Judge may from time to time direct to be transacted or exercised by a Judge in person or as may by any of these Rules be expressly directed to be transacted or exercised by a Judge in person.

Reference of matter to Judge (O. 32, r. 10)

10. The Registrar may refer to a Judge any matter which he thinks should properly be decided by a Judge, and the Judge may either dispose of the matter or refer it back to the Registrar, as the case may be, with such directions as he thinks fit.

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Power to direct hearing in Court (O. 32, r. 11)

11. (1) A notice of application or an appeal shall be heard in Chambers, subject to any express provision of these Rules, any written law, any direction of the Court or any practice direction for the time being issued by the Chief Judge.

(2) Any matter heard in Court in accordance with paragraph (1) may be adjourned from Court into Chambers.

Obtaining assistance of assessors or experts (O. 32, r. 12)

12. If the Court thinks it expedient in order to enable it better to determine any matter arising in proceedings in Chambers, it may obtain the assistance of an assessor or expert pursuant to Order 33 or Order 40, as the case may be.

Service or use of affidavit (O. 32, r. 13)

13. (1) Any party—

(a) filing an affidavit intended to be used by him in any proceedings in Chambers; or

(b) intending to use in any such proceedings any affidavit filed by him in previous proceedings,

shall serve the affidavit on every other party or give notice of his intention to do so in Form 58, as the case may be.

(2) Save as otherwise provided in these Rules, or unless otherwise directed by the Court—

(a) an affidavit intended to be used in support of an application shall be filed and served on the other party within fourteen days from the date of filing of the application;

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(b) a party intending to reply to an affidavit intended to be used in support of an application shall file his affidavit and serve it on the other party within fourteen days from the date the sealed application and the affidavit in support of that application were served on him whichever is later;

(c) a party intending to reply to an affidavit served on him shall file his affidavit and serve it on the other party within fourteen days from the date the affidavit he intends to reply was served on him; and

(d) if an affidavit or an exhibit is deposed or affirmed by a deponent out of Malaysia, then the time fixed by this rule for a party to file and serve a reply to an affidavit shall be twenty-one days.

Disposal of matters in Chambers (O. 32, r. 14)

14. The Judge may by any judgment or order made in Court in any proceedings direct that such matters, if any, in the proceedings as he may specify shall be disposed of in Chambers.

Papers for use of Court (O. 32, r. 15)

15. The Judge may by order direct that the original of any document which is to be used in evidence in proceedings in Chambers shall, if it is available, be brought in, and copies of any such document or of any part thereof shall be supplied for the use of the Court or be given to the other parties to the proceedings.

Uncontested chamber applications (O. 32, r. 16)

16. If a Judge is satisfied that all parties to an application in Chambers have been served and have consented to the application, he may in the absence of the parties or their solicitors order the granting of the application by minute on the file and the Court shall inform the applicant or his solicitor in writing of the order.

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Application under the Settled Estates Ordinance

Application for sale or lease of settled estates (O. 32, r. 17)

17. (1) An application under the Settled Estates Ordinance (*S.S. Cap. 52*), for a lease or sale of settled estate or any part thereof may be made by originating summons, containing a detailed description of the property to be dealt with, and shall be entitled in the matter of the settlement. Such title shall contain the name of the settlor and a description of the instrument creating the settlement.

(2) It shall be supported by affidavit setting forth *inter alia* the names and addresses of all persons interested in the settled property.

Consent in writing (O. 32, r. 18)

18. Any person interested in the application may signify his consent thereto in writing, attested either by a solicitor or by the Registrar. Such written consent may be endorsed on the notice of application, or, if not so endorsed, may be filed.

Direction for service (O. 32, r. 19)

19. (1) The Court or a Judge may direct that notice of any application be served on any person who has not been served, or that notice of the application be inserted in a newspaper.

(2) Where a notice is ordered to be inserted in a newspaper, any person may, within the time specified in the notice make an application, either *ex parte*, or on notice to the applicant, for leave to be heard in opposition to or in support of the application.

(3) If the application is made *ex parte*, and the Court or Judge gives such leave, it shall be subject to such order as to costs as the Court or Judge thinks fit.

(4) Any order made *ex parte* giving such leave shall be served on the applicant or his solicitor.

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Contents of order (O. 32, r. 20)

20. Every order under this part of this Order shall state, in addition to the names of the parties making the application—

(a) the names of the persons, other than the applicant, who concur or consent, or to whom notice of the application has been given, or who under rule 19 have obtained leave to be heard in opposition to or in support of the application;

(b) whether any notification was received from the persons to whom notice was given, and, if any was received, the purport thereof, and also the names of the person, if any, notice to whom was dispensed with; and

(c) whether the order is made subject to any and what rights, estate or interest of any person, whose concurrence or consent was refused, or who is or is not deemed to have submitted his rights or interest to be dealt with by the Court or Judge, or whose rights or interests ought in the opinion of the Court or Judge to be excepted.

Order for lease (O. 32, r. 21)

21. In cases where the Court or Judge authorizes a lease, the order shall direct that the lease shall contain such conditions as are required by section 5 of the Settled Estates Ordinance, and such other covenants, conditions and stipulations as the Court or Judge deems expedient with reference to the special circumstances, or may direct the same to contain such covenant, conditions and stipulations as may be approved by the Registrar, without directing the lease to be settled by the Judge.

Existing practice to be applied (O. 32, r. 22)

22. In all cases not provided for by the Settled Estates Ordinance or these Rules, the forms and mode of procedure and practice of the Court existing for similar proceedings shall apply to proceedings under the Ordinance.

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ORDER 33

MODE OF TRIAL

Mode of trial (O. 33, r. 1)

1. Subject to the provisions of these Rules, a cause or matter, or any question or issue arising therein, may be tried before a Judge or Registrar, with or without the assistance of assessors.

Time of trial of questions or issues (O. 33, r. 2)

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

Determining mode of trial (O. 33, r. 3)

3. (1) In every action begun by writ, an order made at the pre-trial case management shall determine the mode of trial; and any such order may be varied by a subsequent order of the Court made at or before the trial.

(2) In any such action, different questions or issues may be ordered to be tried by different modes of trial and one or more questions or issues may be ordered to be tried before the others.

Trial with assistance of assessors (O. 33, r. 4)

4. (1) A trial of a cause or matter with the assistance of assessors shall take place in such manner and on such terms as the Court may direct.

(2) The assessor shall assist the Court in dealing with a matter in which the assessor has skill and experience.

(3) An assessor shall take such part in the proceedings as the Court may direct.

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(4) The Court will, not less than fourteen days before appointing an assessor, notify each party in writing of the name of the proposed assessor and of the qualifications of the assessor.

(5) Where any person has been proposed for appointment as an assessor, any objection against him, either personally or in respect of his qualification, may be taken by any party.

(6) Any such objection shall be made in writing and filed with the Court within seven days of receipt of the notification referred to in paragraph (4) and shall be taken into account by the Court in deciding whether or not to make the appointment.

(7) The remuneration to be paid to the assessor for his services shall be determined by the Court, and shall form part of the costs of the proceedings.

(8) The Court may order any party to deposit into Court a specified sum in respect of the assessor's fees and, where it does so, the assessor will not be asked to act until the sum has been deposited.

(9) Paragraphs (7) and (8) shall have no application where the remuneration of the assessor is to be paid out of moneys provided by Parliament.

Dismissal of action after decision of preliminary issue (O. 33, r. 5)

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

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ORDER 34

PRE-TRIAL CASE MANAGEMENT

Orders and directions for just, expeditious and economical disposal of proceedings (O. 34, r. 1)

1. (1) Notwithstanding anything in these Rules, the Court may, at any time after the commencement of proceedings, of its own motion, direct any party or parties to the proceedings to appear before the Court, in order that the Court may make such order or give such direction as it thinks fit so that—

(a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with; and

(b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof.

(2) Where the Court makes orders or gives directions under paragraph (1), the Court may take into account whether or not a party has complied with any relevant pre-action protocol or practice direction for the time being issued.

(3) Where any party fails to comply with any order made or direction given by the Court under paragraph (1), the Court may dismiss the action, strike out the defence or counterclaim or make such other order as it thinks fit.

(4) The Court may, in exercising its powers under paragraph (1), make such order as to costs as it thinks fit.

(5) Any judgment, order or direction given or made against any party who does not appear before the Court when directed to do so under paragraph (1) may be set aside or varied by the Court on such terms as it thinks just.

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Pre-trial case management when directed by the Court (O. 34, r. 2)

2. (1) Without prejudice to rule 1, at any time before any action or proceedings are tried, the Court may direct parties to attend a pre-trial case management relating to the matters arising in the action or proceedings.

(2) At a pre-trial case management, the Court may consider any matter including the possibility of settlement of all or any of the issues in the action or proceedings and require the parties to furnish the Court with such information as it thinks fit, and the appropriate orders and directions that should be made to secure the just, expeditious and economical disposal of the action or proceedings, including—

(a) mediation in accordance with any practice direction for the time being issued;

(b) the period within which the plaintiff is to file a bundle of pleadings consisting of one copy of each of the following documents, bound up in proper chronological order and endorsed thereon the names, addresses and telephone numbers of the solicitors for the parties or, in the case of a party who has no solicitor, of the party himself:

(i) the writ; and

(ii) the pleadings (including any affidavits ordered to stand as pleadings), any notice or order for particulars and the particulars given;

(c) the period within which the parties are to file a bundle of all documents that will be relied on or referred to in the course of the trial by any party, including documents referred to in the witness statement of a witness;

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(d) the contents of the bundle of the documents referred to in subparagraph *(c)* shall be agreed on between all parties as far as possible and this bundle of agreed documents shall be filed by the plaintiff and marked as Part A;

(e) if the parties are unable to agree on certain documents, those documents on which agreement cannot be reached shall be included in separate bundles and each such bundle shall be filed by the plaintiff and marked as follows:

(i) Part B – documents where the authenticity is not disputed but the contents are disputed;

(ii) Part C – documents where the authenticity and contents are disputed;

(f) the documents contained in bundles shall be arranged chronologically or in some logical order and shall be paginated;

(g) care shall be taken to avoid duplication within the same bundle;

(h) the contents and format of every bundle of documents filed in pursuance of this rule shall comply with the requirements laid down in any practice direction for the time being issued;

(i) any party may apply at any time to the Court for directions as to the filing, bundling and organization of documents intended to be used at the trial of the action, and, on such application, the Court may make such order or give such direction as is necessary to achieve the just, expeditious and economical conduct of the trial of the action;

(j) the filing of a statement of agreed facts;

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(k) the filing of a statement of issues to be tried;

(l) the period within which the parties have to exchange and file their list of witnesses;

(m) the period within which the parties have to exchange and file witness statements of all witnesses who may give evidence at the trial;

(n) whether the number of witnesses shall be limited and whether the evidence-in-chief of the witnesses specified be each limited to a single witness statement;

(o) the mode in which the evidence-in-chief shall be given by any witness from whom a party is unable on sufficient cause being shown to obtain a witness statement and the manner in which such evidence shall be disclosed to the other parties prior to the trial;

(p) whether an order should be made limiting the number of expert witnesses;

(q) whether the evidence-in-chief of each expert witness should be set out in a single witness statement;

(r) whether any direction should be given for a discussion between the experts prior to the exchange of their affidavits exhibiting their reports for the purpose of requiring them to identify the issues in the proceedings and where possible, reach agreement on an issue, and if such a direction should be given, whether—

(i) to specify the issues which the experts are to discuss; and

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(ii) to direct the experts to prepare a joint statement indicating the agreed issues, the issues not agreed and a summary of the reasons for any non-agreement;

(s) the period within which objections to the contents of the witness statement or other evidence of a witness shall be taken; and

(t) an estimate of the length of the trial and the date for trial.

(3) The Court, having given directions under rule 2(2) or rule 3 may either on its own motion or upon the application of any party, if any party defaults in complying with any such directions, dismiss such action or proceedings or strike out the defence or counterclaim or enter judgment or make such order as it thinks fit.

(4) Any judgment or order made under rule 2(3) may be set aside by the Court, on the application of the party, on such terms, if any, as it thinks just.

(5) At any time during the pre-trial case management where the parties are agreeable to a settlement of some or all of the matters in dispute in the action or proceedings, the Court may enter judgment in the action or proceedings or make such order to give effect to the settlement.

Notification of pre-trial case management (O. 34, r. 3)

3. All parties shall be informed of the date and time appointed for the holding of the pre-trial case management by way of a notice in accordance with Form 59, and each party shall comply with any directions contained in such notice.

Attendance at pre-trial case management (O. 34, r. 4)

4. The parties to the action or proceedings may be represented at the pre-trial case management by their solicitor, if any, but may, if they so desire, with the leave of the Court, attend the pre-trial case management personally, at the time originally appointed or as adjourned, in addition to their solicitor.

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Adjourned pre-trial case management (O. 34, r. 5)

5. A pre-trial case management may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

Failure to attend (O. 34, r. 6)

6. (1) If, at the time appointed for the pre-trial case management, any party fails to attend, the Court may dismiss the action or proceedings or strike out the defence or counterclaim or enter judgment or make such other order as the Court thinks fit.

(2) An order made by the Court in the absence of a party concerned or affected by the order may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(3) Without prejudice to the preceding paragraphs of this rule, where any party to the action or proceedings fails to attend the pre-trial case management, the Court may, if it thinks fit, adjourn the case management.

Admissions and agreements (O. 34, r. 7)

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

Duty to give all information at pre-trial case management (O. 34, r. 8)

8. (1) The parties to the action and their solicitors shall give all such information and produce all such documents as the Court may reasonably require for the purposes of enabling the Court to properly deal with the action.

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(2) The Court may, if it appears proper to do so in the circumstances, or on the application of any party, authorize such information or documents to be given or produced to the Court without being disclosed to the other parties, but in the absence of such authority, any information or document given or produced shall be given and produced to all the parties present and represented as well as to the Court.

(3) Notwithstanding paragraphs (1) and (2), any information or document which is privileged from disclosure shall not be required to be given or produced under this rule by, or by the solicitors of, any party otherwise than with the consent of that party.

Duty to make all interlocutory applications at pre-trial case management (O. 34, r. 9)

9. (1) Any party to whom the notice to attend pre-trial case management addressed shall so far as practicable apply at the first pre-trial case management for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and shall, not less than seven days before the first pre-trial case management date, serve on the other parties a notice in Form 60 specifying the orders and directions sought.

(2) If the pre-trial case management is adjourned and any party to the proceedings desires to apply at the resumed pre-trial case management for any order or directions not asked in any notice given under paragraph (1), he shall, not less than seven days before the resumed pre-trial case management date, serve on the other parties a notice in the manner prescribed in paragraph (1) specifying those orders and directions sought in so far as they differ from the orders and directions asked for during the first pre-trial case management.

(3) Any application subsequent to the pre-trial case management and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made by a notice of application.

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Automatic directions in personal injury action (O. 34, r. 10)

10. (1) When the pleadings in any action to which this rule applies are deemed to be closed, the following directions shall take effect automatically:

(a) there shall be discovery of documents within fourteen days in accordance with Order 24 and inspection within seven days thereafter, except that where liability is admitted, discovery shall be limited to discovery by the plaintiff of any document relating to damages;

(b) (i) subject to paragraph (2), where the plaintiff intends to place reliance at the trial on expert evidence, he shall, within three months from the close of pleadings, disclose the substance of that evidence to the other parties in the form of a written report which shall be agreed, if possible, and thereafter, if not agreed, the defendant shall within three months from the date of receipt of the written report, refer the plaintiff to an expert and disclose the substance of that evidence to the other parties in the form of a written report, if necessary;

(ii) subject to *(b)*(i) above, in the event the defendant does not agree to the plaintiffs' expert report, he shall within one month of the date of receipt of the plaintiff's expert report, inform the plaintiff's solicitor of the defendant's intention to refer the plaintiff for a further written report.

(c) where any party intends to call any witness at the trial for the purpose of proving any photograph, sketch plan, or model or the condition of a vehicle or the maintenance or operation of traffic lights or any other evidence, he shall, within three months from close of pleadings, disclose the evidence thereof to the other parties;

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(d) photographs, sketch plans, models and the contents of any police accident report may be agreed, if possible;

(e) the action shall be set down within six months by a notice in Form 60;

(f) the Court shall be notified, on setting down, of the estimated length of trial; and

(g) the party setting down the action shall certify that the provisions of this rule have been complied with.

(2) Where subparagraph (1)*(b)* applies to more than one party, the reports shall be disclosed by mutual exchange, medical for medical and non-medical for non-medical, within the time provided or as soon thereafter as the reports on each side are available.

(3) Nothing in paragraph (1) shall prevent any party to an action to which this rule applies from applying to the Court for such further or different directions or orders as may, in the circumstances, be appropriate.

(4) For the purpose of this rule, documents relating to special damages include documents relating to any industrial injury, industrial disablement or sickness benefit rights, and where the claim is made under the Civil Law Act 1956, include documents relating to any claim for dependency on the deceased.

(5) This rule shall apply to any action for personal injuries except—

(a) any admiralty action; and

(b) any action where the pleadings contain an allegation of a negligent act or omission in the course of medical or dental treatment.

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(6) This rule shall not apply to actions in which any party has applied for judgment under Order 14.

Non-disclosure (O. 34, r. 11)

11. Subject to rule 8, no communication of facts disclosed or of any matter considered in the course of a pre-trial case management in any action or proceedings shall be made to the Court conducting the trial of the action or proceedings.

Abatement of action (O. 34, r. 12)

12. Where after an action has been set down for trial, the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action shall, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the Registrar.

ORDER 35

PROCEEDINGS AT TRIAL

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

1. (1) If, when the trial of an action is called on, neither party appears, the Judge may dismiss the action or make any other order as he thinks fit.

(2) If, when the trial of an action is called on, one party does not appear, the Judge may proceed with the trial of the action or any counterclaim in the absence of that party, or without trial give judgment or dismiss the action, or make any other order as he thinks fit.

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

2. (1) Any judgment or order obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

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(2) An application under this rule shall be made within fourteen days after the date of the judgment or order sought to be set aside without prejudice, however, to the power of the Court to extend the period.

(3) In considering an application made under this rule, the Court shall have regard to the following matters:

(a) the interest of justice;

(b) whether the absence of the applicant or counsel was deliberate, or due to an accident or mistake;

(c) the prospects of success of the applicant at trial;

(d) whether there is any delay in making the application;

(e) whether the conduct of the applicant has caused prejudice to the other party which cannot be compensated by an order of costs.

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

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

Order of speeches (O. 35, r. 4)

4. (1) The Judge before whom an action is tried may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule.

(2) Subject to paragraph (6), the plaintiff shall begin by opening his case.

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(3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.

(4) If the defendant elects to adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.

(5) Where there are two or more defendants who appear separately or are separately represented, then—

(a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears in the record;

(b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;

(c) if some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order aforesaid after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, one of the defendants, the defendant or that defendant, as the case may be, shall begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between him and the plaintiff, as if the references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

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(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

Inspection by Judge (O. 35, r. 5)

5. The Judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter. All such expenses shall be costs in the proceedings.

Death of party before giving of judgment (O. 35, r. 6)

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

Records to be made by Registrar or proper officer of the Court (O. 35, r. 7)

7. (1) The Registrar or the proper officer of the Court shall make a note in the Minute Book of the time at which the trial commences and terminates, and the time actually occupied on each day on which the trial takes place.

(2) At the conclusion of the trial of any action, the Registrar or the officer shall enter in the Minute Book the judgment given by the Judge, and any order made by the Judge as to costs.

(3) The certificate of the Registrar or the officer in Form 61 shall be sufficient authority for the proper officer in the Registry to enter judgment accordingly.

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List of exhibits (O. 35, r. 8)

8. (1) The Registrar or the proper officer of the Court shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number, so that all the exhibits put in by a party, or proved by a witness, are numbered in one consecutive series. In this paragraph, a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

(2) The Registrar or the officer shall cause a list in Form 62 to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office copy of that list.

(3) The list of exhibits when completed shall be attached to the pleadings and shall form part of the record of the action.

(4) For the purpose of this rule, a bundle of documents may be treated and counted as one exhibit.

Custody of exhibit after trial (O. 35, r. 9)

9. (1) The Registrar shall retain all exhibits in his custody duly marked or labelled so that in the event of an appeal, he may be able to produce the exhibits so marked or labelled at the hearing of the appeal.

(2) After the expiration of the time for appealing and if no appeal has been brought, or after the final disposal of the appeal, as the case may be, the exhibits shall be returned on request of the respective parties who put them in:

Provided that where the claim or counterclaim is for money due under a negotiable instrument which is received in evidence, the negotiable instrument shall be retained in the Registry and shall not be delivered out of the custody of the Registry except upon an order of the Registrar.

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Impounded documents (O. 35, r. 10)

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

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

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

Continuation of hearing by another Judge (O. 35, r. 11)

11. (1) When a Judge who has commenced the hearing of a cause or matter is unable through death, illness or other cause to conclude the hearing or trial, the Chief Judge may nominate another Judge to continue the hearing.

(2) Nothing herein shall prevent the Judge so nominated from recalling all or any of the witnesses or taking their evidence afresh.

ORDER 35A

WITNESS STATEMENT

(There is no Order 35A)

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ORDER 36

TRIALS BEFORE AND INQUIRIES BY REGISTRAR

Power to order trial before Registrar (O. 36, r. 1)

1. If in any cause or matter, the Court considers, upon application by any party or on its own motion, that having regard to the nature of the case it is desirable (whether on grounds of expedition, economy or convenience or otherwise) in the interest of one or more of the parties, the Court may order that the cause or matter, or any question or issue of fact arising therein, shall be tried before the Registrar.

Trial before, and inquiry by, Registrar (O. 36, r. 2)

2. The Court may, with the consent of the parties to any cause or matter, order that the cause or matter, or any question or issue of fact arising therein, be tried before the Registrar.

ORDER 37

ASSESSMENT OF DAMAGES

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

1. (1) Where judgment is given for damages to be assessed and no provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of this Order, be assessed by the Registrar, and the party entitled to the benefit of the judgment shall, within one month from the date of the judgment, apply to the Registrar for directions and the provisions of Order 34 shall, with the necessary modifications, apply.

(2) On the hearing of the application for directions, the Registrar may, in addition to making such orders as are necessary and appropriate under Order 34, give directions as to the time by which a notice of appointment for assessment of damages shall be filed and such notice upon being filed shall, notwithstanding anything in Order 62, rule 10, be served not later than seven days thereafter on the party against whom the judgment is given. Notice of appointment for assessment of damages shall be in Form 62A.

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(3) If the party entitled to the benefit of the judgment fails to comply with paragraph (1), the Court may, on the application of the party against whom the judgment is given, proceed to assess damages or make such other order as it thinks just.

(4) The attendance of witnesses and the production of documents before the Registrar in proceedings under this Order may be compelled by subpoena, and the provisions of Order 35 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at the trial.

(5) Subject to any direction given by the Registrar pursuant to this rule, the party entitled to the benefit of the judgment shall file a notice of appointment for assessment of damages within six months of the date of judgment.

(6) A party shall not file a notice of appointment for assessment of damages by the Registrar pursuant to this rule unless directions for filing and exchange of affidavit evidence pursuant to Order 34 have been given or complied with, as the case may be.

(7) If that party does not file the notice of appointment for assessment of damages within the prescribed period, any other party may apply for directions.

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

2. Where in pursuance of this Order or otherwise damages are assessed by the Registrar, he shall certify the amount of the damages.

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

3. Where any such judgment as is mentioned in rule 1 is given in default of appearance or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

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Power to order assessment by Registrar or at trial (O. 37, r. 4)

4. The Court may, in the case of any such judgment as is mentioned in rule 1, order either—

(a) that the assessment of the damages shall be made by the Registrar; or

(b) that the action shall proceed to trial before a Judge in respect of the damages,

and where the Court orders that the action shall proceed to trial, Order 34 shall apply with the necessary modifications.

Assessment of value (O. 37, r. 5)

5. Rules 1 to 4 shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly.

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

6. Where damages are to be assessed (whether under this Order or otherwise) in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

ORDER 38

EVIDENCE: GENERAL

General rule: Witness to be examined orally (O. 38, r. 1)

1. Subject to the provisions of these Rules and of the Evidence Act 1950 [*Act 56*] and any other written law relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses in open Court.

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Evidence by witness statement (O. 38, r. 2)

2. (1) Without prejudice to the generality of rule 1, and unless otherwise provided by any written law or by these Rules, at the trial of an action commenced by writ, evidence-in-chief of a witness shall be given by way of witness statement and, unless the Court otherwise orders or the parties to the action otherwise agree and subject to such directions as the Court may make, such a witness shall attend trial for cross-examination and, in default of his attendance, his witness statement shall not be received in evidence except with the leave of the Court.

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

(3) Notwithstanding paragraph (1) or (2), the Court may, if it thinks just, order that evidence of a party or any witness or any part of such evidence be given otherwise than by witness statement at the trial or hearing of any cause or matter.

(4) Unless otherwise ordered by the Court, a witness statement must be filed in Court and served on the other parties to the action not less than seven days before it is to be tendered and read at the trial.

Evidence of particular facts (O. 38, r. 3)

3. (1) Without prejudice to rule 2, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

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(2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial—

(a) by statement on oath of information or belief;

(b) by the production of documents or entries in books;

(c) by copies of documents or entries in books; or

(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular place, by the production of a specified newspaper which contains a statement of that fact.

Limitation of expert evidence (O. 38, r. 4)

4. *(There is no rule 4)*

Limitation of plans in evidence (O. 38, r. 5)

5. Unless, at or before the trial, the Court for special reasons otherwise orders, a plan, photograph or model shall not be receivable in evidence at the trial of an action unless at least ten days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

Expert evidence in action arising out of accident (O. 38, r. 6)

6. *(There is no rule 6)*

Revocation or variation of orders under rules 2 to 6 (O. 38, r. 7)

7. Any order under rules 2 to 6 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

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

8. The foregoing rules of this Order shall apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of action.

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

9. (1) A deposition taken in any cause or matter shall not be received in evidence at the trial of the cause or matter unless—

(a) the deposition was taken in pursuance of an order under Order 39, rule 1; and

(b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.

(2) A party intending to use any deposition in evidence at the trial of a cause or matter shall, within a reasonable time before the trial, give notice of his intention to do so to the other party.

(3) A deposition purporting to be signed by the person before whom it was taken shall be received in evidence without proof of the signature being the signature of that person.

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

10. (1) Office copies of a writ or originating summons, records, pleadings and documents filed in the Registry shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

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(2) Without prejudice to the provisions of any written law, every document purporting to be sealed with the seal of the High Court shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, the Court shall be deemed to be an office copy of that document without further proof unless the contrary is shown.

Evidence of consent of new trustee to act (O. 38, r. 11)

11. A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

Evidence at trial may be used in subsequent proceedings (O. 38, r. 12)

12. Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

Order to produce document at proceedings other than trial (O. 38, r. 13)

13. (1) At any stage in a cause or matter, the Court may order any person to attend any proceedings in the cause or matter and produce any document, to be specified or described in the order, the production of which appears to the Court to be necessary for the purpose of that proceedings.

(2) A person shall not be compelled by an order under paragraph (1) to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

Form and issue of subpoena (O. 38, r. 14)

14. (1) A subpoena shall be in Forms 63, 64 and 65, whichever is appropriate.

(2) The issue of a subpoena takes place upon it being sealed by an officer of the Registry.

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(3) Before a subpoena is issued, a *praecipe* in Form 66 for the issue of the subpoena shall be filed in the Registry; and the *praecipe* shall contain the name and address of the party issuing the subpoena, if he is acting in person, or the name of the firm and business address of that party's solicitor.

(4) The Registrar may, in any case, revoke a subpoena upon an application by any person or on his own motion.

(5) Any party who is dissatisfied with any decision of the Registrar made under this rule may apply to a Judge for a review of that decision.

(6) An application under this rule shall be made by a notice of application supported by an affidavit, within fourteen days of that decision.

More than one name may be included in one subpoena (O. 38, r. 15)

15. The names of two or more persons may be included in one subpoena to testify.

Subpoena to produce documents (O. 38, r. 16)

16. (1) A subpoena to produce documents shall contain the name of one person only.

(2) Any person served with a subpoena to produce documents shall sufficiently comply if he causes the document to be produced without attending personally.

Amendment to subpoena (O. 38, r. 17)

17. Where there is a mistake in any person's name or address in a subpoena, then if the subpoena has not been served, the party by whom the subpoena was issued may have the subpoena resealed in the correct form by filing a second *praecipe* under rule 14(3) endorsed with the words "Amended and resealed".

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Service of subpoena (O. 38, r. 18)

18. (1) Unless the Court otherwise orders, a subpoena shall be served personally and the service shall not be valid unless effected within twelve weeks after the date of issue of the subpoena.

(2) A subpoena shall not be served on any person outside the jurisdiction.

Duration of writ of subpoena (O. 38, r. 19)

19. A subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

Court records (O. 38, r. 20)

20. (1) A subpoena to produce documents shall not require an officer of the High Court or of any Subordinate Court to produce the records of the Court.

(2) If the original of any record of a Court or of any document filed in such Court is for any special reason required, a request for production thereof may, on the application of the party requiring the same, be addressed by the Registrar to that Court.

(3) A mark shall not be placed upon any record or document produced under this rule.

Attendance of prisoner as witness or party (O. 38, r. 21)

21. (1) An application for an order under section 30 of the Prison Act 1995 [*Act 537*] for the production before the Court of a person confined in prison may be made *ex parte* by notice of application supported by an affidavit in Form 67.

(2) Unless the Court otherwise orders, the costs of conveyance of the witness in safe custody to and from the Court shall be paid in the first instance by the party on whose application the order was issued and shall be costs in the cause.

(3) An order for the production of such person shall be in Form 68.

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Tender of expenses (O. 38, r. 22)

22. A witness shall not be compelled to attend on a subpoena unless a reasonable sum to cover his expenses of going to, remaining at, and returning from, Court is extended to him.

Affidavit of service of subpoena (O. 38, r. 23)

23. An affidavit filed for the purpose of proving the service of a subpoena shall state when, where, how and by whom the service was effected.

ORDER 39

EVIDENCE BY DEPOSITION: EXAMINERS OF THE COURT

Power to order depositions to be taken (O. 39, r. 1)

1. (1) The Court may, in any cause or matter where it appears necessary for the purposes of justice, make an order in Form 69 for the examination on oath before a Judge or the Registrar or some other person, at any place, of any person.

(2) An order under paragraph (1) may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court thinks fit.

Where person to be examined is out of jurisdiction (O. 39, r. 2)

2. (1) Where the person in relation to whom an order under rule 1 is required is out of the jurisdiction, an application may be made—

(a) for an order in Form 70 under that rule for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person; or

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(b) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for an order in Form 71 under that rule appointing a special examiner to take the evidence of that person in that country.

(2) An application may be made for the appointment as special examiner of a Malaysian consul in the country in which the evidence is to be taken or his deputy—

(a) if there subsists with respect to that country a Civil Procedure Convention providing for the taking of the evidence of any person in that country for the assistance of proceedings in the High Court; or

(b) with the consent of the Minister.

Order for issue of letter of request (O. 39, r. 3)

3. (1) Where an order is made under rule 1 for the issue of a letter of request to the judicial authorities of a country to take, or cause to be taken, the evidence of any person in that country the following provisions of this rule shall apply.

(2) The party obtaining the order shall prepare the letter of request and lodge it in the Registry, and the letter shall be in Form 72 with such variations as the order may require.

(3) If the evidence of the person to be examined is to be obtained by means of written questions, there shall be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him on examination.

(4) Unless the official language or one of the official languages of the country in which the examination is to be taken in is English, each document lodged under paragraph (2) or (3) shall be accompanied by a translation of the document in the official language of that country or, if there is more than one official language of that

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country, in any of those languages which is appropriate to the place in that country where the examination is to be taken.

(5) Every translation lodged under paragraph (4) shall be certified by the person making it to be the correct translation and the certificate shall contain a statement of that person's full name, address and qualifications for making the translation.

(6) The party obtaining the order shall, when he lodges in the Registry the documents mentioned in paragraphs (2) to (5), also file in the Registry an undertaking in Form 73 signed by him or his solicitor to be responsible personally for all expenses incurred by the Minister in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the office of the Minister and to produce a receipt for the payment to the proper officer of the Registry.

Enforcing attendance of witness (O. 39, r. 4)

4. Where an order has been made under rule 1—

(a) for the examination of any person before the Registrar or some other person (which is referred to as "the examiner" in this rule and rules 5 to 14); or

(b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him of any document at the examination may be enforced by subpoena in like manner as the attendance of a witness and the production by a witness of a document at a trial may be enforced.

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Refusal of witness to attend, be sworn (O. 39, r. 5)

5. (1) If any person, having been duly summoned by subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document therein, a certificate of his refusal or failure, signed by the examiner, shall be filed in the Registry, and upon the filing of the certificate the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn or to answer any question or produce any document, as the case may be.

(2) An application for an order under this rule may be made *ex parte*.

(3) If the Court makes an order under this rule, it may order the person against whom the order is made to pay any costs occasioned by his refusal or failure.

(4) A person who wilfully disobeys any order made against him under paragraph (1) is guilty of contempt of Court.

Appointment of time and place for examination (O. 39, r. 6)

6. (1) The examiner shall give the party on whose application the order for examination was made a notice appointing the place and time at which, subject to any application of the parties, the examination shall be taken, and such time shall, having regard to the convenience of the persons to be examined and all the circumstances of the case, be as soon as practicable after the making of the order.

(2) The party to whom a notice under paragraph (1) is given shall, on receiving it, forthwith give notice of the appointment to all the other parties.

Examiner to have certain documents (O. 39, r. 7)

7. The party on whose application the order for examination before the examiner was made shall furnish the examiner with copies of such of the documents in the cause or matter as are necessary to inform the examiner of the questions at issue in the cause or matter.

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Conduct of examination (O. 39, r. 8)

8. (1) Subject to any direction contained in the order for examination—

(a) any person ordered to be examined before the examiner may be cross-examined and re-examined; and

(b) the examination, cross-examination and re-examination of persons before the examiner shall be conducted in like manner as at the trial of a cause or matter.

(2) The examiner may put any question to any person examined before him as to the meaning of any answer made by that person or as to any matter arising in the course of the examination.

(3) The examiner may, if necessary, adjourn the examination from time to time.

Examination of additional witnesses (O. 39, r. 9)

9. The examiner may, with the written consent of all the parties to the cause or matter, take the examination of any person in addition to those named or provided for in the order for examination, and shall annex such consent to the original deposition of that person.

Objections to questions (O. 39, r. 10)

10. (1) If any person being examined before the examiner objects to answer any question put to him, or if objection is taken to any such question, that question, the ground for the objection and the answer to any such question to which objection is taken shall be set out in the deposition of that person or in a statement annexed thereto.

(2) The validity of the ground for objecting to answer any such question or for objecting to any such question shall be decided by the Court and not by the examiner, but the examiner shall state to the parties his opinion thereon, and the

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statement of his opinion shall be set out in the deposition or in a statement annexed thereto.

(3) If the Court decides against the person taking the objection, it may order him to pay the costs occasioned by his objection.

Taking of depositions (O. 39, r. 11)

11. (1) The deposition of any person examined before the examiner shall be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner but, subject to paragraph (2) and rule 10(1), the deposition need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.

(2) The examiner may direct the exact words of any particular question and the answer thereto to be set out in the deposition if that question and answer appear to him to have special importance.

(3) The deposition of any person shall be read to him, and he shall be asked to sign it, in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with the foregoing provision. If a person refuses to sign a deposition when asked under this paragraph to do so, the examiner shall sign the deposition.

(4) The original deposition of any person, authenticated by the signature of the examiner before whom it was taken shall be sent by the examiner to the Registry and shall be filed therein.

Time taken by examination to be endorsed on depositions (O. 39, r. 12)

12. Before sending any deposition to the Registry, the examiner shall endorse on the deposition a statement signed by him of the time occupied in taking the examination and the fees to the paid in respect thereof.

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Special report by examiner (O. 39, r. 13)

13. The examiner may make a special report to the Court with regard to any examination taken before him and with regard to the absence or conduct of any person thereat, and the Court may direct such proceedings to be taken, or make such order, on the report as it thinks fit.

Order for payment of examiner's fees (O. 39, r. 14)

14. (1) If the fees and expenses due to an examiner are not paid, he may report that fact to the Court, and the Court may make an order against the party on whose application the order for examination was made to pay the examiner the fees and expenses due to him in respect of the examination.

(2) An order under this rule shall not prejudice any determination on the taxation of costs or otherwise as to the party by whom the costs of the examination are ultimately to be borne.

Perpetuation of testimony (O. 39, r. 15)

15. (1) Witnesses shall not be examined to perpetuate testimony unless an action has been begun for the purpose.

(2) Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity or office, or to any estate or interest in any real or personal property, the right or claim to which cannot be brought to trial by him before the happening of such event, may begin an action to perpetuate any testimony which may be material for establishing such right or claim.

(3) No action to perpetuate the testimony of witnesses shall be set down for trial.

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ORDER 40

COURT EXPERT

Appointment of expert to report on certain question (O. 40, r. 1)

1. (1) In any cause or matter in which any question for an expert witness arises, the Court may at any time, on its own motion or on the application of any party, appoint an independent expert or, if more than one such question arises, two or more such experts, to inquire and report upon any question of fact or opinion not involving questions of law or of construction.

(2) An expert appointed under this Order or under Order 32 rule 12 shall be referred to as a "Court expert".

(3) Any Court expert in a cause or matter shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court.

(4) The question to be submitted to the Court expert and the instructions, if any, given to him shall, failing agreement between the parties, be settled by the Court.

(5) In this rule "expert", in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence.

Report of Court expert (O. 40, r. 2)

2. (1) The Court expert shall send his report to the Court, together with such number of copies thereof as the Court may direct, and the Registrar shall send copies of the report to the parties or their solicitors.

(2) The Court may direct the Court expert to make a further or supplemental report.

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(3) Any part of a Court expert's report which is not accepted by all the parties to the cause or matter in which it is made shall be treated as information furnished to the Court and be given such weight as the Court thinks fit.

Experiments and tests (O. 40, r. 3)

3. If the Court expert is of the opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him to make a satisfactory report, he shall inform the parties or their solicitors and shall, if possible, make an arrangement with them as to the expenses involved, the person to attend and other relevant matters and if the parties are unable to agree on any of those matters, it shall be settled by the Court.

Cross-examination of Court expert (O. 40, r. 4)

4. Any party may, within fourteen days after receiving a copy of the Court expert's report, apply to the Court for leave to cross-examine the expert on his report, and on that application, the Court shall make an order for the cross-examination of the expert by all the parties either—

(a) at the trial; or

(b) before an examiner at such time and place as may be specified in the order.

Remuneration of Court expert (O. 40, r. 5)

5. (1) The remuneration of the Court expert shall be fixed by the Court and shall include a fee for his report and a proper sum for each day during which he is required to be present either in Court or before an examiner.

(2) Without prejudice to any order providing for payment of the Court expert's remuneration as part of the costs of the cause or matter, the parties shall be jointly and severally liable to pay the amount fixed by the Court for his remuneration, but where the appointment of a Court expert is opposed the Court may, as a condition of

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making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the Court thinks fit.

Calling of expert witnesses (O. 40, r. 6)

6. Where a Court expert is appointed in a cause or matter, any party may, on giving to the other party a reasonable time before the trial notice of his intention to do so, call one expert witness to give evidence on the question reported on by the Court expert but no party may call more than one such witness without the leave of the Court, and the Court shall not grant leave unless it considers it reasonable in the circumstances of the case.

ORDER 40A

EXPERTS OF PARTIES

Limitation of expert evidence (O. 40A, r. 1)

1. (1) The Court may, at or before the trial of any action, by order limit the number of expert witnesses who may be called at the trial to such number as it may specify.

(2) A reference to an "expert" in this Order is a reference to an expert who has been instructed to give or prepare evidence for the purpose of Court proceedings.

Expert's duty to the Court (O. 40A, r. 2)

2. (1) It is the duty of an expert to assist the Court on the matters within his expertise.

(2) This duty overrides any obligation to the person from whom he has received instructions or by whom he is paid.

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Requirements of expert's evidence (O. 40A, r. 3)

3. (1) Unless the Court otherwise directs, expert evidence to be given at the trial of any action, is to be given in a written report signed by the expert and exhibited in an affidavit sworn to or affirmed by him testifying that the report exhibited is his and that he accepts full responsibility for the report.

(2) An expert's report shall—

(a) give details of the expert's qualifications;

(b) give details of any literature or other material which the expert witness has relied on in making the report;

(c) contain a statement setting out the issues which he has been asked to consider and the basis upon which the evidence was given;

(d) if applicable, state the name and qualifications of the person who carried out any test or experiment which the expert has used for the report and whether or not such test or experiment has been carried out under the expert's supervision;

(e) where 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 opinion;

(f) contain a summary of the conclusions reached;

(g) contain a statement of belief of correctness of the expert's opinion; and

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(h) contain a statement that the expert understands that in giving his report, his overriding duty is to the Court and that he complies with that duty.

Written questions to expert (O. 40A, r. 4)

4. (1) A party may with the leave of the Court put to an expert instructed by another party written questions about his report.

(2) An application for leave to put questions to an expert about his report shall be made within fourteen days of service of the expert's affidavit exhibiting his report, or such longer period as the Court may allow.

(3) The written questions under paragraph (1) shall be for the purpose only of clarification of the report.

(4) An expert's answers to the written questions put to him under paragraph (1) shall be in writing and provided within such time as the Court may direct and shall be treated as part of the expert's report.

(5) Where a party has put a question to an expert instructed by another party in accordance with this rule and the expert does not answer the question or does not, in the opinion of the Court, answer the question adequately within the time provided, the Court may make such order as it thinks just, including all or any of the following:

(a) that the party who instructed the expert may not rely on the evidence of that expert;

(b) that the party who instructed the expert may not recover the costs of that expert from any other party; or

(c) that the expert is to answer or provide a further and better answer to the question, as the case may be.

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Discussions between experts (O. 40A, r. 5)

5. (1) The Court may, at any stage, direct a discussion between experts for the purpose of requiring them to—

(a) identify the issues in the proceedings; and

(b) where possible, reach agreement on an issue.

(2) The Court may specify the issues which the experts shall discuss.

(3) The Court may direct that following a discussion between the experts, they shall prepare a statement for the Court showing—

(a) the issues on which they agree; and

(b) the issues on which they disagree and a summary of their reasons for disagreeing.

(4) The contents of the discussions between the experts shall not be referred to at the trial unless the parties agree.

(5) Where the experts reach agreement on an issue during their discussions, the agreement shall not bind the parties, unless the parties expressly agree to be bound by the agreement.

ORDER 41

AFFIDAVITS

Form of affidavit (O. 41, r. 1)

1. (1) Subject to paragraphs (2) and (3), every affidavit sworn in a cause or matter shall be entitled in that cause or matter.

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(2) Where a cause or matter is entitled in more than one matter, it is sufficient to state the first matter followed by the words "and other matters", and where a cause or matter is entitled in a matter and between parties, that part of the title which consists of the matter may be omitted.

(3) Where there are more plaintiffs than one, it is sufficient to state the full name of the first plaintiff followed by the words "and others", and similarly with respect to defendants.

(4) Every affidavit shall be expressed in the first person and shall state the place of residence of the deponent and his occupation or, if he has none, his description, and if he is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit shall state that fact:

Provided that in the case of a deponent who is giving evidence in a professional, business or other occupational capacity, the affidavit may, instead of stating the deponent's place of residence, state the address of which he works, the position he holds and the name of his firm or employer, if any.

(5) Every affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(6) Dates, sums and other numbers shall be expressed in an affidavit in figures and not in words.

(7) Every affidavit shall be signed by the deponent and the jurat shall be completed and signed by the person before whom it is sworn.

(8) A jurat shall be in one of the forms in Form 74.

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Affidavit by two or more deponents (O. 41, r. 2)

2. (1) Where an affidavit is made by two or more deponents, the names of the persons making the affidavit shall be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it is sufficient to state that it was sworn by both (or all) of the "abovenamed" deponents.

(2) When the oath is administered to deponents in different languages, there shall be a separate jurat for those sworn in each language.

Affidavit by illiterate or blind person (O. 41, r. 3)

3. Where it appears to the person administering the oath that the deponent is illiterate or blind, he shall certify in the jurat that—

(a) the affidavit was read in his presence to the deponent;

(b) the deponent seemed perfectly to understand it; and

(c) the deponent made his signature or mark in his presence,

and the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

Use of defective affidavit (O. 41, r. 4)

4. An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

Contents of affidavit (O. 41, r. 5)

5. (1) Subject to Order 14, rules 2(2) and 4(2), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.

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(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information of belief with the sources and grounds hereof.

Scandalous matter in affidavits (O. 41, r. 6)

6. The Court may order to be struck out of any affidavit any matter which is scandalous, irrelevant or otherwise oppressive.

Alterations in affidavits (O. 41, r. 7)

7. (1) An affidavit which has in the jurat or body thereof any interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

(2) An alteration shall not be made in any affidavit after it has been filed, but, before an affidavit is filed alterations may be made therein and the affidavit shall be re-sworn with a further jurat commencing with the word "re-sworn" added.

Affidavit not to be sworn before solicitor of party (O. 41, r. 8)

8. An affidavit is not sufficient if sworn before the solicitor of the party on whose behalf the affidavit is to be used or before any member of the firm of that solicitor.

Filing of affidavits (O. 41, r. 9)

9. (1) Except as otherwise provided by these Rules, every affidavit shall be filed in the Registry.

(2) Every affidavit shall be endorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so endorsed may not be filed or used without the leave of the Court.

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Use of original affidavit or office copy (O. 41, r. 10)

10. (1) Subject to paragraph (2), an original affidavit may be used in proceedings with the leave of the Court, notwithstanding that it has not been filed in accordance with rule 9.

(2) An original affidavit may not be used in any proceedings unless it has previously been stamped with the appropriate fee.

(3) Where an original affidavit is used, then, unless the party whose affidavit it is undertakes to file it, he shall immediately after it is used file with the proper officer in the Registry.

(4) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

Document annexed to affidavit (O. 41, r. 11)

11. (1) Any document to be used in conjunction with an affidavit shall be exhibited and a copy thereof annexed to the affidavit.

(2) Any exhibit to an affidavit shall be identified by a certificate of the person before whom the affidavit is sworn. The certificate shall be entitled in the same manner as the affidavit and rule 1(1), (2) and (3) shall apply accordingly.

Affidavit taken outside Malaysia admissible without proof of seal (O. 41, r. 12)

12. A document purporting to have affixed or impressed thereon or subscribed thereto the seal or signature of a Court, Judge, notary public or person having authority to administer oaths in a Commonwealth country and in the case of any other country the seal or signature of a consular officer of a Commonwealth country in testimony of an affidavit being taken before it or him shall be admitted in evidence without proof of the seal or signature being the seal or signature of that Court, Judge, notary public or person.

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Language of affidavit (O. 41, r. 13)

13. An affidavit of a deponent affirmed outside the jurisdiction may be filed in the English language and, unless the Court otherwise orders, need not be accompanied by a translation in the national language.

ORDER 42
JUDGMENT AND ORDERS

Delivering judgment (O. 42, r. 1)

1. (1) Every judgment, after the hearing of a cause or matter in open Court, shall, subject to paragraphs (3) and (4), be pronounced in open Court either on the conclusion of the hearing or on a subsequent day of which notice shall be given to the parties.

(2) Where a cause or matter is heard in Chambers, the Judge hearing it may, subject to paragraphs (3) and (4), pronounce the judgment in Chambers, or, if he thinks fit, in open Court.

(3) Whenever a written judgment is to be delivered, the Court may deliver it by directing copies thereof to be handed to the parties or their solicitors upon payment of the appropriate charges therefor, and the original thereof signed by the Judge shall be filed.

(4) When a Judge who has heard any cause or matter is unable through death, illness or other cause to pronounce judgment, the judgment written by him may be pronounced by any other Judge in open Court or in Chambers, as the case may be, and such other Judge may deliver it in Chambers by directing copies thereof to be handed to the parties or their solicitors upon payment of the appropriate charges therefor, and the original thereof signed by the Judge who wrote it shall be filed.

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Judgment in proceedings heard in camera (O. 42, r. 1A)

1A. Where proceedings are heard in camera pursuant to any written law, any judgment pronounced or delivered in such proceedings shall not be available for public inspection except that the Court may, on such terms as it may impose, allow an inspection of such judgment by, or a copy thereof to be furnished to, a person who is not a party to the proceedings.

Written judgment to be filed (O. 42, r. 2)

2. *(There is no rule 2)*

Inspection of judgment (O.42, r. 2A)

2A. Subject to rule 1A, a copy of every judgment delivered in any cause or matter heard in open Court shall be available for public inspection upon payment of the prescribed fee and a copy thereof shall be handed to any member of the public upon payment of the appropriate charges therefor, and nothing in Order 60, rule 4, shall apply to this rule.

Judgment of absent Judge (O. 42, r. 3)

3. *(There is no rule 3)*

Entry of judgment in Cause Book (O. 42, r. 4)

4. The proper officer in the Registry shall enter in the cause book a minute of judgment or final order given or made by the Court.

Form of judgment (O. 42, r. 5)

5. (1) If, in the case of any judgment, a form thereof is prescribed in Form 75, the judgment shall substantively be in that form.

(2) *(There is no paragraph (2))*

(3) An order shall be marked with the name of the Judge, Magistrate or the Registrar by whom it was made and shall be sealed.

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Judgment requiring act to be done: Time for doing it (O. 42, r. 6)

6. (1) Subject to paragraph (2), a judgment or order which requires a person to do an act shall specify the time after service of the judgment or order, or some other time, within which the act is to be done.

(2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any immovable property or deliver any movable property, a time within which the act is to be done need not be specified in the judgment or order in accordance with paragraph (1), but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

Date from which judgment or order takes effect (O. 42, r. 7)

7. (1) A judgment or order of the Court takes effect from the day of its date.

(2) Such a judgment or order shall be dated as of the day on which it is pronounced, given or made, unless the Court orders it to be dated as of some other earlier or later day, in which case it shall be dated as of that other day.

Preparation of judgment or order (O. 42, r. 8)

8. (1) Where the party in whose favour a judgment or order is given or made is represented by a solicitor, a copy of the draft shall be submitted for approval to the solicitor, if any, of the other party who shall within two days of the receipt thereof, or within such extended or abridged time as may in any case be allowed by the Registrar, return such copy with his signed consent or any required amendments thereto.

(2) When the solicitor omits to return the copy of the draft within the time prescribed, he shall be deemed to have consented to the terms thereof.

(3) In any case where the solicitors concerned are unable to agree upon the draft, any one of them may obtain an appointment before the Registrar, of which notice shall be given to the other, to settle the terms of the judgment or order.

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(4) Every judgment or order shall be settled by the Registrar, but in the case of a judgment or order made by a Judge or Magistrate, any party may require the matter in dispute to be referred to the Judge or Magistrate for his determination.

(5) Where the other party has no solicitor, the draft shall be submitted to the Registrar.

Orders required to be drawn up (O. 42, r. 9)

9. (1) Subject to paragraph (2), every order of the Court shall be drawn up unless the Court otherwise directs.

(2) An order—

(a) which—

(i) extends the period within which a person is required or authorized by these rules, or by any judgment, order or direction, to do an act; or

(ii) grants leave for the doing of any of the acts mentioned in paragraph (3); and

(b) which neither imposes any special term nor includes any special direction other than a direction as to costs,

need not be drawn up unless the Court otherwise directs.

(3) The acts referred to in subparagraph (2)*(a)*(ii) are—

(a) the amendment of a writ or originating summons or a pleading;

(b) the filing of any document; and

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(c) any act to be done by an officer of the Court, other than a solicitor.

Drawing up and entry of judgment and order (O. 42, r. 10)

10. (1) Where a judgment given in a cause or matter is presented for entry in accordance with this rule at the Registry, it shall be entered by an officer of the Registry in the book kept for the purpose.

(2) The party seeking to have such a judgment entered shall draw up the judgment and present it to the proper officer of the Registry for entry.

(3) On entering any such judgment, the proper officer shall file the judgment and return a duplicate thereof to the party who presented it for entry.

(4) Every order required to be drawn up shall be drawn up by the party in whose favour the order has been made and if that party fails to draw up the order within seven days after it is made, any other party affected by the order may draw it up.

(5) The order referred to in paragraph (4) shall, when drawn up, be produced at the Registry, together with a copy thereof, and when passed by the proper officer, the order, sealed with the seal of the Court, shall be returned to the party producing it and the copy shall be lodged in the Registry.

Duplicates of judgment and order (O. 42, r. 11)

11. (1) Not less than one clear day after a judgment or order has been filed, a duplicate thereof shall be supplied on payment of the prescribed fee out of the Registry to any party in the proceedings.

(2) The duplicate of a judgment or order may be a carbon copy of the original except that if the Registrar so directs, the duplicate of every judgment or order of such class as he directs, shall be a photographic copy or a copy produced by type lithography or other similar process.

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(3) Before a duplicate of a judgment or order is issued, it shall be sealed and noted with the number of the judgment, the date of entry and the amount of any stamp on the original.

(4) Where by any of these rules or any order of the Court the original judgment or order is required to be produced or served, it is sufficient to produce or serve the duplicate.

(5) A further duplicate of a judgment or order may, on payment of the prescribed fee, be issued if the registry is satisfied that the duplicate has been lost and that the applicant for a further duplicate is entitled to it.

(6) A judgment or order shall not be amended except on production of the duplicate thereof last issued, and if the judgment or order is amended, the duplicate so issued shall be similarly amended, and the amendment sealed, under the direction of the Registrar.

Interest on judgment debts (O. 42, r. 12)

12. Subject to rule 12A, except when it has been otherwise agreed between the parties, every judgment debt shall carry interest at such rate as the Chief Justice may from time to time determine or at such other rate not exceeding the rate aforesaid as the Court determines, such interest to be calculated from the date of judgment until the judgment is satisfied.

Late payment charge on judgment debts arising from financial transactions in accordance with Shariah (O. 42, r. 12A)

12A. (1) Every judgment debt arising from financial transactions in accordance with Shariah shall carry a late payment charge calculated from the date of judgment until the judgment debt is fully satisfied at the rate provided under Order 42, rule 12 and subject to the following conditions:

(a) the judgment creditor shall only be entitled to *ta'widh* as a result of late payment;

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(b) the amount of late payment charge shall not exceed the outstanding principal amount; and

(c) if the amount of *ta'widh* is less than the amount of late payment charge, the balance shall be channelled to any charitable organizations as determined by the Shariah Advisory Council.

(2) For the purpose of this rule—

(a) "Shariah Advisory Council" means the Shariah Advisory Council established under the Central Bank of Malaysia Act 2009 [*Act 701*] and the Capital Markets and Services Act 2007 [*Act 671*]; and

(b) "*ta'widh*" means compensation for actual loss and shall be calculated at the rate determined by the Shariah Advisory Council.

Setting aside or varying judgment and orders (O. 42, r. 13)

13. Save as otherwise provided in these Rules, where provisions are made in these Rules for the setting aside or varying of any order or judgment, a party intending to set aside or to vary such order or judgment shall make an application to the Court and serve it on the party who has obtained the order or judgment within thirty days after the receipt of the order or judgment by him.

ORDER 43

ACCOUNTS AND INQUIRIES

Summary order for account (O. 43, r. 1)

1. (1) Where a writ is endorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has entered an appearance or after the time limited for appearing, apply for an order under this rule.

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(2) A defendant to an action begun by writ who has served a counterclaim, which includes a claim for an action or a claim which necessarily involves taking an account, on—

(a) the plaintiff;

(b) any other party; or

(c) any person who becomes a party in accordance with such service, may apply for an order under this rule.

(3) An application under this rule shall be made by notice of application, if the Court so directs, shall be supported by affidavit or other evidence.

(4) On the hearing of the application, the Court may, unless satisfied by the defendant by affidavit or otherwise that there is some preliminary question to be tried, order that an account be taken and may also order that any amount certified on taking the account to be due to either party be paid to him within a time specified in the order.

Court may direct taking of account (O. 43, r. 2)

2. (1) The Court may, on an application made by notice of application at any stage of the proceedings in a cause or matter, direct any necessary account or inquiries to be taken or made in Form 76.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

Directions as to manner of taking account (O. 43, r. 3)

3. (1) Where the Court orders an account to be taken it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched.

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(2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking the account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

(3) Where the Court orders an account to be taken and no provision is made in the order for the manner in which the account is to be taken, the party entitled to the account shall, within one month from the date of the order, apply to the Registrar for directions.

(4) On the hearing of the application for directions under paragraph (3), the Registrar may, in addition to making such orders as are necessary and appropriate, give directions as to the time by which the account referred to in rule 4, a notice referred to in rule 5 or a notice of appointment for the taking of the account in Form 76A shall be filed.

(5) Notwithstanding Order 62, rule 10, a notice of appointment for the taking of the account referred to in paragraph (4) shall, not later than seven days after it has been filed, be served on the party making the account.

(6) If the party entitled to the account does not file the application for directions within the period referred to in paragraph (3), any other party may do so or apply for the Court to exercise its powers under rule 7.

Account to be made and verified (O. 43, r. 4)

4. (1) Where an account has been ordered to be taken, the accounting party shall make out his account and, unless the Court otherwise directs, verify it by an affidavit to which the account shall be exhibited.

(2) The items on each side of the account shall be numbered consecutively.

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(3) Unless the order for the taking of the account otherwise directs, the accounting party shall lodge the account with the Registry and shall at the same time notify the other parties that he has done so and of the filing of any affidavit verifying the account and of any supporting affidavit.

Notice to be given of alleged omissions in account (O. 43, r. 5)

5. Any party who seeks to charge an accounting party with an amount beyond that which he has by his account admitted to have received or who alleges that any item in his account is erroneous in respect of amount or in any other respect shall give him notice thereof stating, so far as he is able, the amount sought to be charged, with brief particulars thereof or, as the case may be, the grounds for alleging that the item is erroneous.

Filing documents prior to the taking of accounts or making of inquiries (O. 43, r. 5A)

5A. (1) The following documents shall be filed not less than seven days before the taking of any account or making of an inquiry:

(a) the originals of the affidavits of the evidence-in-chief of all witnesses, including the affidavit verifying the accounts; and

(b) a bundle of all the documents that will be relied on or referred to in the course of the taking of the account or making of the inquiry by any party, including any documents that are exhibited to the affidavits of the evidence-in-chief of all witnesses.

(2) Each party shall file the affidavits of evidence-in-chief of that party's witnesses.

(3) The contents of the bundle of documents referred to in subparagraph (1) (b) shall be agreed on between the parties as far as possible, and this bundle of agreed documents shall be filed by the accounting party lodging the account pursuant to rule 4(3).

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(4) If the parties are unable to agree on the inclusion of certain documents, those documents on which agreement cannot be reached shall be included in separate bundles, and each such bundle shall be filed by the party that intends to rely on or refer to the documents in that bundle at the same time as the bundle of documents referred to in paragraph (3).

(5) For the purposes of this rule, all documents contained in bundles shall be arranged chronologically or in some logical order and shall be paginated.

(6) The contents and format of every bundle of documents filed pursuant to this rule shall comply with the requirements laid down in any practice directions for the time being issued by the Registrar.

Allowances (O. 43, r. 6)

6. In taking an account directed by any judgment or order, all just allowances shall be made without any direction to that effect.

Delay in prosecution of accounts (O. 43, r. 7)

7. (1) If it appears to the Court that there is undue delay in the prosecution on any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.

(2) The Court may direct any party to take over the conduct of the proceedings in question and to carry out any directions made by an order under this rule and to make such order as to costs as the Court deems fit.

Distribution of fund before all persons entitled are ascertained (O. 43, r. 8)

8. Where some of the persons entitled to share in a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the other persons so entitled, the Court may order or allow immediate payment of their shares to the persons

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ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

ORDER 44

PROCEEDINGS UNDER JUDGMENTS AND ORDERS ON THE EQUITY SIDE

Application to proceedings under an order (O. 44, r. 1)

1. In this Order, references to a judgment includes references to an order.

Documents to be filed at registry: Application to proceed (O. 44, r. 2)

2. (1) Where in order to carry out any directions contained in a judgment given in a cause or matter it is necessary to proceed in Chambers under the judgment, the party entitled to prosecute the judgment shall, within ten days after entry of the judgment, take out a notice of application to proceed under the judgment.

(2) If the party entitled to prosecute the judgment fails to comply with paragraph (1), any other party to the cause or matter shall, unless the Court otherwise directs, become entitled to prosecute the judgment.

(3) The party entitled to prosecute the judgment shall take out a notice of application to proceed under the judgment.

Service of notice of judgment on person not a party (O. 44, r. 3)

3. (1) Where in an action for—

(a) the administration of the estate of a deceased person;

(b) the execution of a trust; or

(c) the sale of any property,

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the Court gives a judgment which affects the rights or interests of persons not parties to the action or directs any account to be taken or inquiry made, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct that a notice of the judgment to be served on any person interested in the estate or under the trust or in the property, as the case may be; and any person duly served with a notice of the judgment in accordance with this rule shall, subject to paragraph (5), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(2) The Court may direct a sealed notice of judgment to be served personally or in such manner as it may specify on the person required to be served, or if it appears to the Court that it is impracticable for any reason to serve such notice on any person it may dispense with service of the notice on that person. Before a notice of the judgment is served, the notice shall be endorsed with a memorandum in Form 77.

(3) Where no appearance has been entered by a person served with a notice of the judgment, the party prosecuting the judgment shall file a certificate in the Registry to that effect.

(4) Where the Court dispenses with the service of a notice of a judgment on any person, it may also order that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly, except where the judgment has been obtained by fraud or non-disclosure of material facts.

(5) A person served with notice of a judgment may, within one month after service of the notice on him, and without entering an appearance, apply to the Court to discharge, vary or add to the judgment.

(6) A person served with a notice of a judgment may, after entering an appearance to the notice, attend the proceedings under the judgment.

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(7) Order 12, rules 1 to 3 shall apply in relation to entry of appearance to a notice of judgment as if the judgment were a writ, and the person by whom the notice is served were the plaintiff and the person on whom it is served a defendant.

Directions by Court (O. 44, r. 4)

4. (1) The Court hearing the application to proceed shall give directions with respect to the proceedings to be taken under the judgment and the conduct thereof, including, in particular, directions with respect to—

(a) the manner in which any account or enquiry is to be prosecuted;

(b) the evidence to be adduced in support thereof;

(c) the parties required to attend all or any part of the proceedings; and

(d) the time within which each proceeding is to be taken,

and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under this rule.

Court may require parties to be represented by same solicitor (O. 44, r. 5)

5. Where on the hearing of the application to proceed or at any stage of the proceedings under the judgment it appears to the Court that the interests of the parties can be classified, it may require the parties constituting each or any class to be represented by the same solicitor, and where the parties constituting any class cannot agree on the solicitor to represent them, Court may nominate a solicitor to represent the class in the proceedings.

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Court may require parties to be represented by different solicitors (O. 44, r. 6)

6. Where on the hearing of the application to proceed or at any stage of the proceedings under the judgment it appears to the Court that two or more of the parties who are represented by the same solicitor ought to be separately represented, it may require them to be so represented and may adjourn the proceedings until they are.

Leave to attend proceedings (O. 44, r. 7)

7. Any party to the proceedings under the judgment who has not been directed to attend may apply to the Court for leave to attend any part of the proceedings at the cost of the estate or other property to which the proceedings relate and to have the conduct of that part either in addition to or in substitution for any other party.

Judgment requiring deed to be settled by Court: Directions (O. 44, r. 8)

8. Where the judgment directs any deed or other instrument to be settled by the Judge in Chambers, or to be settled by him if the parties to the deed fail to agree to it, the Court hearing the application to proceed under the judgment shall direct—

(a) that within such period as it may specify the party entitled to prepare a draft of the deed shall serve a copy of the draft on every other party who will be a party to the deed; and

(b) that within eight days, or such other period, if any, as it may specify, after service on may such other party of a copy of the draft that party shall serve on the party by whom the draft was prepared a written statement of his objections, if any, to the draft.

Application of rules 10 to 17 (O. 44, r. 9)

9. Rules 10 to 17 apply—

(a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other liabilities of the deceased's estate to be taken or any inquiry for next-of-kin or other unascertained claimants to be made; and

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(b) where the proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made,

and those rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs any account of debts or other liabilities to be taken or any inquiry to be made.

Advertisements for creditors and other claimants (O. 44 r. 10)

10. (1) On the hearing of the application to proceed, the Court may direct the issue of advertisements for creditors in Form 78 or other claimants in Form 79 and, in deciding whether to do so, shall have regard to any advertisement previously issued by the personal representatives or trustees concerned.

(2) Every such advertisement shall be prepared by the party prosecuting the judgment, and—

(a) in the case of an advertisement for creditors, shall be signed by that party's solicitor or, if he has no solicitor, by the Registrar; and

(b) in the case of an advertisement for other claimants, shall be submitted to the Registrar and if approved by the Registrar shall be signed by him.

(3) The Court shall fix the time within which, and the person to whom, any claimant is to send his name and address and particulars of his claim, and that time and the name and address of that person shall be stated in the advertisement.

Failure to claim within specified time (O. 44, r. 11)

11. A claimant who fails to send full particulars of his claim to the person named in any advertisement directed by the Court within the time therein specified shall not be entitled to prove his claim except with the leave of the Court, and in granting leave the Court may impose such terms as to costs and otherwise as it thinks just.

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Examination of claims (O. 44, r. 12)

12. (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct shall—

(a) examine the claims of persons claiming to be creditors of the estate and determine, so far as he is able, to which of such claims the estate is liable; and

(b) at least seven clear days before the time appointed for adjudicating on claims, make an affidavit in Form 80 verifying the lists of—

(i) claims sent in pursuance of any advertisement;

(ii) claims which have been received by any of the personal representatives otherwise that in pursuance on an advertisement; and

(iii) debts of the deceased at the time of his death in respect of which no claim has been received but which are or may still be due and which have come to the knowledge of any of the personal representatives.

(2) Where an inquiry for next-of-kin or other unascertained claimants has been directed, such party as the Court may direct shall—

(a) examine the claims and determine, so far as he is able, which of them are valid claims; and

(b) at least seven clear days before the time appointed for adjudicating on claims, make an affidavit in Form 81 verifying the lists of—

(i) claims sent in pursuance of any advertisement; and

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(ii) claims received by any of the personal representatives or trustees concerned, otherwise than in pursuance of an advertisement, or which have come to his knowledge.

(3) The affidavit required by paragraph (1) or (2) shall, as the circumstances of the case require, specify, in relation to the claims of creditors, the claims and debts which in the belief of the deponent are liabilities of the estate of the deceased and ought to be allowed, in whole or in part, and, in relation to the claims of persons other than creditors, the claims which in the belief of the deponent are valid claims, with, in either case, the reasons for such belief.

(4) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they shall join with the party directed to examine them in making the affidavit required by this rule.

Adjudication on claims (O. 44, r. 13)

13. (1) The Court adjudicating on the claims—

(a) may allow such claim after or without proof thereof;

(b) may direct any such claim to be investigated in such manner as it thinks fit;

(c) may require any claimant to attend and prove his claim or to furnish further particulars or evidence of it.

(2) Where the Court exercises the power conferred by subparagraph (1)*(c)* in relation to any claimant such party as the Court may direct shall serve on that claimant a notice requiring him—

(a) to file an affidavit in support of his claim within such time, not being less than seven days after service of the notice, as may be

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specified in the notice and to attend before the Court for adjudicating on the claim at such times as may be so specified; or

(b) to produce to the Court at such time as may be so specified such documents in support of his claim as many be so specified or described.

(3) Where the claimant fails to comply with a notice served on him under paragraph (2) his claim may be disallowed.

(4) A claimant who files an affidavit in compliance with a notice served on him under paragraph (2) shall serve notice of the filing on the party by whom the first mentioned notice was served and, unless the Court otherwise directs, that party shall produce an office copy of the affidavit at the adjudication of the claim.

(5) No person claiming to be a creditor need make an affidavit or attend in support of his claim, except for the purpose of producing any documents which he is required to produce, unless served with a notice under subparagraph (2)*(a)*.

(6) If the Court so directs, a person claiming to be a secured creditor shall produce his security to the Registrar.

(7) In this rule, references to a claim include references to part of a claim.

Adjournment of adjudication (O. 44, r. 14)

14. Where on the day appointed for adjudication of claims any claim is not then disposed of, the adjudication shall be adjourned to a day appointed by the Court, and the Court may fix the time within which any evidence in support of or in opposition to the claim is to be filed.

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Service of notice of judgment on certain claimants (O. 44, r. 15)

15. (1) Where a claimant other than a creditor has established his claim, then, unless he is a party to the cause or matter or has previously been served with notice of the judgment or the Court otherwise directs, the party having the conduct of the cause or matter shall serve notice of the judgment on him.

(2) A person duly served with notice of a judgment under this rule shall, subject to rule 3(5), as applied by paragraph (4), be bound by the judgment to the same extent as he would have been if he had originally been made a party to the action.

(3) Where the Court directs under paragraph (1) that notice of a judgment shall not be served on a person, it may also order that that person shall be bound by the judgment to the same extent as if he had been served with notice thereof, and he shall be bound accordingly except where the judgment has been obtained by fraud or non-disclosure of material facts.

(4) Rule 3(5), (6) and (7) shall apply in relation to a person served with a notice of a judgment under this rule as they apply in relation to a person served with a notice of a judgment under that rule.

Notice of claims allowed (O. 44, r. 16)

16. (1) Such party as the Court may direct shall serve on every creditor whose claim or any part thereof has been allowed or disallowed and who did not attend when the claim was disposed of a notice informing him of the fact.

(2) Such party, if any, as the Court may direct shall make out a list of the creditors' claims, and a list of other claims, allowed and file it at the Registry.

Service of notices (O. 44, r. 17)

17. For the purpose of Order 62, rule 6, in its application to the service of any notice under this Order on a claimant, the proper address of a claimant shall be the address stated in his claim, or, if a solicitor is acting for him in connection with the claim, the business address of that solicitor.

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Interest on debts (O. 44, r. 18)

18. (1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—

(a) on any such debt as carries interest, at the rate it carries; and

(b) on any other debt, at such rate as the Chief Justice may from time to time direct from the date of the judgment.

(2) A creditor who has established his debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his debt at such rate as the Chief Justice may from time to time direct from the date of the judgment out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purpose of this rule—

(a) "debt" includes funeral, testamentary or administration expenses; and

(b) in relation to any expenses incurred after the judgment, subparagraph (1)*(b)* applies as if, instead of the date of the judgment, it referred to the date when the expenses became payable.

Interest on legacies (O. 44, r. 19)

19. Where an account of legacies is directed by any judgment, then subject to any directions contained in the will or codicil in question and to any order made by the Court, interest be allowed on each legacy at such rate as the Chief Justice may from time to time direct beginning at the expiration of one year after the testator's death.

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Determination by Judge of question arising before Registrar (O. 44, r. 20)

20. (1) Any party may, before the proceedings before the Registrar under any judgment is concluded, apply to the Judge for the determination of any question arising in the course of the proceedings. Unless the Court otherwise directs, a fresh notice of application shall not be issued for the purpose of an application under this paragraph.

(2) It shall not be necessary to draw up the order or directions made or given by the Judge on the determination of such question, except in the event of an appeal, but the Registrar shall refer to such order or directions in his certificate under rule 21.

Registrar's certificate (O. 44, r. 21)

21. (1) The result of proceedings before the Registrar under a judgment shall be stated in the form of a certificate in Form 82 signed by the Registrar.

(2) Such certificate shall refer to so much of the judgment, to such documents or parts thereof and to such of the evidence as will make it clear upon what the result stated in the certificate is founded but shall not, unless the circumstances of the case render it necessary, set out the judgment or any documents, evidence or reasons.

(3) Where the judgment requires the taking of any account, the certificate shall refer to the account verified by filed affidavit and shall specify by reference to the numbered items in the account which, if any, of such items have been disallowed or varied and the additions, if any, which have been made by way of surcharge or otherwise.

(4) Where by reason of the alterations made in the account verified by filed affidavit the Court has directed a fresh account incorporating the alterations to be made, the reference in paragraph (3) to the account so verified shall be construed as a reference to the fresh account.

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Settling and filing of Registrar's certificate (O. 44, r. 22)

22. (1) A draft of the Registrar's certificate shall be drawn up by a party to the proceedings as directed by the Registrar and the draft shall be settled by the parties before the Registrar on such day as the Registrar may appoint.

(2) The certificate signed by the Registrar and any account referred to therein shall be filed in the Registry.

Discharge or variation of Registrar's certificate (O. 44, r. 23)

23. (1) Any party to proceedings under a judgment may, not later than—

(a) eight clear days after the filing of the Registrar's certificate therein; or

(b) if the certificate is to be acted upon by the Accountant General without further order or is a certificate passing a receiver's account, two clear days after the filing thereof,

apply by notice of application for an order of the Judge in person discharging or varying the certificate. A copy of any notice of application to discharge or vary a certificate which is to be acted upon by the Accountant General without further order shall be served on the Accountant General as soon as practicable after the issue thereof.

(2) Subject to paragraph (3), any such certificate shall, on the expiration of the period specified in relation to it in paragraph (1), become binding on the parties to the proceedings unless discharge or varied by order under paragraph (1).

(3) The Judge in person may, in special circumstances, by order discharge or vary the certificate of the Registrar notwithstanding that the certificate has become binding on the parties. An application for an order under this paragraph may be by a notice of application.

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Further consideration of cause or matter in Chambers (O. 44, r. 24)

24. (1) Where a Registrar's certificate has been filed in any cause or matter, then, if—

(a) the cause or matter in which it was filed is a debenture holder's action or the judgment to be made in the cause or matter in which it was filed is for the distribution of an insolvent estate or for the distribution of the estate of a person who died intestate;

(b) the order on which the certificate was made was made in Chambers and no direction has been given that the cause or matter be adjourned for further consideration in Court; or

(c) an order has been made directing that the cause or matter be adjourned for further consideration in Chambers,

a notice of application for the further consideration of the cause or matter may be issued—

(A) after the expiration of eight clear days, and before the expiration of fourteen days, from the filing of the Registrar's certificate, by the plaintiff or party having the conduct of the proceedings; or

(B) after the expiration of the fourteen days, by any party.

(2) There shall be at least six days between the service of a notice of application under the rule and the day named therein for the further consideration of the cause or matter.

Further consideration of cause or matter in Court (O. 44, r. 25)

25. (1) Where a Registrar's certificate has been filed in any cause or matter, then, if—

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(a) the judgment on which the certificate was made was given in Court and the cause or matter is not such as is mentioned in rule 24(1)*(a)* and no direction has been given that it be adjourned for further consideration in Chambers; or

(b) an order has been made directing that the cause or matter be adjourned for further consideration in Court,

the cause or matter may be set down by the Registrar in the cause book for further consideration—

(A) after the expiration of eight clear days, and before the expiration of fourteen days, from the filing of the Registrar's certificate, on the written request of the plaintiff or party having the conduct of the proceedings; or

(B) after the expiration of the fourteen days, on the written request of any party,

upon the production, in either case, of the judgment adjourning the cause or matter for further consideration, or an office copy thereof, and an office copy of the registrar's certificate or a memorandum of the date of the filing of the certificate, endorsed on request by the proper officer on the judgment or office copy thereof.

When a cause or matter is so set down, a copy of the notice of writ or originating summons by which the cause or matter was begun, a copy of the pleadings, if any, and two copies of minutes of the judgment sought shall also be left with the proper officer.

(2) A cause or matter so set down shall not be put into the list for further consideration until after the expiration of ten days from the day on which it was so set down, and shall be marked in the cause book accordingly, and notice of the setting down and of the day marked in the cause book as the day before which the cause or matter is

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not to be put in the list for further consideration shall be given to the other parties to the cause or matter at least six days before that day.

ORDER 45

ENFORCEMENT OF JUDGMENT AND ORDERS

Enforcement of judgment or order for payment of money (O. 45, r. 1)

1. (1) Subject to the provisions of these Rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into Court, may be enforced by one or more of the following means:

(a) a writ of seizure and sale;

(b) garnishee proceedings;

(c) in a case in which rule 5 applies, an order of committal.

(1A) In addition to rule 1(1) and subject to the provisions of these Rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into Court, may be enforced in the High Court by one or more of the following means:

(a) a charging order; and

(b) the appointment of a receiver.

(2) Subject to the provisions of these Rules, a judgment or order for the payment of money into Court may be enforced in a case in which rule 5 applies, by an order of committal.

(2A) In addition to rule 1(2) and subject to the provisions of these Rules, a judgment or order for the payment of money into Court may be enforced in the High Court by the appointment of a receiver.

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(3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a Court under the Debtors Act 1957 [*Act 256*] to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him, or to the written law relating to bankruptcy or the winding up of companies.

(4) In this Order, references to any writ shall be construed as including references to any further writ in aid of the first-mentioned writ.

Judgment or order for payment of money to person resident outside scheduled territories (O. 45, r. 2)

2. (1) Where any person is directed by any judgment, order or award to pay any money to or for the credit of a person who is resident outside the scheduled territories, he shall, unless the Controller has given permission for the payment under the Exchange Control Act 1953, unconditionally or upon conditions which have been complied with, pay the money into Court.

(2) Payment into Court under paragraph (1) shall, to the extent of the amount paid in, be a good discharge to the person making the payment, and no steps may be taken to enforce the judgment, order or award to the extent of that amount.

(3) A notice of a payment into Court under this rule shall be given to the plaintiff or his solicitor and to any other person required by the judgment, order or award to be given a notice of such payment.

Enforcement of judgment for possession of immovable property (O. 45, r. 3)

3. (1) Subject to these Rules, a judgment or order for the giving of possession of immovable property may be enforced by one or more of the following means:

(a) a writ of possession;

(b) in a case in which rule 5 applies, an order of committal.

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(2) A writ of possession to enforce a judgment or order for the giving of possession of any immovable property shall not be issued without leave of the Court except where the judgment or order was given or made in a charge action to which Order 83 applies.

(3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the immovable property has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

Enforcement of judgment for delivery of movable property (O. 45, r. 4)

4. (1) Subject to these Rules, a judgment or order for the delivery of any movable property which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the property may be enforced by one or more of the following means:

(a) a writ of delivery to recover the property without alternative provision for recovery of the assessed value thereof (which is referred to as a "writ of specific delivery" in this rule);

(b) in a case in which rule 5 applies, an order of committal.

(2) Subject to the provisions of these Rules, a judgment or order for the delivery of any movable property or payment of their assessed value may be enforced by one or more of the following means:

(a) a writ of delivery to recover the property or its assessed value;

(b) with the leave of the Court, a writ of specific delivery;

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(c) in a case in which rule 5 applies, an order of committal.

(3) A writ of specific delivery, and a writ of delivery to recover any movable property or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(4) A judgment or order for the payment of the assessed value of any movable property may be enforced by the same means as any other judgment or order for the payment of money.

Enforcement of judgment to do or abstain from doing an act (O. 45, r. 5)

5. (1) Where—

(a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case may be, within that time as extended or abridged under Order 3, rule 5; or

(b) a person disobeys a judgment or order requiring him to abstain from doing an act,

then, subject to these Rules, the judgment or order may be enforced by one or more of the following means:

(A) with the leave of the Court, an order of committal;

(B) where that person is a body corporate, with the leave of the Court, an order of committal against any director or other officer of the body;

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(C) subject to the provision of the Debtors Act 1957, an order of committal against that person or, where that person is a body corporate, against any such officer.

(2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) to a judgment or order shall be construed as references to the order made under rule 6.

(3) Where under any judgment or order requiring the delivery of any movable property the person liable to execution has the alternative of paying the assessed value of the property, the judgment or order shall not be enforceable by order of committal under paragraph (1) but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first-mentioned person to deliver the property to the applicant within a time specified in the order, and that order may be so enforced.

Judgment or order requiring act to be done: Order fixing time for doing it (O. 45, r. 6)

6. (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the Court shall, without prejudice to Order 3, rule 5, have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time as may be specified therein.

(2) Where, notwithstanding Order 42, rule 6(1), or by reason of Order 42, rule 6(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

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(3) An application for an order under this rule shall be made by notice of application and such notice of application shall, notwithstanding anything in Order 62, rule 10, be served on the person required to do the act in question.

Service of copy of judgment or order prerequisite to enforcement under rule 5 (O. 45, r. 7)

7. (1) In this rule, references to an order shall be construed as including references to a judgment.

(2) Subject to Order 26, rule 7(3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless—

(a) a copy of the order had been served personally on the person required to do or abstain from doing the act in question; and

(b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

(3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5 (1)(B) or (C) unless—

(a) a copy of the order has also been served personally on the officer against whom an order of committal is sought; and

(b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.

(4) There shall be endorsed on the copy of an order served under this rule a notice in Form 83 informing the person on whom the copy is served—

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(a) in the case of service under paragraph (2), if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the order, he is liable to process of execution to compel him to obey it; and

(b) in the case of service under paragraph (3), that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, the body corporate is liable to process of execution to compel the body to obey it.

(5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there shall also be served a copy of any order made under Order 3, rule 5, extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 5(3) or 6 of this Order, a copy of the previous order requiring the act to be done.

(6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either—

(a) by being present when the order was made; or

(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) Without prejudice to its power under Order 62, rule 5, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

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Court may order act to be done at expense of disobedient party (O. 45, r. 8)

8. If a mandamus order, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers under the Act, where applicable and its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

Execution by or against person not being a party (O. 45, r. 9)

9. (1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

Conditional judgment: Waiver (O. 45, r. 10)

10. A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have taken if the judgment or order had not been given or made.

Matters occurring after judgment: Stay of execution (O. 45, r. 11)

11. Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the

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judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks fit.

Matters occurring after judgment: Enforcement Conference (O. 45, r. 11A)

11A. Notwithstanding anything in these Rules, the Court may, at any time after the commencement of any execution proceedings, of its own motion or upon written request by any party, direct any party to those proceedings to appear before it, in order that the Court may make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of such proceedings including striking out of any writ of execution.

Forms of writs (O. 45, r. 12)

12. (1) A writ of seizure and sale shall be in Form 84 (for movable property) or Form 85 (for immovable property).

(2) A writ of delivery shall be in Form 86.

(3) A writ of possession shall be in Form 87.

Enforcement of judgments and orders for recovery of money (O. 45, r. 13)

13. (1) Rule 1(1), except for subparagraph *(c)*, and Orders 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.

(2) Rule 3, except for subparagraph (1)*(b)*, and Order 47, rule 2(2), shall apply in relation to a judgment or order for the recovery of possession of immovable property as they apply in relation to a judgment or order for the giving or delivery of possession of immovable property.

(3) Rule 4, except for subparagraphs (1)*(b)* and (2)*(c)*, and Order 47, rule 2(2), shall apply in relation to a judgment or order that a person do have a return of any movable property or do recover the assessed value thereof as they apply in relation to a

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judgment or order for the delivery of any movable property or payment of the assessed value thereof respectively.

ORDER 46

WRITS OF EXECUTION: GENERAL

Definition (O. 46, r. 1)

1. In this Order, unless the context otherwise requires, "writ of execution" includes a writ of seizure and sale, a writ of possession and a writ of delivery.

When leave to issue any writ of execution is necessary (O. 46, r. 2)

2. (1) A writ of execution to enforce a judgment or order may not be issued without the leave of the Court in the following cases:

(a) where six years or more have lapsed since the date of the judgment or order;

(b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;

(c) where the judgment or order is against the assets of a deceased person coming to the hand of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;

(d) where under the judgment or order any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled; and

(e) where any movable property sought to be seized under a writ of execution is in the hands of a receiver appointed by the Court.

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(2) Paragraph (1) is without prejudice to any written law or rule by which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution on or otherwise the enforcement of a judgment or order.

(3) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

Application for leave to issue writ (O. 46, r. 3)

3. (1) An application for leave to issue a writ of execution may be made *ex parte* by a notice of application in Form 88.

(2) Such an application shall be supported by an affidavit—

(a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;

(b) stating, where the case falls within rule 2(1)*(a)*, the reasons for the delay in enforcing the judgment or order;

(c) stating, where the case falls within rule 2(1)*(b)*, the change which has taken place in the parties entitled or liable to execution since the date of the judgment or order;

(d) stating, where the case falls within rule 2(1)*(c)* or *(d)*, that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so; and

(e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the

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judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The Court hearing such application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

Issue of writ of execution (O. 46, r. 4)

4. (1) The issue of a writ of execution takes place on its being sealed by an officer of the Registry.

(2) Before such a writ is issued, a *praecipe* in one of the forms in Form 89 for its issue shall be filed.

(3) The *praecipe* shall be signed by the solicitor of the person entitled to execution or, if that person is acting in person, by him.

(4) Such writ shall not be sealed unless at the time of the tender thereof for sealing—

(a) the person tendering it produces—

(i) the judgment or order on which the writ is to be issued, or an office copy thereof;

(ii) where the writ may not be issued without the leave of the Court, the order granting such leave or evidence of the granting of it;

(iii) where rule 5(2) applies, the written permission of the Controller therein referred to; and

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(b) the officer authorized to seal it is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act has expired.

(5) Every writ or execution shall bear the date of the day on which it is issued.

Writ and request where Exchange Control Act 1953 applies (O. 46, r. 5)

5. (1) Where any party entitled to enforce a judgment or order for the payment of money is resident outside the scheduled territories, then, unless the Controller has given permission under the Exchange Control Act 1953, for payment of the money to him unconditionally or on conditions which have been complied with, any writ of execution to enforce that judgment or order shall direct the Sheriff or bailiff to pay the proceeds of execution into Court. A notice of payment into Court in compliance with such a direction shall be given by the Sheriff or bailiff to the party by whom the writ of execution was issued or to his solicitor.

(2) Where the Controller has given such permission unconditionally or on conditions which have been complied with, the *praecipe* for the issue of a writ of execution to enforce the judgment or order in question shall be endorsed with such a certificate of that fact.

Duration and renewal of writ of execution (O. 46, r. 6)

6. (1) For the purpose of execution, a writ of execution is valid in the first instance for twelve months beginning with the date of the issue.

(2) Where a writ has not been wholly executed, the Court may by order extend the validity of the writ from time to time for a period of twelve months at any time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire.

(2A) For the purpose of this rule, "wholly executed" means—

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(a) in the case of a writ of seizure and sale, the sale of all the seized property by the Sheriff or bailiff;

(b) in the case of a writ of delivery, the transfer of possession of the movable property by the Sheriff or bailiff to the judgment creditor; and

(c) in the case of a writ of possession, the transfer of possession of the immovable property by the Sheriff or bailiff to the judgment creditor.

(3) Before a writ the validity of which has been extended under this rule is executed the writ shall be marked in Form 3 showing the date on which the order extending its validity was made.

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally issued.

(5) The production of a writ of execution, purporting to be sealed as mentioned in paragraph (3), shall be evidence that the validity of that writ has been extended under this rule.

Fees, expenses, commission to be levied (O. 46, r. 7)

7. In every case of execution the party entitled to execution may levy the commission, fees and expenses of execution over and above the sum recovered.

Costs of writ (O. 46, r. 8)

8. Subject to these Rules, the costs of and incidental to writs of execution or distress, whether executed or unexecuted, or unproductive shall be allowed against the person liable, unless the Court otherwise orders.

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Satisfaction by consent (O. 46, r. 9)

9. (1) Any person who has satisfied a judgment debt may on filing a consent of the judgment creditor in Form 90 apply to the Court for satisfaction to be recorded and the Court may order satisfaction to be recorded accordingly.

(2) The consent of the judgment creditor shall be attested by his solicitor or if he has no solicitor, by a Commissioner for Oaths.

Where consent refused (O. 46 r. 10)

10. (1) If a judgment creditor refuses or neglects to give such consent when requested, or if the judgment creditor cannot be found, the judgment debtor may apply to the Registrar for an order that satisfaction be entered.

(2) The notice of application shall be served on the judgment creditor at least two clear days before the hearing thereof unless the Registrar otherwise orders.

(3) If on such application the Registrar is satisfied that the judgment debt has been satisfied and that the judgment creditor has no reasonable grounds for refusing or neglecting to give such consent, the Registrar may order that satisfaction be recorded and that the judgment creditor pay the costs of and incidental to the application.

Deposit for costs of execution and date for execution (O. 46, r. 11)

11. (1) Before any writ of execution or distress is executed the person at whose instance the writ was issued (which is referred to as the "execution creditor" in these Rules) shall, if the Sheriff or bailiff so requests, deposit in the Registry a sufficient sum of money to defray the costs of the execution.

(2) Where the execution creditor has caused a date appointed for the execution to be vacated or postponed, the Court may, if it thinks that such vacation or postponement is without good reason, direct that any fee paid and expenses incurred by the execution creditor in respect of the appointment shall not be recovered by the execution creditor as a disbursement.

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Where Sheriff or bailiff in possession more than fourteen days (O. 46, r. 12)

12. Where the Sheriff or bailiff has to remain in possession of movable property for more than fourteen days, the execution creditor shall before or at the end of the first fourteen days of the Sheriff or bailiff keeping possession deposit in the Registry, if the Sheriff or bailiff so requests, a further sum of money to provide for the costs of execution for the next ensuing fourteen days and shall continue to make such deposits in advance before or at the end of each successive period of fourteen days so long as the Sheriff or bailiff continues in possession.

Proper officer to give receipt (O. 46, r. 13)

13. (1) The proper officer in the Registry shall give a receipt for each sum of money deposited and he shall apply such sums or so much thereof as is necessary for the costs of the execution.

(2) The Sheriff or bailiff shall return to the execution creditor any balance of money remaining over after the release of the person or the movable property seized, as the case may be, under the writ of execution or distress.

(3) Where the movable property seized under a writ of execution or distress is sold by the Sheriff or bailiff or he receives the amount of the levy without sale, any sums of money deposited by the execution creditor shall, so far as the monies coming to the hands of the Sheriff or bailiff will allow, be refunded to the execution creditor.

Duties of Sheriff or bailiff

Time of filing to be forthwith endorsed on the writ (O. 46, r. 14)

14. Whenever any writ of execution or distress is delivered to the Sheriff or bailiff, he shall endorse thereon the day, hour and minute of such delivery.

Time of execution (O. 46, r. 15)

15. Any writ of execution or distress may be executed between the hours of 9 a.m. and 4 p.m., unless the Sheriff or bailiff otherwise orders.

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Notice of seizure and inventory (O. 46, r. 16)

16. (1) Where any movable property is seized by the Sheriff or bailiff under a writ of execution or distress, he shall give to the execution debtor a notice of seizure in Form 91, and a copy of the notice shall be filed.

(2) Where the Sheriff or bailiff removes from a place any movable property that is seized, he shall give to the execution debtor at the time the property is removed or immediately afterwards an inventory of the property so removed.

(3) The notice of seizure under paragraph (1) and notice of removal and inventory under paragraph (2) may be—

(a) handed to the execution debtor personally;

(b) sent to him by post to his place of residence; or

(c) left at or sent by post addressed to him at the place from which the property was seized.

Proper officer to keep records and to prepare statement of accounts (O. 46, r. 17)

17. (1) The proper officer receiving any money under any writ of execution or distress shall give for every sum so received a receipt.

(2) The proper officer shall keep a record of all sums of money received by him under a writ of execution or distress and of the manner in which he has applied them, and shall endorse on or annex to the writ a statement thereof.

(3) Subject to these Rules and any written law, the proper officer shall prepare a statement of account in respect of the moneys received by him under a writ of execution or distress as follows:

(a) first, the Court fees and commission;

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(b) next, the expenses of execution;

(c) next, moneys due to the execution creditor under rule 13 which have not been returned to him;

(d) next, moneys claimed by the landlord, not exceeding six months' rent, due under a writ of distress in accordance with section 20 of the Distress Act 1951 [*Act 255*];

(e) next, moneys available for payment to the execution creditor to satisfy the judgment or order in respect of which the execution was issued;

(f) next, where there is more than one writ of execution in his hands against the same defendant, moneys available to satisfy the various execution creditors in the order of the priority of their writs according to the dates of issue:

Provided that where an order for attachment of movable property before judgment has been made under the provisions of Part III of the Debtors Act 1957 and a writ of execution has been issued to enforce a judgment in the same action, such writ shall have priority according to the date on which the order of attachment before judgment was issued; and

(g) next, after accounting for the moneys available for payment to the execution creditors, show any balance due to the execution debtor.

(4) If the proceeds of the sale received by the proper officer are insufficient to cover the fees, commission and expenses of execution, the execution creditor shall pay to the proper officer the amount of the deficiency and shall be entitled to add such amount to the judgment debt to be eventually recovered from the judgment debtor.

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Sheriff or bailiff to give information if required (O. 46, r. 18)

18. (1) On a written application by the execution creditor, or the execution debtor, or any claimant to movable property seized by him, the Sheriff or bailiff shall within two days furnish to such applicant a memorandum stating—

(a) the date on which the writ was delivered to him;

(b) the amount leviable under the writ;

(c) the particulars of property seized;

(d) the place of seizure;

(e) the particulars of any claim to such property of which has received notice;

(f) the gross proceeds of sale;

(g) the amount of the fees, commission and expenses; and

(h) the moneys paid by him into the Registry and to whose credit.

(2) The Sheriff or bailiff shall at all times permit the execution creditor, or judgment debtor, or any claimant to property seized by him to inspect and copy free of charge any inventory of property seized, sales account, or note of the fees, commission and expenses together with all vouchers in support thereof.

Date of arrest to be endorsed (O. 46, r. 19)

19. The Sheriff or bailiff executing an order to arrest shall endorse thereon the day, hour and minute of the arrest.

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Sheriff or bailiff may be required to show cause for neglect of duty (O. 46, r. 20)

20. Any person aggrieved by any alleged non-observance by the Sheriff or bailiff of any duty imposed on him by any written law or by these Rules, may apply to the Court for an order that the Sheriff or bailiff show cause why he should not do the thing required, and the Sheriff or bailiff may be required to show cause accordingly.

Payment out (O. 46, r. 21)

21. Subject to these Rules and to section 50 of the Bankruptcy Act 1967 [*Act 360*], section 31 of the Employment Act 1955 [*Act 265*] and to any other written law, any sum of money paid by the Sheriff or bailiff to the credit of the execution creditor or by the judgment debtor under rule 17 shall, subject to any order of Court, be paid to the execution creditor or judgment debtor respectively on his application without an order:

Provided that the Sheriff or the Registrar of the Subordinate Courts may in his discretion require the execution creditor or judgment debtor, as the case may be, to apply to Court for an order for payment out.

Sale by Sheriff or bailiff

Sheriff or bailiff to sell (O. 46, r. 22)

22. Subject to these Rules, the Sheriff or bailiff shall sell all property seized by him under a writ of execution or distress.

Sale by public auction (O. 46, r. 23)

23. Unless the Sheriff or bailiff otherwise orders, all sales shall be by public auction between the hours of 9 a.m. and 4 p.m. and a notice in Form 92 of the day, hour and place of any intended sale shall be posted on the notice board of the Registry and so far as practicable at the place of the intended sale seven days before the sale.

Where property exceeds ten thousand ringgit sale by authorized auctioneer (O. 46, r. 24)

24. (1) Where the value of the property attached or seized is estimated by the Sheriff or bailiff to exceed ten thousand ringgit, the same shall, unless the Sheriff or

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bailiff otherwise orders, be conducted by a licensed auctioneer and the sale shall be publicly advertised by the Sheriff or bailiff or auctioneer once two days before the date of sale.

(2) In any other case, the sale may be conducted by the Sheriff or bailiff.

Negotiable instruments (O. 46, r. 25)

25. Negotiable instruments may, with the leave of the Court, be sold through the agency of a broker and on such terms as the Court thinks just.

Sheriff or bailiff may execute or endorse documents (O. 46, r. 26)

26. Where the execution or endorsement of any document is ordinarily lawfully required to give effect to any sale by the Sheriff or bailiff, the Sheriff or bailiff may execute or endorse such document; and the execution or endorsement thereof by the Sheriff or bailiff shall have the same effect as the execution or endorsement by the judgment debtor.

When order made suspending execution (O. 46, r. 26A)

26A. (1) An order suspending or staying execution shall be in Form 93.

(2) The Court may order the person liable to execution to pay the costs of the writ and any fees or expenses incurred by the Sheriff or bailiff before the suspension of execution and may authorize the Sheriff or bailiff to sell a portion of the movable property seized sufficient to realise such costs, fees and expenses, and commission, if any.

Interpretation (O. 46, r. 27)

27. In this Order, where a writ of distress has been issued, the term “execution creditor’ includes a “landlord” and the term “judgment debtor” includes a “tenant”.

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ORDER 47

WRITS OF SEIZURE AND SALE

Power to stay execution by writ of seizure and sale (O. 47, r. 1)

1. (1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other party liable to execution—

(a) that there are special circumstances which render it inexpedient to enforce the judgment or order; or

(b) that the applicant is unable from any cause to pay the money,

then, notwithstanding anything in rule 2 or 3, the Court may by order stay the execution of the judgment or order by writ of seizure and sale either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this rule, if not made at the time the judgment is given or order made, shall be made by notice of application and may be so made notwithstanding that the party liable to execution did not enter an appearance in the action.

(3) An application made by notice of application shall be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.

(4) The notice of application and a copy of the supporting affidavit must, not less than four clear days before the return day, be served on the party entitled to enforce the judgment or order.

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(5) An order staying execution under this rule may be varied or revoked by a subsequent order.

Separate writs to enforce payment of costs (O. 47, r. 2)

2. (1) Where only the payment of money, together with costs to be taxed, is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been taxed, the party entitled to enforce that judgment or order may issue a writ of seizure and sale to enforce the judgment or order and, not less than eight days after the issue of that writ, he may issue a second writ to enforce payment of the taxed costs.

(2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, issue a separate writ of seizure and sale to enforce payment of any damages or costs awarded to him by that judgment or order.

Where landlord claims arrears of rent of premises where property seized (O. 47, r. 3)

3. (1) Where the landlord or any other person entitled to receive the rent of the premises in which any movable property has been seized by the Sheriff or bailiff has any claim for arrears of rent of those premises, he may apply to the Registrar of the High Court, Judge of the Sessions Court or Magistrate, at any time before the sale of such property, for a writ of distress for recovery of such arrears of rent.

(2) When a writ of distress has been issued, section 20 of the Distress Act 1951 shall apply.

(3) Unless a writ of distress is issued for the recovery of such arrears of rent, the property seized by the Sheriff or bailiff shall be deemed not to be liable to be seized under a writ of distress and to be free from all claims in respect of rent and may be dealt with accordingly and the landlord or other person entitled to receive rent as aforesaid, shall have no claim in respect of the property or to the proceeds of sale or any part thereof.

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After seizure, dealings with property void (O. 47, r. 4)

4. After seizure has been made of the judgment debtor's movable property under a writ of seizure and sale, and during the continuance of the seizure, otherwise than by the leave of the Court, any alienation of the property seized, whether by sale, gift, mortgage or otherwise, shall be void against the Sheriff or bailiff and any person on whose behalf the movable property was seized.

Withdrawal and suspension of writ (O. 47, r. 5)

5. (1) Where any execution creditor requests the Sheriff or bailiff to withdraw the seizure, he is deemed to have abandoned the execution, and the Sheriff or bailiff shall mark the writ of seizure and sale as withdrawn by request of the execution creditor:

Provided that where the request is made in consequence of a claim having been made in an interpleader proceedings, the execution is deemed to be abandoned in respect only of the property so claimed.

(2) A writ of seizure and sale which has been withdrawn under this rule shall not be re-issued but the execution creditor may apply by a notice of application supported by affidavit stating the grounds of the application for a fresh writ of seizure and sale to be issued, and such writ shall take priority according to its date of issue.

Immovable property (O. 47, r. 6)

6. Where the property to be seized consists of immovable property or any registered interest therein, the following provisions shall apply:

(a) a seizure shall be made by an order by the Court or a Judge prohibiting the judgment debtor from transferring, charging or leasing such property or interest; and for the purpose of this rule, "charging" includes the creation of a lien by deposit of a document of title;

(b) an application for an order under this rule may be made *ex parte* by a notice of application;

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(c) the application shall be supported by an affidavit—

(i) identifying the judgment or order to be enforced;

(ii) stating the name of the judgment debtor in respect of whose immovable property or interest an order is sought;

(iii) stating the amount remaining unpaid under the judgment or order at the time of application;

(iv) specifying the immovable property or the interest therein in respect of which an order is sought; and

(v) stating that to the best of the information or belief of the deponent, the immovable property or interest in question is the judgment debtor's and stating the sources of the deponent's information or the grounds for his belief;

(d) a copy of the order shall be served on the judgment debtor and as many copies as the case may require shall be issued to the judgment creditor in order that he may present the same, in compliance with the provision of any written law relating to such land, for registration at the Registry of Titles or Land Office whereat the land or interest in land specified in such order is registered;

(e) a prohibitory order issued under this rule shall not affect any immovable property or registered interest therein and any immovable property or registered interest therein shall not be deemed to have been seized until such prohibitory order has been registered as provided by any written law relating to such land;

(f) subject to subparagraph *(g)*, any prohibitory order shall, upon the expiration of six months from the date thereof, cease to affect the

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immovable property or registered interest therein specified in such order;

(g) upon the application of any judgment creditor on whose application a prohibitory order has been issued, the Court or a Judge, if it or he considers that special circumstances render an extension just, may from time to time by order extend the period of six months referred to in subparagraph *(f)*, for any period not exceeding six months, provided that an order made under this rule shall not have any force or effect unless it is presented for registration at the Land Office or Registry of Titles before the expiration of the prohibitory order which such order purports to extend;

(h) subparagraph *(d)* shall apply to orders made under subparagraph *(g)*;

(i) when a judgment creditor has obtained in any suit or proceedings a prohibitory order, in execution of an order or judgment in such suit or proceedings, affecting any immovable property or registered interest therein, a further prohibitory order affecting the same property or interest shall not be made in the same suit or proceedings in execution of the same order or judgment on the application of such judgment creditor or of any other person unless the Court or a Judge by order otherwise directs, on the ground of the existence of special circumstances;

(j) a copy of every order made under this rule shall be sent by the Court making the order to the Registrar of Titles of the State or to the Land Administrator of the District wherein the land affected is situated or to both as may be necessary; and

(k) the Court may at any time, on sufficient cause being shown, order that property seized under this rule shall be released.

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Sale of immovable property (O. 47, r. 7)

7. The sale of immovable property or any interest therein shall be subject to the following conditions:

(a) there shall be no sale until the expiration of fourteen days from the date of registration of the prohibitory order under rule 6*(a)*;

(b) the particulars and conditions of sale shall be settled by the Sheriff or his solicitor;

(c) the judgment debtor may apply by a notice of application to the Court or a Judge for a postponement of the sale in order that he may raise the amount leviable under the writ by charge or lease, or sale of a portion only, of the immovable property seized, or by sale of any other property of the judgment debtor, or otherwise, and the Court or Judge, if satisfied that there is reasonable ground to believe that the amount may be raised in any such manner, may postpone the sale for such period and on such terms as are just;

(d) the judgment creditor may apply to the Court or a Judge for the appointment of a receiver of the rents and profits, or a receiver and manager of the immovable property, in lieu of sale thereof, and on such application, the Court or Judge may appoint such receiver or receiver and manager, and give all necessary directions in respect of such rents and profits or immovable property;

(e) where the interest of the judgment debtor in any immovable property, seized and sold under the order, includes a right to the immediate possession thereof, the Sheriff or bailiff shall put the purchaser in possession;

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(f) where immovable property or any registered interest therein has been sold in execution of an order, the judgment creditor who had obtained the order or any person entitled to share in a rateable distribution of assets or whose interests are affected by the sale may apply to the Court or a Judge to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that a sale shall not be set aside on the ground of irregularity or fraud unless upon the facts proved the Court or a Judge is satisfied that the applicant has sustained injury by reason of such irregularity or fraud;

(g) the purchaser at any such sale in execution of an order may apply to the Court or a Judge to set aside the sale on the ground that the judgment debtor had no saleable interest in the property sold;

(h) (i) where no application is made under subparagraph *(f)* or *(g)*, or where such application is made and disallowed, the Court or a Judge shall make an order confirming the sale, and thereupon the sale shall become absolute:

Provided that such order shall not be made until after the expiration of one month from the date of the sale; or

(ii) where such application is made and allowed, the Court or a Judge shall make an order setting aside the sale:

Provided that an order shall not be made unless a notice of the application has been given to all persons affected thereby; and

(iii) an action to set aside an order made under this subparagraph shall not be brought by any person against whom such order is made;

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(i) (i) where a sale is set aside under subparagraph *(h)*, the purchaser shall be entitled to an order for repayment of his purchase money (with or without interest as the Court or a Judge may direct) against any person to whom it has been paid; and

(ii) the repayment of the purchase money and of the interest, if any, allowed by the Court or a Judge may be enforced against such person under this rule relating to the execution of an order for the payment of money;

(j) (i) every order under subparagraph *(h)* shall contain a sufficient description of the property or interest sold and the name of the purchaser and shall further declare that the title of the property sold shall vest in such purchaser upon the registration of such order under any written law relating to such land, and not before;

(ii) a copy of any such order shall be issued to the purchaser in order that he may present the same for registration under any written law relating to such land; and

(iii) every such order shall for the purposes of the Stamp Act 1949 [*Act 378*] be deemed to be, and shall be stamped by the purchaser as, a conveyance;

(k) pending the execution or endorsement of any deed or document which is ordinarily lawfully required to give effect to any sale by the Sheriff or bailiff, the Court or a Judge may by order appoint the Sheriff or bailiff to receive any rents and profits due to the purchaser in respect of the property sold; and

(l) the Sheriff or bailiff may at any time apply to the Court or a Judge for directions with respect to the immovable property or any interest therein seized under the order and may, or, if the Court or a Judge so directs,

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must, give notice of the application to the judgment creditor, the judgment debtor and any other party interested in the property.

Securities (O. 47, r. 8)

8. (1) Where the property to be seized consists of any stock of any company or corporation registered or incorporated under any written law, to which the judgment debtor is beneficially entitled, seizure thereof shall be made by a notice in Form 94, signed by the Sheriff or bailiff, attaching such stock.

(2) The notice shall be addressed—

(a) in the case of stock listed on the Bursa Malaysia and held under a central depository system, to the depository for the time being and the company or corporation concerned; and

(b) in the case of other stock, to the company or corporation concerned,

and together with a copy of the writ of seizure and sale shall be served by the Sheriff or bailiff by any mode of service as he thinks fit.

(3) A copy of the notice shall at the same time be sent to the judgment debtor at his address for service.

(4) On receipt of such notice, the judgment debtor shall hand over to the Sheriff or bailiff at his office any indicia of title in his possession relating to such stock, or where any such indicia of title are not in his possession, shall notify the Sheriff or bailiff in writing of the name and address of the person having possession thereof.

(5) The Sheriff or bailiff shall further send a copy of the notice to any person, other than the judgment debtor, in whose possession he has reason to believe any such indicia of title to be.

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(6) After the receipt of any notice sent under paragraph (2), and unless the notice is withdrawn, a transfer of the stock or any interest therein, as the case may be, shall not be registered or effected unless the transfer be executed or directed by the Sheriff or bailiff, and any such transfer or direction by the Sheriff or bailiff shall have the same effect as if the registered holder or beneficial owner of such stock had executed the transfer, and shall be dealt with accordingly.

(7) All interest or dividends becoming due and payable, or benefits accruing, after the receipt of such notice, and until the withdrawal thereof or transfer or direction by the Sheriff or bailiff as abovementioned, shall be paid or transmitted to the Sheriff or bailiff.

(8) Any notice served under paragraph (2) may be withdrawn by a notice in writing to that effect signed by the Sheriff or bailiff and served to the person and in the manner provided by paragraph (2).

(9) The Court or a Judge, on the application of the judgment debtor or any other person interested in the stock seized under this rule, may at any time, on sufficient cause being shown, order that the stock or any part thereof be released.

Sale of securities (O. 47, r. 9)

9. (1) Stock seized under rule 8 may be sold through the agency of a broker.

(2) If the indicia of title are not in the possession of the Sheriff or bailiff, he may apply to the Court or a Judge for such directions as may be necessary to give effect to the sale.

ORDER 48

EXAMINATION OF JUDGMENT DEBTOR

Order for examination of judgment debtor (O. 48, r. 1)

1. (1) In this Order, "the Registrar" means the Registrar of the High Court or Sessions Court Judge or Magistrate.

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(2) Where a person has obtained a judgment or order for the payment of money by some other person (who is referred to as "the judgment debtor" in this Order), the Court may, on an application made *ex parte* by a notice of application supported by an affidavit in Form 95 by the person entitled to enforce the judgment or order, order the judgment debtor, or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar, and be orally examined on the questions—

(a) whether any and, if so, what debt are owing to the judgment debtor; and

(b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order,

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

(3) An order under this rule shall be in Form 96 and must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination.

(4) Any difficulty arising in the course of an examination under this rule before the Registrar, including any dispute with respect to the obligation of the person being examined to answer any question put to him, may be referred to the Court and the Court may determine it or give such directions for determining it as it thinks fit.

Examination of party liable to satisfy the judgment (O. 48, r. 2)

2. Where any difficulty arises in or in connection with the enforcement of any judgment or order, other than such a judgment or order as is mentioned in rule 1, the Court may make an order under that rule for the attendance of the party liable to satisfy the judgment or order and for his examination on such questions as may be specified in the order, and that rule shall apply accordingly with the necessary modifications.

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Registrar to make record of debtor's statement (O. 48, r. 3)

3. The Registrar conducting the examination shall take down, or cause to be taken down, in writing, the statement made by the judgment debtor or other person at the examination, read it to him and ask him to sign it, and if he refuses, the Registrar shall sign the statement.

ORDER 49

GARNISHEE PROCEEDINGS

Attachment of debt due to judgment debtor (O. 49, r. 1)

1. (1) Where a person (who is referred to as "the judgment creditor" in this Order) has obtained a judgment or order for the payment of money by some other person (who is referred to as "the judgment debtor" in this Order), not being a judgment or order for the payment of money into Court, and any other person within the jurisdiction (who is referred to as "the garnishee" in this Order), is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any written law, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An order in Form 97 under this rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

(3) In this Order, "any debt due or accruing due" includes a current or deposit account with a bank or other financial institution, whether or not the deposit has matured and notwithstanding any restriction as to the mode of withdrawal.

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Application for order (O. 49, r. 2)

2. An application for an order under rule 1 shall be made *ex parte* by a notice of application supported by an affidavit in Form 98—

(a) identifying the judgment or order to be enforced and stating the amount remaining unpaid under it at the time of the application; and

(b) stating that to the best of the information or belief of the deponent the garnishee (naming him) is within the jurisdiction and is indebted to the judgment debtor and stating the sources of the deponent's information or the grounds for his belief.

Service and effect of order to show cause (O. 49, r. 3)

3. (1) An order under rule 1 to show cause shall, at least seven days before the time appointed thereby for the further consideration of the matter, be served—

(a) on the garnishee personally; and

(b) unless the Court otherwise directs, on the judgment debtor.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be so specified.

No appearance or dispute of liability by garnishee (O. 49, r. 4)

4. (1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from him to the judgment debtor, the Court may, subject to rule 7, make an order absolute in one of the forms in Form 99 under rule 1 against the garnishee.

(2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

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Dispute of liability by garnishee (O. 49, r. 5)

5. Where on the further consideration of the matter the garnishee disputes liability to pay the debt due or claimed to be due from him to the judgment debtor, the Court may summarily determine the question at issue or order in Form 100 that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried, without, if it orders trial before the Registrar, the need for any consent by the parties.

Claims of third persons (O. 49, r. 6)

6. (1) If in garnishee proceedings it is brought to the notice of the Court that some other person than the judgment debtor is or claims to be entitled to the debt sought to be attached or has or claims to have a charge or lien upon it, the Court may order that person to attend before the Court and state the nature of the claim with particulars thereof.

(2) After hearing any person who attends before the Court in compliance with an order under paragraph (1), the Court may summarily determine the questions at issue between the claimants or make such other order as it thinks just, including an order that any question or issue necessary for determining the validity of the claim of such other person as is mentioned in paragraph (1) be tried in such manner as is mentioned in rule 5.

Judgment creditor resident outside scheduled territories (O. 49, r. 7)

7. (1) The Court shall not make an order under rule 1 requiring the garnishee to pay any sum to or for the credit of any judgment creditor resident outside the scheduled territories unless that creditor produces a certificate that the Controller has given permission under the Exchange Control Act 1953 for the payment unconditionally or on conditions which have been complied with.

(2) If it appears to the Court that payment by the garnishee to the judgment creditor will contravene any provision of the Exchange Control Act 1953, it may order the garnishee to pay into Court the amount due to the judgment creditor and the costs of the garnishee proceedings after deduction of his own costs, if the Court so orders.

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Discharge of garnishee (O. 49, r. 8)

8. Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him in pursuance of such an order, shall be a valid discharge of his liability to the judgment debtor to the extent of the amount paid or levied notwithstanding that the garnishee proceedings are subsequently set aside or the judgment or order from which they arose reversed.

Money in Court (O. 49, r. 9)

9. (1) Where money is standing to the credit of the judgment debtor in Court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the Court by a notice of application for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) On issuing a notice of application under this rule, the applicant shall produce the application at the office of the Accountant General and leave a copy at that office, and the money to which the application relates shall not be paid out of Court until after the determination of the application. If the application is dismissed, the applicant shall give notice of that fact to the Accountant General.

(3) Unless the Court otherwise directs, the notice of application shall be served on the judgment debtor at least seven days before the day named therein for the hearing of it.

(4) Subject to Order 70, rule 23, the Court hearing an application under this rule may make such order with respect to the money in Court as it thinks just.

Costs (O. 49, r. 10)

10. The costs of any application for an order under rule 1 or 9, and of any proceedings arising therefrom or incidental thereto, shall, unless the Court otherwise directs, be retained by the judgment creditor out of the money recovered by him under the order and in priority to the judgment debt.

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ORDER 50

CHARGING ORDERS, STOP ORDERS

(O. 50, r. 1)

1. *(There is no rule 1)*

Order imposing charge on securities (O. 50, r. 2)

2. (1) The Court may for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person by order in Form 101 impose on any interest to which the judgment debtor is beneficially entitled in such of the securities to which this rule applies as may be specified in the order a charge for securing payment of the amount due under the judgment or order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, in Form 102 specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) The securities to which this rule applies are—

(a) any Government stock, and any stock of any company registered under any written law, including any such stock standing in the name of the Accountant General; and

(b) any dividend of or interest payable on such stock.

(4) In this Order, "Government stock" means any stock issued by the Government or any funds of or annuity granted by the Government, and "stock" includes stock options, shares, debentures and debenture stock.

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Application for order under rule 2 (O. 50, r. 3)

3. An application for an order under rule 2 shall be made *ex parte* by notice of application supported by an affidavit—

(a) identifying the judgment or order to be enforced, stating the amount unpaid under it at the date of the application, and showing that the applicant is entitled to enforce the judgment or order; and

(b) specifying the securities on the judgment debtor's interest in which it is sought to impose a charge and in whose name they stand,

stating that to the best of the information or belief of the deponent the judgment debtor is beneficially entitled to an interest in the securities in question, describing that interest, and stating the sources of the deponent's information or the grounds for his belief.

Service of notice of order to show cause (O. 50, r. 4)

4. (1) Unless the Court otherwise directs, a copy of the order under rule 2 to show cause shall, at least seven days before the time appointed thereby for the further consideration of the matter, be served on the judgment debtor, and if he does not attend on such consideration proof of service must be given.

(2) A notice of the making of an order to show cause, with a copy of that order, shall as soon as practicable after the making of the order be served—

(a) where the order relates to Government stock, on the Accountant General;

(b) where the order relates to other stock, on the company concerned; and

(c) where the order relates to stock standing in the name of the Accountant General, on the Accountant General.

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Effect of order to show cause (O. 50, r. 5)

5. (1) No disposition by the judgment debtor of his interest in any securities to which an order under rule 2 to show cause relates made after the making of that order shall, so long as that order remains in force, be valid as against the judgment creditor.

(2) Until such order is discharged or made absolute the Accountant General or a company, as the case may be, shall not permit any transfer of any such stock as is specified in the order, or pay to any person any dividend thereof, or interest payable thereon, except with the authority of the Court.

(3) If after a notice of the making of such order is served on the Accountant General or a company, the Accountant General or company permits any transfer or makes any payment prohibited by paragraph (2), it shall be liable to pay the judgment creditor the value of the stock transferred or the amount of the payment made, as the case may be, or, if that value or amount is more than sufficient to satisfy the judgment or order to which such order relates, so much thereof as is sufficient to satisfy it.

Making and effect of charging order absolute (O. 50, r. 6)

6. (1) On the further consideration of the matter the Court shall, unless it appears that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(2) Where on the further consideration of the matter it appears to the Court that the order should not be made absolute it shall discharge the order.

(3) A charge imposed by an order under rule 2 made absolute under this rule shall have the same effect, and the judgment creditor in whose favour it is made shall, subject to paragraph (4), have the same remedies for enforcing it, as if it were a valid charge effectively made by the judgment debtor.

(4) The proceedings to enforce a charge imposed by an order made absolute under this rule shall not be taken until after the expiration of six months from the date of the order to show cause.

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Discharge of charging order (O. 50, r. 7)

7. The Court, on the application of the judgment debtor or any other person interested in the securities to which an order under rule 2 relates, may at any time, whether before or after the order is made absolute, discharge or vary the order on such terms, if any, as to costs as it thinks just.

Money in Court: Charging order (O. 50, r. 8)

8. (1) The Court may for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money to a person by order impose on any interest to which the judgment debtor is beneficially entitled to any money in Court identified in the order a charge for securing payment of the amount due under the judgment or order and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for the further consideration of the matter and imposing the charge until that time in any event.

(3) Rules 3 and 4(1) shall, with the necessary modifications, apply in relation of an application for an order under this rule and to the order as they apply in relation to an application for an order under rule 2 and to such order.

(4) A notice of the making of an order under this rule to show cause, with a copy of that order, shall, as soon as practicable after the making of the order, be served on the Accountant General.

(5) Rules 5(1), 6(1), 6(2) and 7 shall, with the necessary modifications, apply in relation to an order under this rule as they apply in relation to an order under rule 2.

Registrar may grant injunction ancillary to charging order (O. 50, r. 9)

9. The Registrar shall have power—

(a) to appoint a receiver to enforce a charge imposed by an order under rule 1; or

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(b) to grant an injunction if, and only so far as, it is ancillary or incidental to an order under rule 1, 2 or 8,

and an application for the appointment of a receiver or an injunction under this rule may be joined with the application for the order under rule 2 or 8 to which it relates.

Securities not in Court: Stop notice (O. 50, r. 10)

10. (1) Any person claiming to be beneficially entitled to an interest in any securities to which rule 2 applies, other than securities in Court, who wishes to be notified of any proposed transfer of payment of those securities may avail himself of the provisions of this rule.

(2) A person claiming to be so entitled shall file in the Registry—

(a) an affidavit identifying the securities in question and describing his interest therein by reference to the document under which it arises; and

(b) a notice in Form 103 signed by the deponent to the affidavit, and annexed to it, addressed to the Accountant General or the company concerned, as the case may be,

and shall serve an office copy of the affidavit, and a copy of the notice sealed with the seal of the High Court, on the Accountant General or that company.

(3) There shall be endorsed on the affidavit filed under this rule a notice stating the address to which any such notice as is referred to in rule 11(1) is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the affidavit is filed.

(4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 11 by serving on the Accountant General or the company concerned, as the case may be, a notice to that effect, and as from the

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date of service of such a notice the address stated therein shall for the purpose of that rule be the address for service of that person.

Effect of stop notice (O. 50, r. 11)

11. (1) Where a notice under rule 10 has been served on the Accountant General or a company, then, so long as the notice is in force, the Accountant General or company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the notice was filed at his address for service a notice informing him of the request for such transfer or payment.

(2) Where the Accountant General or a company receive a request for such a transfer or payment as is mentioned in paragraph (1) made by or on behalf of the holder of the securities to which the notice under rule 10 relates, the Accountant General or company shall not by reason only of that notice refuse to register the transfer or make the payment for longer than eight days after receipt of the request except under the authority of an order of the Court.

Amendment of stop notice (O. 50, r. 12)

12. If any securities are incorrectly described in a notice filed under rule 10 the person on whose behalf the notice was filed may file in the Registry an amended notice and serve on the Accountant General or the company concerned, as the case may be, a copy of that notice sealed with the seal of the High Court, and where he does so the notice under rule 10 shall be deemed to have been served on the Accountant General or company on the day on which the copy of the amended notice was served on it.

Withdrawal of stop notice (O. 50, r. 13)

13. (1) The person on whose behalf a notice under rule 10 was filed may withdraw it by serving a request for its withdrawal on the Accountant General or the company, as the case may be, on whom the notice was served.

(2) Such request shall be signed by the person on whose behalf the notice was filed and his signature shall be witnessed by a practising solicitor.

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(3) The Court on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 10 relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) shall be made by a notice of application, and such application shall be served on the person on whose behalf the notice under rule 10 was filed.

Order prohibiting transfer of securities (O. 50, r. 14)

14. (1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any Government stock or any stock of any company registered under any written law, may by order in Form 104 prohibit the Accountant General or that company, as the case may be, from registering any transfer of such part of that stock as may be specified in the order or from paying any dividend thereof or interest thereon. The name of the holder of the stock to which the order relates shall be stated in the order.

(2) An application for an order under this rule shall be made by a notice of application.

(3) The Court, on the application of any person claiming to be entitled to an interest in any stock to which an order under this rule relates, may vary or discharge the order on such terms, if any, as to costs as it thinks fit.

ORDER 51

RECEIVERS: EQUITABLE EXECUTION

Appointment of receivers by way of equitable execution (O. 51, r. 1)

1. (1) Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of

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his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

(2) Where on an application for the appointment of a receiver by way of equitable execution it appears to the Court that the judgment creditor is resident outside the scheduled territories, or is acting by order or on behalf of person so resident, then, unless the permission of the Controller required by the Exchange Control Act 1953 has been given unconditionally or on conditions that have been complied with, any order for the appointment of a receiver shall direct that the receiver shall pay into Court to the credit of the cause or matter in which he is appointed any balance due from him after deduction of his proper remuneration.

Registrar may appoint receiver (O. 51, r. 2)

2. Subject to any directions given by the Court under Order 32, rule 9, the Registrar shall have power to make an order for the appointment of a receiver by way of equitable execution and to grant an injunction if, and only so far as, the injunction is ancillary or incidental to such an order.

Application of rules as to appointment of receiver (O. 51, r. 3)

3. (1) An application for the appointment of a receiver by way of equitable execution may be made in accordance with Order 30, rule 1, and rules 2 to 6 of that Order shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose.

(2) The application for the appointment of a receiver shall be in Form 105 and an order for the appointment of receiver by way of equitable execution shall be in one of the forms in Form 106.

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ORDER 51A

RATEABLE DISTRIBUTION

Proceeds of execution sale to be distributed rateably among judgment creditors (O. 51A, r. 1)

1. (1) Where assets are realized by sale or otherwise in execution of an order or judgment and more persons than one have, prior to the realization, attached the property from which such assets have been realized in execution of orders or judgments for the payment of money against the same judgment debtor and have not obtained satisfaction thereof, the assets after deducting the costs of the realization, shall be distributed rateably among all such persons:

Provided as follows:

(a) where any property is sold subject to a charge, the chargee shall not as such be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of an order or judgment is subject to a charge, the Court may, with the consent of the chargee, order that the property be sold free from the charge, giving to the chargee the same right against the proceeds of the sale as he had against the property sold;

(c) where any immovable property is sold in execution of an order or judgment ordering its sale for the discharge of an encumbrancer thereon, the proceeds of sale shall be applied—

(i) firstly, in defraying the expenses of the sale;

(ii) secondly, in discharging the interest and principal money due on subsequent encumbrances, if any;

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(iii) thirdly, in discharging the interest and principal money due on subsequent encumbrances, if any; and

(iv) fourthly, rateably among the holders of orders or judgment for the payment of money against the judgment debtor who have, prior to the sale of the property, applied to the Court which passed the order or judgment ordering such sale for execution of such orders or judgments and have not obtained satisfaction thereof; and

(d) where the property from which such assets have been realized has prior to realization been attached by the High Court and also by one or more of the Subordinate Courts, a holder of a decree passed by a Subordinate Court shall not be entitled to share in the distribution of such assets unless he has, prior to the realization, given notice in writing to the Registrar of the attachment at his instance of such property by such Subordinate Court.

(2) Where all or any of the assets liable to be rateably distributed under this rule are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this rule shall operate to defeat or postpone any claim which under the provisions of any written law ought to be paid in priority.

Method of subsequent attachment (O. 51A, r. 2)

2. (1) Any property attached by way of execution by any Court whether physically taken into the Court's custody or not, shall be deemed to have been seized by the Court and shall not thereafter be seized at the instance of any other person, but any subsequent order or warrant for the attachment or seizure of the same property by the same Court or any other Court, whether in the same or another place, or a certified copy thereof, may be delivered to the Sheriff or the bailiff by whom the property was seized

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and shall thereupon operate and have effect as an attachment for the purpose of this Order.

(2) In the case of any property which cannot be taken into the physical custody of the bailiff or other officer of the Court, any prohibitory order or similar document for the purpose of protecting the interests of a subsequent attaching creditor may be served or registered and shall have effect in accordance with paragraph (1).

(3) If the property is released from the prior attachment, it shall be deemed to have been attached and seized under the subsequent order or warrant.

(4) If the property remains under the prior attachment and no order for sale thereof has been made within two months after such attachment, the property shall be deemed to have been released from the prior attachment and paragraph (3) shall apply.

Property attached in execution of order or judgment of several Courts (O. 51A, r. 3)

3. Where property not in the custody of any Court is under attachment in execution of orders or judgments of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of the highest grade, or where there is no difference in grade between such Courts, the Court under whose order of judgment the property was first attached.

Immovable property (O. 51A, r. 4)

4. Where the property to be seized consists of immovable property or any registered interest therein, the following provisions shall apply:

(a) seizure shall be made by an order prohibiting the judgment debtor from transferring, charging or leasing such property or interest; and for the purpose of this rule, "charging" includes the creation of a lien by deposit of a document of title;

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(b) a copy of the order shall be served on the judgment debtor and one or more copies, as the case may require, shall be issued to the judgment creditor in order that he may present the same, in compliance with any written law relating to such land, registration at the Registry of Titles or Land Office whereat the land or interest in land specified in such order is registered;

(c) a prohibitory order issued under this rule shall not affect any immovable property or registered interest therein and any immovable property or registered interest therein shall not be deemed to have been seized until such prohibitory order has been registered as provided by any written law relating to such land; and

(d) subject to subparagraph *(c)*, any prohibitory order shall, upon the expiration of twelve months from the date thereof, cease to affect the immovable property or registered interest specified in such order.

ORDER 52

COMMITTAL

Definition (O. 52, r. 1)

1. In this Order—

"Court" means the High Court, Sessions Court and Magistrates' Court;

"Judge" means a High Court Judge, Sessions Court Judge or Magistrate.

Committal for contempt of Court (O. 52, r. 2)

2. The Court may, on the application of any party to any cause or matter or on its own motion, make an order of committal in Form 107.

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Contempt committed in the face of the Court (O. 52, r. 2A)

2A. (1) If a contempt is committed in the face of the Court, it shall not be necessary to serve a formal notice to show cause, but the Court shall ensure that the person alleged to be in contempt understands the nature of the offence alleged against him and has the opportunity to be heard in his own defence, and the Court shall make a proper record of the proceedings.

(2) Where a Judge is satisfied that a contempt has been committed in the face of the Court, the Judge may order the contemnor to appear before him on the same day at the time fixed by the Court for the purpose of purging his contempt.

(3) Where such person has purged his contempt by tendering his unreserved apology to the Court and the Judge considers the contempt to be not of a serious nature, the Judge may excuse such person and no further action shall be taken against him.

(4) Where such person declines or refuses to purge his contempt, then the Judge shall sentence him.

Other cases of contempt (O. 52, r. 2B)

2B. In all other cases of contempt of Court, a formal notice to show cause why he should not be committed to the prison or fined shall be served personally.

Application to Court (O. 52, r. 3)

3. (1) No application to a Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.

(2) An application for such leave must be made *ex parte* to the Court by a notice of application supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

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Application for order after leave to apply granted (O. 52, r. 4)

4. (1) When leave has been granted under rule 3 to apply for an order of committal, the application for the order must be made by notice of application to the Court, and, unless the Court granting leave has otherwise directed, there must be at least eight clear days between the service of the notice of application and the day named therein for the hearing.

(2) Unless within fourteen days after such leave was granted the notice of application is filed, the leave shall lapse.

(3) Subject to paragraph (4), the notice, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 3 and the order granting such leave, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the Court or Judge under Order 62, rule 5, the Court or Judge may dispense with service of the notice under this rule if it or he thinks it just to do so.

Saving for power to commit without application for purpose (O. 52, r. 5)

5. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of Court.

Provisions as to hearing (O. 52, r. 6)

6. (1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private or in Chambers in the following cases:

(a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;

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(b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act 2001;

(c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;

(d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private,

but, except as aforesaid, the application shall be heard in open Court.

(2) If the Court hearing an application in private or in Chambers by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open Court state—

(a) the name of that person;

(b) in general terms, the nature of the contempt of Court in respect of which the order of committal is being made; and

(c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 3.
The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

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Contempt committed by corporation (O. 52, r. 6A)

6A. If a corporation is guilty of contempt of Court, the Court may fine the corporation or punish any officer of the corporation who caused or wilfully permitted or contributed to the contempt of Court or fine the corporation and punish the officer.

Power to suspend execution of committal order (O. 52, r. 7)

7. (1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

Discharge of person committed (O. 52, r. 8)

8. (1) The Court may, on the application of any person committed to prison for any contempt of Court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in Court or elsewhere, then, if the thing is in the custody or power of the person committed, the Sheriff in the High Court or the bailiff in the Subordinate Court, as the case may be, may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the Sheriff or the bailiff as it thinks fit.

Saving for other powers (O. 52, r. 9)

9. Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of Court, or a person punishable by virtue of any written law in like manner as if he had been guilty of contempt of the Court, to pay a fine or to give security for his good behaviour, and those

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provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

Form of warrant of committal (O. 52, r. 10)

10. A warrant for committal must be in Form 108.

ORDER 53

APPLICATION FOR JUDICIAL REVIEW

Application for judicial review (O. 53, r. 1)

1. (1) This Order shall govern all applications seeking the relief specified in paragraph 1 of the Schedule to the Courts of Judicature Act 1964 and for the purposes therein specified.

(2) This Order is subject to the provisions of Chapter VIII of Part 2 of the Specific Relief Act 1950 [*Act 137*].

Applications (O. 53, r. 2)

2. (1) An application for any of the reliefs specified in paragraph 1 of the Schedule to the Courts of Judicature Act 1964 (other than an application for an order of *habeas corpus*) shall be in Form 109.

(2) An application for judicial review may seek any of the reliefs, including a prayer for a declaration, either jointly or in the alternative in the same application if it relates to or is connected with the same subject matter.

(3) Upon the hearing of an application for judicial review, the Court shall not be confined to the relief claimed by the applicant but may dismiss the application or make any orders, including an order of injunction or monetary compensation:

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Provided that the power to grant an injunction shall be exercised in accordance with the provisions of section 29 of the Government Proceedings Act 1956 [*Act 359*] and section 54 of the Specific Relief Act 1950.

(4) Any person who is adversely affected by the decision of any public authority shall be entitled to make the application.

Leave (O. 53, r. 3)

3. (1) An application under this Order shall not be made unless leave therefor has been granted in accordance with this rule.

(2) An application for leave must be made *ex parte* to a Judge in Chambers and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by affidavits verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than three days before the hearing date to the Attorney General's Chambers and must at the same time lodge in those Chambers copies of the statement and affidavits.

(4) The Judge may, in granting leave, impose such terms as to costs and as to the giving of security as he thinks fit.

(5) The grant of leave under this rule shall not, unless the Judge so directs, operate as a stay of the proceedings in question.

(6) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of application first arose or when the decision is first communicated to the applicant.

(7) The Court may, upon an application, extend the time specified in rule 4(1) and if it considers that there is a good reason for doing so.

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(8) An application to extend time must be served on all respondents and shall be heard *inter partes*.

Notice (O. 53, r. 4)

4. (1) Where leave has been granted under this rule, the applicant shall, within fourteen days after the grant of such leave, file a notice in Form 110.

(2) Upon extraction of the sealed copy of Form 110, the applicant shall serve a copy of the same together with a copy of the statement and all affidavits in support on all persons directly affected by the application not later than fourteen days before the date of hearing specified in the Form 110.

Damages (O. 53, r. 5)

5. (1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if—

(a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and

(b) the Court is satisfied that, if the claim has been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

Discovery, *etc.* (O. 53, r. 6)

6. After leave has been granted, any party to an application for judicial review may apply to the Judge for discovery and inspection of documents pursuant to Order 24, to administer interrogatories pursuant to Order 26, or to cross-examine the deponent of any affidavit filed in support of or in opposition to the application pursuant to Order 38.

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Amendment (O. 53, r. 7)

7. (1) The Judge may allow the statement to be amended, and may allow further affidavits to be used if they deal with new matters arising out of any affidavit of any other party to the application, and where the applicant intends to amend his statement or use further affidavits, he must immediately give notice of his intention and of any proposed amendment of his statement to every other party.

(2) Every party to the application must supply to any other party copies of the affidavits which he proposes to use at the hearing.

Other persons who may be heard (O. 53, r. 8)

8. (1) Upon the hearing of an application for judicial review, any person who desires to be heard in opposition to the application and appears to the Judge to be a proper person to be heard may be heard notwithstanding that he has not been served with the cause papers in the matter.

(2) Where on application for judicial review an order of *certiorari* is made in any such case, the order shall direct that the proceedings shall be quashed forthwith on their removal to the High Court.

No setting aside of order (O. 53, r. 9)

9. An application to set aside any order made by the Judge shall not be entertained, but the aggrieved party may appeal to the Court of Appeal.

ORDER 54

(There is no Order 54)

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ORDER 55

APPEALS TO HIGH COURT FROM SUBORDINATE COURTS

Definition (O. 55, r. 1)

1. In this Order, "decision" includes judgment, order and decree.

Appeal to be by re-hearing on notice (O. 55, r. 2)

2. All appeals to the High Court shall be by way of re-hearing and shall be brought by giving a notice of appeal within fourteen days from the date of the decision appealed from.

Notice of appeal against a decision made after trial (O. 55, r. 3)

3. (1) A notice of appeal against a decision made after trial shall substantially be in Form 111 and shall be filed in the Court from which the decision is appealed from.

(2) Any appellant may appeal from the whole or part of a judgment or order and the notice of appeal shall state whether the whole or part only, and what part, of the judgment or order is complained of.

(3) At the time of the filing of the appeal under this rule, the appellant shall, unless the Court for sufficient cause otherwise orders, lodge in the Court appealed from a sum of one thousand ringgit by way of security for the costs of the appeal within the time limited for filing of the appeal.

(4) A duplicate copy of the notice of appeal must be served by the appellant within the time limited for the filing of an appeal on all respondents.

(5) For an appeal under this rule, the appellant shall, within the time limited for the filing of an appeal, apply to the Court appealed from in writing for the notes of proceedings and the grounds of judgment.

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(6) The judgment of the High Court in the case of an appeal of a decision after trial shall be pronounced in open Court, either on the hearing of the appeal or at any subsequent time of which notice shall be given to the parties to the appeal.

Record of appeal (O. 55, r. 4)

4. (1) In the case of an appeal from a decision after trial, the appellant shall within one month from the date of filing of notice of appeal prepare and file the requisite number of copies of the record of appeal and the record shall contain copies of—

(a) the relevant pleadings;

(b) the notes of evidence, including witness statements, if available;

(c) the grounds of judgment, if available;

(d) the memorandum of appeal;

(e) the decision, order or judgment;

(f) a duplicate copy of the notice of appeal;

(g) a duplicate copy of the notice of cross appeal, if any;

(h) all such documentary exhibits and other documents the parties shall consider relevant for the purposes of the appeal:

Provided that the record of appeal shall be filed notwithstanding that the notes of evidence and/or grounds of judgment are not ready or that the sealed decision, order or judgment has not been extracted.

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(2) In the event the notes of evidence and/or grounds of judgment are not ready or the sealed decision, order or judgment has not been extracted within the period specified in rule 4(1) above, then the notes of evidence and/or grounds of judgment, where they are made available and a copy of the sealed decision, order or judgment when extracted**,** shall be filed by way of a supplementary record of appeal without leave of the High Court:

Provided also that the absence of the grounds of judgment shall not prevent the appellant from proceeding with his appeal.

(3) The memorandum of appeal shall be substantially in Form 112 and shall set forth concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, and specifying the points of law or fact which are alleged to have been wrongly decided; such grounds to be numbered consecutively. Notwithstanding rule 8 of this Order, where a supplementary record of appeal is to be filed pursuant to rule 4(2) above, the appellant may if necessary also include in the supplementary record of appeal an amended memorandum of appeal, without leave of the High Court.

(4) A draft index of the documents to be included in the record of appeal shall be sent by the solicitors for the appellant to the solicitors for the respondent who or, if more than one, any one of whom may, within forty-eight hours, object to the inclusion or exclusion of any document.

(5) In the event of the parties being unable to agree, the matter shall be referred to the Registrar of the High Court who may require the parties to attend before a Judge of the High Court.

(6) The Registrar of the High Court and the parties 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 taking care to avoid any duplication of documents and unnecessary repetition of headings and other merely formal parts of documents.

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(7) Where in the course of preparation of the 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 on it being included, the record as finally printed or typed shall, with a view to the subsequent adjustment of the costs of and incidental to such documents, indicate, in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

(8) The appellant shall within the time limited for the filing of a record of appeal serve each respondent with a copy of such record of appeal.

Notice of Appeal against any decision other than a decision made after trial (O. 55, r. 5)

5. (1) An appeal from any decision other than a decision made after trial by the Subordinate Court shall lie to a Judge in Chambers of the High Court.

(2) The appeal under this rule shall be brought by filing a notice of appeal in Form 111A in the Registry of the relevant Subordinate Court, with a copy extended to the Registry of the High Court within fourteen days from the date on which the decision was pronounced and serving a copy of the notice on every other party to the proceedings.

(3) Within one month after the filing of the notice of appeal under this rule, the appellant shall file the record of appeal in the High Court, and the record shall contain copies of—

(a) the application for the decision;

(b) all pleadings filed;

(c) all affidavits filed in support of or in opposition to the application; and

(d) the order or draft order of the decision appealed from:

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Provided that the record of appeal shall not include the notes of evidence, the grounds of judgment or any memorandum of appeal.

List of appeals (O. 55, r. 6)

6. On receiving a notice of appeal under this Order, the Registrar shall enter the appeal in a list of appeals from the Subordinate Courts.

Restriction on fresh evidence (O. 55, r. 7)

7. At the hearing of any appeal, fresh evidence shall not be admitted unless the Judge is satisfied that—

(a) at the hearing in the Subordinate Court, the new evidence was not available to the party seeking to use it or that reasonable diligence would not have made it so available; and

(b) the fresh evidence, if true, would have had or would have been likely to have a determining influence upon the decision of the Subordinate Court.

Notice of cross appeal (O. 55, r. 8)

8. A respondent to an appeal may, within fourteen days from the date of service on him of the record of appeal, file a notice of cross appeal in the High Court and serve upon the appellant a duplicate copy of the notice in Form 113 that he intends to contend on the hearing of the appeal that the decision of the Court below should be varied.

Amendments (O. 55, r. 9)

9. The High Court may at any time allow amendment of the memorandum of appeal or notice of cross appeal or other part of the record of appeal on such terms as it thinks fit.

Parties not appearing (O. 55, r. 10)

10. (1) If, on any day fixed for the hearing of an appeal, the appellant does not appear in person or by a solicitor, the appeal may be dismissed but any cross appeal may be heard.

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(2) If the appellant appears, and any respondent fails to appear either in person or by a solicitor, the appeal shall proceed in the absence of such respondent, unless the High Court for any sufficient reason sees fit to adjourn the hearing thereof.

(3) Where any appeal is dismissed or allowed under paragraph (1) or (2), the party who was absent may apply to the High Court for the re-hearing of the appeal and where it is proved that there was sufficient reason for the absence of such party the High Court may order that the appeal be restored for hearing upon such terms as to costs or otherwise as it thinks fit.

(4) Paragraph (3) shall apply *mutatis mutandis* to the hearing of any cross appeal.

Withdrawal of appeal (O. 55, r. 11)

11. (1) An appellant may at any time before his appeal is called on for hearing serve on the parties to the appeal a notice to the effect that he does not intend further to prosecute the appeal.

(2) A copy of such notice shall at the same time be filed by the appellant in the Registry of the High Court.

(3) If all parties to the appeal consent to the intended withdrawal of the appeal, the appellant may file in the Registry the document or documents signifying such consent and signed by the parties or by their solicitors, and the appeal shall thereupon be deemed to have been withdrawn and shall be struck out of the list of appeals by the Registrar. In such event any sum lodged in Court as security for costs of the appeal shall be paid out to the appellant.

(4) If all the parties do not consent to the intended withdrawal of the appeal, the appeal shall remain on the list, and shall come on for hearing of any issue as to costs or otherwise remaining outstanding between the parties, and for the making of an order as to the disposal of any sum lodged in Court as security for the costs of the appeal.

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Notice of appeal by respondent where notice of appeal withdrawn or appeal not entered (O. 55, r. 12)

12. Where an appeal is withdrawn under the preceding rule, or where an appeal of which notice has been given is not entered within the time limited, any respondent who has not given a notice of cross appeal may give a notice of appeal and proceed therewith in the manner prescribed by the foregoing rules; but in any such case the time limited for giving a notice of appeal, entering the appeal, furnishing security for costs, and filing and serving the record of appeal and the memorandum of appeal may, on application to the High Court or, if the appeal has not been entered, to the Court appealed from, be extended so far as is reasonably necessary in all the circumstances of the case.

High Court may direct service on person not served (O. 55, r. 13)

13. When an appeal is called on for hearing or at any previous time on the application of any person interested, the High Court may direct that the record of appeal, or any notice of cross appeal, be served on any party to the cause or matter who has not been served therewith, or on any person not already a party to the cause or matter, and may, for the purpose of such service, adjourn the hearing upon such terms as are just, and may give such judgment and make such order as might have been given or made if the parties served with such record or notice had been originally parties.

Interest (O. 55, r. 14)

14. On any appeal, interest, for such time as execution has been delayed by the appeal, shall be allowed, unless the High Court otherwise orders.

Decision on appeal to be sent to the Court below (O. 55, r. 15)

15. (1) A certified copy of the judgment of the High Court on the appeal shall be sent to the Court from whose decision the appeal was brought.

(2) The Subordinate Court shall execute the order in accordance with the provisions of these Orders and rules.

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Stay of execution (O. 55, r. 16)

16. (1) An appeal shall not operate as a stay of execution under the decision appealed against except in so far as the Court appealed from or the High Court may order, and any application for stay shall be made in the first instance to the Court appealed from.

(2) The Court appealed from or the High Court may grant an order of stay of execution on such terms as it thinks fit.

ORDER 55A

APPEALS TO HIGH COURT UNDER WRITTEN LAW

Appeals to the High Court under written law (O. 55A, r. 1)

1. (1) Where under any written law an appeal lies from any decision of any person or body of persons to the High Court such appeal shall be made to the High Court in the State where the decision was given by way of an originating summons setting out the grounds of the appeal and supported by an affidavit, and if the Court so directs at the hearing of the appeal, by way of oral evidence.

(2) The appellant shall annex the following documents as exhibits to the affidavit filed in support of the originating summons or to such further affidavit as may be filed in the appeal proceedings:

(a) the notes of evidence, if available;

(b) the grounds of decision, if available;

(c) the decision of the statutory body, if available; and

(d) all such documentary exhibits and other documents the parties shall consider relevant for the purposes of appeal:

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Provided that the originating summons shall be filed notwithstanding that the grounds of decision are not available or ready. If the grounds of decision become available, then they shall be filed by way of a further affidavit without the leave of the High Court.

(3) Unless otherwise provided by any written law, such appeal must be filed in the manner prescribed in paragraph (2) within one month from the date on which the decision was given or the date on which such decision was notified to the person appealing, whichever is the later date.

(4) Unless otherwise provided by any written law, the originating summons shall be served on the respondent in such appeal or where the respondent is a body of persons, on the secretary, registrar or such other officer of that body of persons.

ORDER 56

APPEALS FROM REGISTRAR OF THE HIGH COURT TO A JUDGE IN CHAMBERS

Appeals from certain decisions of Registrar of the High Court to a Judge in Chambers (O. 56, r. 1)

1. (1) An appeal shall lie to a Judge in Chambers from any judgment, order or decision of the Registrar of the High Court.

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice in Form 114 to attend before the Judge on a day specified in the notice.

(3) Unless the Court otherwise orders, the notice shall be filed within fourteen days after the judgment, order or decision appealed against was given or made, and shall be served not less than five days before the date fixed for the hearing of the appeal.

(3A) At the hearing of the appeal fresh evidence shall not be admitted unless the Judge is satisfied that—

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(a) at the hearing before the Registrar the new evidence was not available to the party seeking to use it, or that reasonable diligence would not have made it so available; and

(b) the fresh evidence, if true, would have had or would have been likely to have had a determining influence upon the decision of the Registrar.

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

Appeal from Judge (O. 56, r. 2)

2. Subject to section 68 of the Courts of Judicature Act 1964, a party may appeal to the Court of Appeal against any judgment, order or decision made by a Judge in Chambers.

ORDER 57

TRANSFER OF PROCEEDINGS

Transfer of proceedings to another Court (O. 57, r. 1)

1. (1) Where the Judge of the High Court or a Judge of the Sessions Court or a Magistrate is satisfied that any proceedings in that Court can be more conveniently or fairly tried in some other Court of co-ordinate jurisdiction, he may on application by any party, order the proceedings to be transferred to the other Court.

(2) A transfer of any proceedings from—

(a) a Subordinate Court to the High Court; or

(b) the High Court to a Subordinate Court,

shall only be made by an order of that High Court Judge on application by any party by originating summons or notice of application, whichever is appropriate.

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(3) A transfer of any proceedings from—

(a) a Magistrates' Court to a Sessions Court; or

(b) a Sessions Court to a Magistrates' Court,

shall only be made by an order of that Sessions Court Judge on application by any party by originating summons or notice of application, whichever is appropriate.

(4) Before making any order to transfer any proceedings from—

(a) the High Court to another High Court of co-ordinate jurisdiction;

(b) a Subordinate Court to the High Court;

(c) the High Court to a Subordinate Court; or

(d) a Subordinate Court to another Subordinate Court,

the High Court Judge or the Judge of the Sessions Court or Magistrate, as the case may be, shall take into consideration whether the High Court or Subordinate Court which shall hear the case is located at or nearest to the place where—

(A) the cause of action arose;

(B) the defendant, or one of the several defendants, resides or has his place of business;

(C) the facts on which the proceedings are based exist or are alleged to have occurred;

(D) the land the ownership of which is disputed is situated; or

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(E) for other reasons it is desirable in the interests of justice that the proceedings should be transferred.

(5) In this Order, "Subordinate Court" means the Magistrates' Court or the Sessions Court.

Procedure on transfer (O. 57, r. 2)

2. (1) When an order is made for the transfer of any proceedings, the Court from which the proceedings are transferred shall send—

(a) the file of the proceedings, inclusive of all cause papers, exhibits and bundle of documents contained therein;

(b) certified copies of the notes of evidence of the proceedings, if any; and

(c) a notice in Form 115,

to the Court to which the proceedings are transferred.

(2) The Court to which any proceedings are transferred may give such directions as to the further conduct of the proceedings as it may think fit.

(3) The Registrar to the Court to which the proceedings are transferred shall, on receipt of the order or certified copies of it, enter the proceedings in the appropriate Book.

(4) Upon transfer of the proceedings, the trial shall proceed as if the proceedings had commenced in the Court to which the proceedings are transferred.

Costs on transfer (O. 57, r. 3)

3. Where an order for transfer is made, the costs incurred shall be at the discretion of the Judge.

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Procedure on transfer from High Court to Sessions Court or Magistrates' Court (O. 57, r. 4)

4. (1) Where by an order of the High Court any proceedings are ordered to be transferred to a Sessions Court or Magistrates' Court, the Registrar shall, on receipt of the order or certified copies of it, enter the proceedings in the appropriate Book, and give a notice in Form 116 at least fourteen days before the return day to every party to appear before the Court for such directions as to the further conduct of the proceedings.

(2) Upon transfer of the proceedings, the matter shall proceed as if the proceedings had commenced in the Court to which the matter was transferred.

ORDER 58

(There is no Order 58)

ORDER 59

COSTS

Interpretation (O. 59, r. 1)

1. (1) In this Order—

"costs" includes fees, charges, disbursements, expenses and remuneration;

"determined costs" means costs determined in accordance with this Order;

"fixed costs" means costs under this Order set out hereinafter;

"Court" means the High Court (including a Registrar of the High Court), Sessions Court and Magistrates' Court;

"contentious business" and "non-contentious business" have the same meanings as assigned to them in the Legal Profession Act 1976 respectively.

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(2) In this Order, references to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to any estate or property, whether movable or immovable, held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

(3) The terms mentioned in the first column of the Table below, when used in an order for costs, shall have the effect indicated in the second column of that Table.

TABLE	
Term	*Effect*
"Costs"	Where this order is made in interlocutory proceedings, the party in whose favour it is made shall be entitled to his costs in respect of those proceedings whatever the outcome of the cause or matter in which the proceedings arise.
"Costs reserved"	The party in whose favour an order for costs is made at the conclusion of the cause or matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which this order is made unless the Court orders otherwise.
"Costs in any event"	This order has the same effect as an order for "costs" except that the costs shall be determined only after the conclusion of the cause or matter in which the proceedings arise.
"Costs here and below"	The party in whose favour this order is made shall be entitled not only to his costs in respect of the proceedings in which it is made but also to his costs of the same proceedings in any lower Court, tribunal or other body constituted under any written law or in arbitration proceedings.

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"Costs in the cause" or "Costs in the application"	The party in whose favour an order for costs is made at the conclusion of the cause or the matter in which the proceedings arise shall be entitled to his costs of the proceedings in respect of which such an order is made.
"Plaintiff's costs in the cause" or "Defendant's costs in the cause"	The plaintiff or defendant, as the case may be, shall be entitled to his costs of the proceedings in respect of which such an order is made if judgment is given in his favour in the cause or matter in which the proceedings arise, but he shall not be liable to pay the costs of any other party in respect of those proceedings if judgment is given in favour of any party or parties in the cause or matter in question.
"Costs thrown away"	Where proceedings or any part thereof have been ineffective or have been subsequently set aside, the party in whose favour this order is made shall be entitled to his costs of those proceedings or that part in respect of which it is made.
"Costs paid forthwith"	The plaintiff or defendant, as the case may be, shall be entitled to his costs of that part of the proceedings in respect of which such an order is made, notwithstanding that the cause or matter has yet to be tried.

Application (O. 59, r. 2)

2. (1) Where by virtue of any written law the costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any written law, not being proceedings in the High Court, are to be determined in the High Court, rule 6(6) and rule 13, shall have effect in relation to proceedings for determination of those costs as they have effect in relation to proceedings for determination of the costs of or arising out of proceedings in the High Court.

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(2) Subject to the express provisions of any written law and of these Rules, the costs of and incidental to proceedings in the Court, shall be in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid.

When costs to follow the event (O. 59, r. 3)

3. (1) Subject to the following provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

Offer of contribution and offer of settlement (O. 59, r. 4)

4. The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account—

(a) any such offer of contribution as is mentioned in Order 22B, rule 11, which is brought to its attention in pursuance of a reserved right to do so; and

(b) any offer of settlement under Order 22B, rule 1.

Costs arising from misconduct or neglect (O. 59, r. 5)

5. (1) Where in any cause or matter any thing is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

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(2) Without prejudice to the generality of paragraph (1) the Court shall, for the purpose of that paragraph, have regard in particular to the following matters:

(a) the omission to do any thing the doing of which would have been calculated to save costs;

(b) the doing of any thing calculated to occasion, or in a manner or at a time calculated to occasion unnecessary costs; and

(c) any unnecessary delay in the proceedings.

Personal liability of solicitor for costs (O. 59, r. 6)

6. (1) Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Court may make against any solicitor whom it considers to be responsible an order—

(a) disallowing the costs as between the solicitor and his client; and

(b) directing the solicitor to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or

(c) directing the solicitor personally to indemnify such other parties against cost payable to them.

(2) An order under this rule shall not be made against a solicitor unless he has been given a reasonable opportunity to appear before the Court and show cause why the order should not be made, except where any proceeding in Court or in Chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made—

(a) because of the failure of the solicitor to attend in person or by a proper representative; or

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(b) because of the failure of the solicitor to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.

(3) Before making an order under this rule the Court may, if it thinks fit, refer the matter to the Registrar for inquiry and report and direct to the solicitor in the first place to show cause before him.

(4) The Court may, if it thinks fit, direct or authorize the Bar Council to attend and take part in any proceedings or inquiry under this rule, and may make such order as it thinks fit as to the payment of its costs.

(5) The Court may direct that notice of any proceedings or order against a solicitor under this rule shall be given to his client in such manner as may be specified in the direction.

(6) Where in any proceedings before the Registrar, the solicitor representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the Registrar may direct the solicitor to pay costs personally to any of the parties to those proceedings.

(7) All references to "Registrar" in this rule when applied in the Subordinate Court shall be read as referring to a Judge of the Sessions Court or a Magistrate.

Stage of proceedings at which costs are to be dealt with (O. 59, r. 7)

7. (1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings; and any costs ordered shall be paid at the conclusion of the proceedings unless the Court otherwise orders.

(2) At the conclusion of the proceedings, the Court will hear submissions from the parties as to the quantum of costs to be awarded and shall order such costs as it deems fit. The Court shall direct that the submissions of the parties on costs are to be

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tendered as part of the substantive submission of the case or separately and there shall be annexed to the submission of costs a bill for such costs which shall be in Form 117, and shall include particulars of the following:

(a) work done including the value of getting up; and

(b) all disbursements reasonably incurred.

(3) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and in the case of any proceedings transferred or removed to the High Court from any other Court, the costs of the whole proceedings, both before and after the transfer or removal, may be dealt with by the Court to which the proceedings are transferred or removed.

(4) Where under paragraph (2) costs are determined in respect of proceedings in the High Court an allocatur certificate shall be issued by the Registrar upon payment of an allocatur fee equivalent to four per centum of the costs or at such rate as the Chief Justice may from time to time determined.

Special matters to be taken into account in exercising discretion (O. 59, r. 8)

8. The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account—

(a) any offer of contribution or offer of settlement under Order 22B;

(b) the conduct of all the parties, including conduct before and during the proceedings;

(c) the conduct of the parties in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution; and

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(d) in particular, the extent to which the parties have followed any relevant pre-action protocol or practice direction for the time being issued by the Registrar.

Restriction of discretion to order costs (O. 59, r. 9)

9. (1) Notwithstanding anything in this Order or under any written law, unless the Court is of opinion that there was no reasonable ground for opposing the will, an order shall not be made for the costs of the other side to be paid by the party opposing a will in a probate action who has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or out of the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

Costs due to unnecessary claims or issues (O. 59, r. 10)

10. In addition to and not in derogation of any other provision in this Order, where a party has failed to establish any claim or issue which he has raised in any proceedings, and has thereby unnecessarily or unreasonably protracted, or added to the costs or complexity of those proceedings, the Court may order that the costs of that party shall not be allowed in whole or in part, or that any costs occasioned by that claim or issue to any other party shall be paid by him to that other party, regardless of the outcome of the cause or matter.

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When a party may sign judgment for costs without an order (O. 59, r. 11)

11. (1) Where a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made by him therein against any defendant, the defendant—

(a) may ask that costs occasioned by the matter withdrawn be granted to him; or

(b) shall be entitled to his costs of the Subordinate Court action or his costs occasioned by the matter withdrawn,

as the case may be, and, if the costs are not paid within seven days of the order for costs is made, sign judgment for them.

(2) Where money paid into Court in an action is accepted by the plaintiff after the trial or hearing has begun, the plaintiff shall not be entitled to have his costs determined in a High Court action or be entitled to his costs in a Subordinate Court action.

(3) When an appeal is deemed to have been withdrawn under Order 56, the respondent may have his costs of and incidental to the appeal determined, and if the determined costs are not paid within seven days after the determination of costs, may sign judgment for them.

Powers of Registrar to determine costs (O. 59, r. 12)

12. Subject to Order 59, rule 7, the Registrar shall have power to determine—

(a) the costs of or arising out of any cause or matter in the Court;

(b) the costs directed by an award made on a reference to arbitration under any written law or pursuant to an arbitration agreement to be paid;

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(c) any other costs the determination of which is directed by an order of the High Court; and

(d) any costs directed to be determined or settled by or under any written law.

Power of Registrar where party liable to be paid and to pay costs (O. 59, r. 13)

13. Where a party entitled to be paid costs is also liable to pay costs, the Court may determine the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance.

Fees for more than one counsel (O. 59, r. 14)

14. (1) The fees for more than one counsel for one party or set of defendants shall not be allowed unless the Court or Judge at the hearing so certifies.

(2) Such fees may be allowed notwithstanding that both counsels are members of the same firm of solicitors.

Costs payable to one party by another or out of fund (O. 59, r. 15)

15. (1) This rule applies to costs which by or under these Rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) The Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be determined on the common fund basis.

(3) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if—

(a) the costs are to be paid out of a fund; or

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(b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be determined as if the person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be.

Assessment of costs

Basis of assessment (O. 59, r. 16)

16. (1) In assessing the costs payable in relation to any item, the Court shall have regard to all relevant circumstances, and in particular to—

(a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;

(b) the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;

(c) the number and importance of the documents, however brief, prepared or perused;

(d) the place and circumstances in which the business involved is transacted;

(e) the importance of the cause or matter to the client;

(f) where money or property is involved, its amount or value;

(g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which

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would otherwise have been necessary in relation to the item in question.

(2) Subject to the other provisions of these Rules, the amount of costs which any party are entitled to recover is the amount allowed after determination of costs on the standard basis where—

(a) an order is made that the costs of one party to proceedings be paid by another party to those proceedings;

(b) an order is made for the payment of costs out of any fund; or

(c) no order for costs is required,

unless it appears to the Court to be appropriate to order costs to be determined on the indemnity basis.

(3) On an assessment of costs on the standard basis, there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the Court may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these Rules, the term "the standard basis", in relation to the determination of costs, shall be construed accordingly.

(4) On a determination of costs on the indemnity basis, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the Court may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these Rules, the term "the indemnity basis", in relation to the determination of costs, shall be construed accordingly.

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(5) Where the Court makes an order for costs without indicating the basis of determination of costs or an order that costs be determined on any basis other than the standard basis or the indemnity basis, the costs shall be determined on the standard basis.

(6) Notwithstanding paragraphs (2) to (4), if any action is brought in the High Court, which would have been within the jurisdiction of a Subordinate Court, the plaintiff shall not be entitled to any more costs than he would have been entitled to if the proceedings had been brought in a Subordinate Court, unless in any such action a Judge certifies that there was sufficient reason for bringing the action in the High Court.

Costs payable to a solicitor by his own client (O. 59, r. 17)

17. (1) This Rule is in amplification and not in derogation of the procedure set out in the Legal Profession Act 1976.

(2) On the determination of a solicitor's bill to his own client (except a bill with respect to non-contentious business and a bill payable pursuant s. 5 of the Legal Aid Act 1971), all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(3) For the purpose of paragraph (1), all costs incurred with the express or implied approval of the client shall be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(4) In paragraph (3), references to the client shall be construed—

(a) if the client at the material time a mentally disordered person within the meaning of the Mental Health Act 2001 and was represented by a person acting as litigation representative, as references to that person acting, where necessary, with the authority of the Court; and

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(b) if the client was at the material time a minor and represented by a person acting as litigation representative, as references to that person.

Costs payable to a trustee out of trust fund (O. 59, r. 18)

18. (1) This rule applies to every determination of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.

(2) On any determination of costs to which this rule applies, costs shall be determined but shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the trustee or personal representative as such.

Costs payable for trial in the High Court (O. 59, r. 19)

19. (1) The amount of costs (excluding disbursement) that are payable shall be at the discretion of the Court and shall be determined upon the conclusion of the trial.

(2) In fixing the costs payable, the Court shall have regard to the relevant circumstances including but not limited to the factors set out in the rule 16.

Costs for interlocutory applications (Subordinate Courts) (O. 59, r. 20)

20. Costs for interlocutory applications that may be allowed in the Subordinate Courts are as follows:

(a) in the Magistrates' Court, a sum not exceeding RM2,500.00; and

(b) in the Sessions Court, a sum not exceeding RM8,000.00.

Costs for interlocutory applications (High Court) (O. 59, r. 21)

21. The amount of costs payable upon the conclusion of any interlocutory application, other than those falling within the ambit of rule 22 shall be at the discretion of the Court, but in fixing the amount of costs, the Court shall have regard, *inter alia*, to the factors set out in rule 16.

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Costs on judgment without trial (Subordinate Courts and High Court) (O. 59, r. 22)

22. (1) The scale of costs set out in Parts I and II of this Appendix shall apply in relation to the following cases:

(a) where the defendant pays the amount claimed within the time and in the manner required by the endorsement of the writ;

(b) where the plaintiff obtains final judgment in default of appearance or of defence under—

(i) Order 13, rule 1;

(ii) Order 13, rule 1 by virtue of Order 79, rule 4;

(iii) Order 13, rule 4 or 5;

(iv) Order 19, rule 2;

(v) Order 19, rule 2 by virtue of Order 79, rule 4; or

(vi) Order 19, rule 5 or 6; and

(c) where—

(i) the plaintiff obtains final judgment under Order 14, Order 81 or Order 89 unconditionally;

(ii) the Court dismisses an application under Order 14, rule 1 or Order 81, rule 1;

(iii) the Court gives the defendant against whom an application under Order 14, rule 1 is made unconditional leave to defend;

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(iv) the Court enters judgment under Order 18, rule 19 for the plaintiff or the defendant on the counterclaim, as the case may be; or

(v) the Court enters judgment under Order 14A, Order 27, Order 24, Order 33, rule 5, Order 37, rule 7 for the plaintiff or the defendant, as the case may be.

(2) Where the plaintiff is also entitled under the judgment to damages to be assessed, or where the plaintiff claims any relief of the nature specified in Order 83, rule 1, this Part shall not apply.

(3) In respect of the cases set out in subparagraphs (1)*(a)* and *(b)*, where the plaintiff is entitled under the judgment to costs on an indemnity basis, the scale of costs and disbursements set out in Parts I, II and III of this Appendix shall apply.

APPENDIX

Part I: Basic Costs

The maximum costs that may be allowed (excluding disbursements) in cases under the following rule 22(1) are as follows:

Rule 22(1)	*High Court* RM	*Sessions Court* RM	*Magistrates' Court* RM
(a) subparagraph *(a)*	1,000	800	400
(b) subparagraph *(b)*	1,500	1,000	600
(c) subparagraph *(c)*	4,000 to 15,000	3,000 to 10,000	2,000 to 6,000

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Part II: Costs for additional items

	Costs to be allowed		
Rule 22(2)	*High Court* RM	*Sessions Court* RM	*Magistrates' Court* RM
2. (1) Where there is more than one defendant, in respect of each additional defendant served—			
(a) if the additional defendant is represented by the same solicitor as any other defendant	100	100	100
(b) in any other case	200	200	150
(2) Where substituted service is ordered and effected, in respect of each defendant served	350 plus disbursement	350 plus disbursement	300 plus disbursement
(3) Where service out of jurisdiction is ordered and effected	700 plus disbursement	700 plus disbursement	600 plus disbursement
The disbursements allowed under subparagraphs (2) and (3) shall be limited to disbursements reasonably incurred in connection with the substituted service and service out of the jurisdiction as follows:			
(a) Court fees	Actual fees	Actual fees	Actual fees

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(b) Affirmation fees for affidavit in support of application	Actual fees	Actual fees	Actual fees
(c) For each attempted service	20	20	20
(d) For the substituted service, if effected within Malaysia—			
(i) by posting on the door and notice board	20	20	20
(ii) by advertisement and posting on the notice board	Actual cost	Actual cost	Actual cost
(e) For service out of jurisdiction	Actual cost	Actual cost	Actual cost
(f) Title searches	Actual cost	Actual cost	Actual cost
(4) In the case of a judgment in default of defence or judgment under Order 14, where notice of appearance is not given on the day on which appearance is entered, and the plaintiff makes an affidavit of service for the purpose of a judgment in default of appearance (the allowance to include the search fee)	200	200	200
(5) In the case of a judgment under Order 14 where an affidavit of service of	200	200	200

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the application is required			
(6) In the case of a judgment in default of appearance or defence on an application under Order 79, rule 4	200	200	200
And where there is more than one defendant in respect of each additional defendant	150	150	100
(7) Where bankruptcy or winding up searches are required by the Court	Actual cost	Actual cost	Actual cost
(8) Any other item approved by the Court	Actual amount allowed	Actual amount allowed	Actual amount allowed

Part III: Additional items where costs are on indemnity basis

Disbursement to be allowed in addition to the items claimed under Part I in cases under rule 22(3):

	Disbursement to be allowed		
	High Court RM	*Sessions Court* RM	*Magistrates' Court* RM
(1) Court fees	Actual fees	Actual fees	Actual fees
(2) Affirmation fees for supporting affidavit	Actual fees	Actual fees	Actual fees
(3) Personal service of the writ of summons in Malaysia (if applicable)	20	20	20
(4) For each attempted	20	20	20

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service, where there is no order for substituted service (if applicable)			
(5) Postage, photocopying, miscellaneous charges and incidentals	50	50	50

Part IV: Miscellaneous

1. Where a plaintiff or defendant signs judgment for costs under rule 12, there shall be allowed the following costs, in addition to the disbursements:

	Costs to be allowed		
	High Court	*Sessions Court*	*Magistrates' Court*
Costs of judgment	RM1000	RM500	RM200

2. Where upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money a garnishee order is made under Order 49, rule 1, against a garnishee attaching debts due or accruing due from him to the debtor, there shall be allowed the following costs, in addition to the disbursements:

(a) to the garnishee, to be deducted by him from any debt owing by him as aforesaid before payments to the applicant—

If no affidavit used			*If affidavit used*		
High Court	*Sessions Court*	*Magistrates' Court*	*High Court*	*Sessions Court*	*Magistrates' Court*
RM150	RM150	RM150	RM300	RM300	RM300

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(b) to the applicant, to be retained, unless the Court otherwise orders, out of the money recovered by him under the garnishee order and in priority to the amount of the debt owing to him under the judgment or order—

Costs to be allowed		
High Court	*Sessions Court*	*Magistrates' Court*
RM1500	RM750	RM600

(c) where the garnishee fails to attend the hearing of the application and an affidavit of service is required—

Costs to be allowed		
High Court	*Sessions Court*	*Magistrates' Court*
RM1000	RM500	RM150

3. Where leave is given under Order 45, rule 3 to enforce a judgment or order for the recovery of possession of land by writ of possession, if costs are allowed on the judgment or order there shall be allowed the following costs, in addition to the disbursements, which shall be added to the judgment or order:

		High Court	*Sessions Court*
(a)	Costs	RM1500	RM800
(b)	Where notice of proceedings has been given to more than one person, in respect of each additional person	RM100	RM100

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4. Where a writ of execution within the meaning of Order 46, rule 1 is issued against any party, there shall be allowed the following costs, in addition to the disbursements:

	Costs to be allowed		
	High Court	*Sessions Court*	*Magistrates' Court*
Costs of issuing execution	RM1500	RM750	RM400 where it is a Small Claims action; RM600 in any other case.

5. Notwithstanding the scale of costs which shall be allowed under rules 1, 2, 3 and 4 above, the Court may in an appropriate case allow a higher sum as costs as it deems fit.

Scale of costs for trial in the Subordinate Courts (O. 59, r. 23)

23. (1) Subject to the provisions hereunder, upon the conclusion and determination of any trial in the Subordinate Courts, the party entitled to costs shall, unless the Court otherwise orders, be paid fixed costs in accordance with the following scale:

Judgment Sum	*Suing/Defending*	*Advocacy*
Does not exceed RM1,000	RM25	RM150
Exceeds RM1,000 but not RM2,000	RM50	RM200
Exceeds RM2,000 but not RM3,000	RM75	RM250
Exceeds RM3,000 but not RM4,000	RM100	RM350
Exceeds RM4,000 but not RM5,000	RM125	RM450
Exceeds RM5,000 but not RM6,000	RM150	RM550
Exceeds RM6,000 but not RM7,000	RM175	RM650
Exceeds RM7,000 but not RM8,000	RM200	RM750
Exceeds RM8,000 but not RM9,000	RM 225	RM850
Exceeds RM9,000 but not RM10,000	RM250	RM950
Exceeds RM10,000 but not RM11,000	RM275	RM1,050
Exceeds RM11,000 but not RM12,000	RM300	RM1,150
Exceeds RM12,000 but not RM13,000	RM325	RM1,250

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Exceeds RM13,000 but not RM14,000	RM350	RM1,350
Exceeds RM14,000 but not RM15,000	RM375	RM1,450
Exceeds RM15,000 but not RM16,000	RM400	RM1,550
Exceeds RM16,000 but not RM17,000	RM425	RM1,650
Exceeds RM17,000 but not RM18,000	RM450	RM1,750
Exceeds RM18,000 but not RM19,000	RM475	RM1,850
Exceeds RM19,000 but not RM20,000	RM500	RM1,950
Exceeds RM20,000 but not RM21,000	RM525	RM2,050
Exceeds RM21,000 but not RM22,000	RM550	RM2,150
Exceeds RM22,000 but not RM23,000	RM575	RM2,250
Exceeds RM23,000 but not RM24,000	RM600	RM2,350
Exceeds RM24,000 but not RM25,000	RM625	RM2,450
Exceeds RM25,000 but not RM27,500	RM650	RM2,550
Exceeds RM27,500 but not RM30,000	RM675	RM2,650
Exceeds RM30,000 but not RM32,500	RM700	RM2,750
Exceeds RM32,500 but not RM35,000	RM725	RM2,850
Exceeds RM35,000 but not RM37,500	RM750	RM2,950
Exceeds RM37,500 but not RM40,000	RM775	RM3,050
Exceeds RM40,000 but not RM42,500	RM800	RM3,150
Exceeds RM42,500 but not RM45,000	RM825	RM3,250
Exceeds RM45,000 but not RM47,500	RM850	RM3,350
Exceeds RM47,500 but not RM50,000	RM875	RM3,450
Exceeds RM50,000 but not RM52,500	RM900	RM3,550
Exceeds RM52,500 but not RM55,000	RM925	RM3650
Exceeds RM55,000 but not RM57,500	RM950	RM3,750
Exceeds RM57,500 but not RM60,000	RM975	RM3,850
Exceeds RM60,000 but not RM62,500	RM1,000	RM3,950
Exceeds RM62,500 but not RM65,500	RM1,025	RM4,050
Exceeds RM65,500 but not RM67,500	RM 1,050	RM 4,150
Exceeds RM67,500 but not RM70,000	RM 1,075	RM 4,250
Exceeds RM70,000 but not RM72,500	RM 1,100	RM 4,350
Exceeds RM72,500 but not RM75,000	RM 1,125	RM 4,450
Exceeds RM75,000 but not RM77,500	RM 1,150	RM 4,550

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Exceeds RM77,500 but not RM80,000	RM 1,175	RM 4,650
Exceeds RM80,000 but not RM82,500	RM 1,200	RM 4,750
Exceeds RM82,500 but not RM85,000	RM 1,225	RM 4,850
Exceeds RM85,000 but not RM87,500	RM 1,250	RM 4,950
Exceeds RM87,500 but not RM90,000	RM 1,275	RM 5,050
Exceeds RM90,000 but not RM92,500	RM 1,300	RM 5,150
Exceeds RM92,500 but not RM95,000	RM 1,325	RM 5,250
Exceeds RM95,000 but not RM97,500	RM 1,350	RM 5,350
Exceeds RM97,500 but not RM100,000	RM 1,375	RM 5,450
Exceeds RM100,000 but not RM105,000	RM1,400	RM5,550
Exceeds RM105,000 but not RM110,000	RM1,425	RM 5,650
Exceeds RM110,000 but not RM115,000	RM 1,450	RM 5,750
Exceeds RM115,000 but not RM120,000	RM 1,475	RM 5,850
Exceeds RM120,000 but not RM125,000	RM 1,500	RM 5,950
Exceeds RM125,000 but not RM130,000	RM 1,525	RM 6,050
Exceeds RM130,000 but not RM135,000	RM 1,550	RM 6,150
Exceeds RM135,000 but not RM140,000	RM 1,575	RM 6,250
Exceeds RM140,000 but not RM145,000	RM 1,600	RM 6,350
Exceeds RM145,000 but not RM150,000	RM 1,625	RM 6,450
Exceeds RM150,000 but not RM155,000	RM 1,650	RM 6,550
Exceeds RM155,000 but not RM160,000	RM 1,675	RM 6,650
Exceeds RM160,000 but not RM165,000	RM 1,700	RM 6,750
Exceeds RM165,000 but not RM170,000	RM 1,725	RM 6,850
Exceeds RM170,000 but not RM175,000	RM 1,750	RM 6,950
Exceeds RM175,000 but not RM180,000	RM 1,775	RM 7,050
Exceeds RM180,000 but not RM185,000	RM 1,800	RM 7,150
Exceeds RM185,000 but not RM190,000	RM 1,825	RM 7,250
Exceeds RM190,000 but not RM195,000	RM 1,850	RM 7,350
Exceeds RM195,000 but not RM200,000	RM 1,875	RM 7,450
Exceeds RM200,000 but not RM205,000	RM 1,900	RM 7,550
Exceeds RM205,000 but not RM210,000	RM 1,925	RM 7,650
Exceeds RM210,000 but not RM215,000	RM 1,950	RM 7,750
Exceeds RM215,000 but not RM220,000	RM 1,975	RM 7,850

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Exceeds RM220,000 but not RM225,000	RM 2,000	RM 7,950
Exceeds RM225,000 but not RM230,000	RM 2,025	RM 8,050
Exceeds RM230,000 but not RM235,000	RM 2,050	RM 8,150
Exceeds RM235,000 but not RM240,000	RM 2,075	RM 8,250
Exceeds RM240,000 but not RM245,000	RM 2,100	RM 8,350
Exceeds RM245,000 but not RM250,000	RM 2,125	RM 8,450
Exceeds RM250,000 but not RM255,000	RM 2,150	RM 8,550
Exceeds RM255,000 but not RM260,000	RM 2,175	RM 8,650
Exceeds RM260,000 but not RM265,000	RM 2,200	RM 8,750
Exceeds RM265,000 but not RM270,000	RM 2,225	RM 8,850
Exceeds RM270,000 but not RM275,000	RM 2,250	RM 8,950
Exceeds RM275,000 but not RM280,000	RM 2,275	RM 9,050
Exceeds RM280,000 but not RM285,000	RM 2,300	RM 9,150
Exceeds RM285,000 but not RM290,000	RM 2,325	RM 9,250
Exceeds RM290,000 but not RM295,000	RM 2,350	RM 9,350
Exceeds RM295,000 but not RM300,000	RM 2,375	RM 9,450
Exceeds RM300,000 but not RM305,000	RM 2,400	RM 9,550
Exceeds RM305,000 but not RM310,000	RM 2,425	RM 9,650
Exceeds RM310,000 but not RM315,000	RM 2,450	RM 9,750
Exceeds RM315,000 but not RM320,000	RM 2,475	RM 9,850
Exceeds RM320,000 but not RM325,000	RM 2,500	RM 9,950
Exceeds RM325,000 but not RM330,000	RM 2,525	RM 10,050
Exceeds RM330,000 but not RM335,000	RM 2,550	RM 10,150
Exceeds RM335,000 but not RM340,000	RM 2,575	RM 10,250
Exceeds RM340,000 but not RM345,000	RM 2,600	RM 10,350
Exceeds RM345,000 but not RM350,000	RM 2,625	RM 10,450
Exceeds RM350,000 but not RM355,000	RM 2,650	RM 10,550
Exceeds RM355,000 but not RM360,000	RM 2,675	RM 10,650
Exceeds RM360,000 but not RM365,000	RM 2,700	RM 10,750
Exceeds RM365,000 but not RM370,000	RM 2,725	RM 10,850
Exceeds RM370,000 but not RM375,000	RM 2,750	RM 10,950
Exceeds RM375,000 but not RM380,000	RM 2,775	RM 11,050
Exceeds RM380,000 but not RM385,000	RM 2,800	RM 11,150

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Exceeds RM385,000 but not RM390,000	RM 2,825	RM 11,250
Exceeds RM390,000 but not RM395,000	RM 2,850	RM 11,350
Exceeds RM395,000 but not RM400,000	RM 2,875	RM 11,450
Exceeds RM400,000 but not RM405,000	RM 2,900	RM 11,550
Exceeds RM405,000 but not RM410,000	RM 2,925	RM 11,650
Exceeds RM410,000 but not RM415,000	RM 2,950	RM 11,750
Exceeds RM415,000 but not RM420,000	RM 2,975	RM 11,850
Exceeds RM420,000 but not RM425,000	RM 3,000	RM 11,950
Exceeds RM425,000 but not RM430,000	RM 3,025	RM 12,050
Exceeds RM430,000 but not RM435,000	RM 3,050	RM 12,150
Exceeds RM435,000 but not RM440,000	RM 3,075	RM 12,250
Exceeds RM440,000 but not RM445,000	RM 3,100	RM 12,350
Exceeds RM445,000 but not RM450,000	RM 3,125	RM 12,450
Exceeds RM450,000 but not RM455,000	RM 3,150	RM 12,550
Exceeds RM455,000 but not RM460,000	RM 3,175	RM 12,650
Exceeds RM460,000 but not RM465,000	RM 3,200	RM 12,750
Exceeds RM465,000 but not RM470,000	RM 3,225	RM 12,850
Exceeds RM470,000 but not RM475,000	RM 3,250	RM 12,950
Exceeds RM475,000 but not RM480,000	RM 3,275	RM 13,050
Exceeds RM480,000 but not RM485,000	RM 3,300	RM 13,150
Exceeds RM485,000 but not RM490,000	RM 3,325	RM 13,250
Exceeds RM490,000 but not RM495,000	RM 3,350	RM 13,350
Exceeds RM495,000 but not RM500,000	RM 3,375	RM 13,450
Exceeds RM500,000	Discretionary but shall not exceed RM40,000	

(2) The costs for suing or defending, as the case may be, include any authority to act, instructions, issue of process and, save as otherwise provided in these Rules, every other proceedings down to judgment, except advocacy at the trial.

(3) The costs for suing and defending may be allowed at whatever stage the solicitor is retained.

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(4) Where a solicitor attends in open Court for mention of any cause or matter, including the hearing of a judgment debtor summons or a judgment notice, he shall be allowed a sum of RM100.00 for every such attendance.

(5) Without prejudice to the express provisions for advocacy costs, the following provisions shall apply:

(a) where proceedings are taken out to enter judgment by admission only, then advocacy costs shall not be allowed;

(b) where after the action has been fixed for trial, the plaintiff discontinues the action or the defendant, the counterclaim, or a party accepts money paid into Court under Order 17 or the action or counterclaim is settled, half the costs for advocacy may be allowed;

(c) where on the day of the trial, the plaintiff discontinues the action or the defendant, the counterclaim, or judgment is given or the claim dismissed, before the trial begins, half the costs for advocacy may be allowed; and

(d) where after the trial has begun, the plaintiff discontinues the action or the defendant, the counterclaim, or judgment is given or the claim dismissed, full costs for advocacy may be allowed.

(6) Costs may be allowed to a solicitor who appears in person as a plaintiff or defendant or to a firm of solicitors who appear as plaintiffs or defendants by a member or employee of their firm.

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(7) Wherever on the day fixed for the trial of any proceedings the same is adjourned on the application of any party, the Court may order the party at whose instance the application for adjournment is made to pay to the other party any fees, disbursements and expenses thrown away by the adjournment and costs not exceeding on each occasion, one quarter the costs for advocacy.

(8) Where a person attends Court as a witness, he may be allowed a reasonable fee and travelling allowance.

Interest on cost (O. 59, r. 24)

24. Any award of costs made under this Order shall carry such interest as may be specified under Order 42, rule 12, from the date of award of cost until full payment.

ORDER 60

THE REGISTRY

Distribution of business (O. 60, r. 1)

1. The Registry shall be divided into such departments, and the business performed in the Registry shall be distributed among the departments in such manner as the Chief Judge or the Sessions Court Judge may direct.

Records or books to be kept (O. 60, r. 2)

2. The Registrar shall cause to be kept in Forms 118 to 132 the following:

(a) a Cause Book;

(b) an Originating Applications Book;

(c) an Interpleader Summons Book;

(d) an Interlocutory Application Book ;

(e) a Judgment Book;

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(f) a Writs of Execution Book;

(g) a Distress Book;

(h) a Probate Book;

(i) a Caveat Book;

(j) a Service Book;

(k) an Adoption Book;

(l) an Accountant General's Direction Book;

(m) an Index of Wills;

(n) a Register of Appeals to the Court of Appeal; and

(o) a Register of Appeals from the Subordinate Courts and statutory bodies,

and such account books and other books as are prescribed or required to be kept by these Rules and such other books as may from time to time be found necessary.

Information to be maintained by Registry (O. 60, r. 2A)

2A. (1) The Registrar shall cause to be maintained such information as is prescribed or required to be kept by these Rules and by practice directions issued by the Registrar.

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(2) The Registrar may maintain at his discretion all the information referred to in paragraph (1) in such medium or mode as he may determine.

Documents to be sealed or particulars to be entered (O. 60, r. 3)

3. (1) Any document filed in the Registry in any proceedings shall be sealed with a seal showing the date on which the document was filed and any document not required by these Rules to be sealed shall show the date on which it was filed.

(2) The particulars of the time of delivery at the Registry of any document for filing, the date of the document and the title of the cause or matter of which the documents forms part of the record shall be entered into a cause book.

Obtaining copies of documents from Registry (O. 60, r. 4)

4. (1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Registry, namely—

(a) the copy of any originating process;

(b) any judgment or order given or made in Court or the copy of any such judgment or order; and

(c) with the leave of the Registrar, any other document.

(2) Nothing in the foregoing provision shall be taken as preventing any party to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in the Registry in that cause or matter or filed therein before the commencement of that cause or matter but made with a view to its commencement.

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Documents ordered to be lodged in Court (O. 60, r. 5)

5. Where the Court orders any documents to be lodged in Court, then, unless the order directs that the documents so lodged by being deposited with the Accountant General, the documents shall be deposited in the Registry.

Depositing instrument creating power of attorney (O. 60, r. 6)

6. (1) An instrument creating a power of attorney which is presented for deposit in the High Court Registry under—

(a) section 30 of the Trustee Act 1949 [*Act 208*]; or

(b) section 4 of the Powers of Attorney Act 1949 [*Act 424*],

shall not be deposited therein unless the execution of the instrument has been verified in accordance with rule 7 and the instrument is accompanied—

(A) except where rule 7*(b)* applies, by the affidavit, declaration, certificate or other evidence by which the execution was verified; and

(B) in the case of an instrument presented for filing under section 30 of the Trustee Act 1949, by the statutory declaration required under subsection (4) of that section.

(2) Without prejudice to section 4 of the Trustee Act 1949, a certified copy of an instrument creating a power of attorney which is presented for deposit in the High Court Registry under the section shall not be deposited therein unless—

(a) the execution of the instrument has been verified in accordance with rule 7;

(b) the signature of the person who certified the copy is sufficiently verified; and

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(c) except where rule 7*(b)* applies and subject to paragraph (3), the copy is accompanied by the affidavit, declaration, certificate or other evidence by which the execution was verified.

(3) If the affidavit, declaration, certificate or other evidence verifying the execution of the instrument is so bound up with or attached to the instrument that they cannot conveniently be separated, it shall be sufficient for the purpose of paragraph (2) to produce and show to the proper officer in the High Court Registry the original affidavit, declaration, certificate or other evidence and to file a certified or office copy thereof.

Verifying execution of instrument or statutory declaration (O. 60, r. 7)

7. The execution of such an instrument or statutory declaration as is referred to in rule 6(1) may be verified—

(a) by an affidavit or statutory declaration sworn or made by the attesting witness or some other person in whose presence the instrument was executed, or, if no such person is available, by some impartial person who knows the signature of the donor of the power of attorney created by the instrument;

(b) if the instrument was attested by a Commissioner for Oaths, by the signature of the Commissioner as attesting witness; or

(c) by such other evidence as, in the opinion of the Registrar is sufficient.

Index of instruments to be kept for inspection (O. 60, r. 8)

8. (1) An index shall be kept in the High Court Registry of all instruments and certified copies to which rule 6 relates deposited in the High Court Registry and of the names of the donors of the powers of attorney created by such instruments.

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(2) Any person shall, on payment of a prescribed fee, be entitled—

(a) to search the index;

(b) to inspect any document filed or deposited in the High Court Registry in accordance with rule 6; and

(c) to be supplied with an office copy of any such document and a copy of any such document may be presented at the Registry to be marked as an office copy.

Taking documents out of Registry (O. 60, r. 9)

9. A document filed in or in the custody of the Registry shall not be taken out of it without the leave of the Court unless the document is to be sent to another Court.

ORDER 61

SITTINGS, VACATION AND OFFICE HOURS

Vacation Judge (O. 61, r. 1)

1. A Judge of the High Court shall be available during every vacation to act as a vacation Judge of the High Court.

Hearing of applications in vacation (O. 61, r. 2)

2. All such applications as required to be immediately or promptly heard shall be heard in vacation by the vacation Judge of the High Court.

Registry of the High Court: Days and hours open (O. 61, r. 3)

3. (1) The Registry of the High Court shall be open on every day of the year except on a weekly holiday or a public holiday.

(2) The hours during which the Registry of the High Court shall be open to the public shall be such as the Chief Judge may from time to time direct.

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ORDER 62

SERVICE OF DOCUMENTS

When personal service required (O.62, r. 1)

1. (1) Any document which by virtue of these Rules is required to be served on any person need not be served personally unless the document is one which by an express provision of these Rules or by order of the Court is required to be so served.

(2) Paragraph (1) shall not affect the power of the Court under any provision of these Rules to dispense with the requirement for personal service.

(3) The service of a writ is not required where the defendant or his solicitor undertakes in writing to accept service and enter an appearance.

(O. 62, r. 2)

2. *(There is no rule 2)*

Personal service: How effected (O. 62, r. 3)

3. Personal service of a document is effected by leaving a copy of the document with the person to be served and, if so requested by him at the time when it is left, showing him—

(a) in the case where the document is a writ or other originating process, the sealed copy; and

(b) in any other case, an office copy.

Service on corporation (O. 62, r. 4)

4. (1) Where an action is against a corporation, the writ may be served—

(a) by leaving a copy of it at the registered office (if any) of the corporation;

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(b) by sending a copy of it by registered post addressed to the corporation at the office, or, if there are more offices than one at the principal office of the corporation, whether such office is situated within Malaysia or elsewhere;

(c) by handing a copy of it to the secretary or to any director or other officer of the corporation; or

(d) in the case of a foreign company registered under Part XI of the Companies Act 1965 [*Act 125*] by handing a copy of it to, or sending the same by registered post to, a person authorized to accept service of process on behalf of the foreign company.

(2) The rule does not restrict the operation of the provisions of any written law as to service on any particular person or authority.

(3) Where service is effected under this rule, the person served shall be entitled on demand to inspect the original writ.

(O. 62, r. 4A)

4A. *(There is no rule 4A)*

Substituted service (O. 62, r. 5)

5. (1) If, in the case of any document which in accordance with these Rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order in Form 133 for substituted service of that document.

(2) An application for an order for substituted service shall be made by notice of application supported by an affidavit in Form 134 stating the facts on which the application is founded.

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(3) A substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

Ordinary service: How effected (O. 62, r. 6)

6. (1) The service of any document, not being a document which in accordance with these Rules is required to be served personally, may be effected—

(a) by leaving the document at the proper address of the person to be served;

(b) by prepaid registered post;

(c) by facsimile in accordance with paragraph (3);

(d) in such other manner as may be agreed between the party serving and the party to be served; or

(e) in such other manner as the Court may direct.

(2) For the purpose of this rule, and of section 2 of the Interpretation Acts 1948 and 1967, in its application to this rule, the proper address of any person on whom a document is to be served in accordance with this rule shall be the address for service of that person, but if at the time when service is effected that person has no address for service his proper address for the purpose aforesaid shall be—

(a) in any case, the business address of the solicitor, if any, who is acting for him in the proceedings in connection with which service of the document in question is to be effected;

(b) in the case of an individual, his usual or last known address;

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(c) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction; or

(d) in the case of a body corporate, the registered or principal office of the body.

(3) A service by facsimile may be effected where—

(a) the party serving the document acts by a solicitor;

(b) the party on whom the document is served acts by a solicitor and service is effected by transmission to the business address of such a solicitor;

(c) the solicitor acting for the party on whom the document is served has indicated in writing to the solicitor serving the document that he is willing to accept service by facsimile at a specified facsimile number and the document is transmitted to that number; and for this purpose the inscription of a facsimile number on the writing paper of a solicitor shall be deemed to indicate that such a solicitor is willing to accept service by facsimile at that number in accordance with this paragraph unless he states otherwise in writing; and

(d) within three days after the day of service by facsimile the solicitor acting for the party serving the document serves a copy of it on the solicitor acting for the other party by any of the other methods of service set out in paragraph (1), and if he fails to do so, the document shall be deemed never to have been served by facsimile.

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(4) Nothing in this rule shall be taken as prohibiting the personal service of any document or as affecting any written law which provides for the manner in which documents may be served on bodies corporate.

Service on Minister in proceedings which are not by or against the Government (O. 62, r. 7)

7. Where for the purpose of or in connection with any proceedings in the High Court, not being civil proceedings by or against the Government within the meaning of Part III of the Government Proceedings Act 1956, any document is required by any written law or these Rules to be served on the Minister of a Government department which is an authorized department for the purposes of that Act, or on such a department or on the Attorney General, section 26 of the Government Proceedings Act 1956 and Order 73, rule 3, shall apply in relation to the service of the documents required to be served on the Government for the purpose of or in connection with any civil proceedings by or against the Government.

Effect of service after certain hours (O. 62, r. 8)

8. Any document (other than a writ of summons or other originating process) service of which is effected under rule 3 or under rule 6(1)*(a)* after twelve noon on a day preceding the weekly holiday or after four in the afternoon on any other weekdays, shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the day following that day preceding the weekly holiday or on the day following that other weekday, as the case may be.

Affidavit of service (O. 62, r. 9)

9. An affidavit of service of any document shall state by whom the document was served, the day of the week and date on which it was served, where it was served and how, and shall be in one of the forms in Form 135.

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No service required in certain cases (O. 62, r. 10)

10. Where in accordance with these Rules any document is required to be served on any person but is not required to be served personally, and at the time when service is to be effected that person is in default as to entry of appearance or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these Rules otherwise provides.

Service of notices from Court (O. 62, r. 11)

11. Notices sent from any office of the Court may be sent by post or electronically and the time at which the notice so posted would be delivered in the ordinary course of post or received in the computer system of the registered user shall be considered as the time of service thereof, and the posting or transmission thereof shall be a sufficient service, but nothing in this rule shall prevent any party from establishing, if such be the case, that he has not been so served.

Service where no appearance entered (O. 62, r. 12)

12. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service, all writs, notices, pleadings, orders, summonses, warrants and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer.

Service upon solicitor or party formerly appearing in person (O. 62, r. 13)

13. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants and other documents, proceedings, and written communications which ought to be delivered to or upon the party on whose behalf the notice is given shall thereafter be delivered to or upon such solicitor.

Dispensation of service (O. 62, r. 14)

14. The Court may, in an appropriate case, dispense with the service of any document on any person.

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ORDER 63

PAPER, PRINTING, NOTICES AND COPIES

Specifications for documents (O. 63, r. 1)

1. Unless the nature of the document renders it impracticable, every document prepared by a party for use in the Court shall be on paper of durable quality, approximately 11.69 inches (297 mm.) long, by 8.27 inches (210 mm.) wide, having a margin, not less than 1 inch wide to be left blank on either side of the paper. Every document may be printed on both sides of the paper.

Method of printing or duplicating document (O. 63, r. 2)

2. (1) Except where these Rules otherwise provide, every document prepared by a party for use in the Court shall be produced by one of the following means, that is to say, printing, writing (which shall be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by the other.

(2) For the purpose of these Rules, a document is deemed to be printed if it is produced by type lithography or stencil duplicating.

(3) Any type used in producing a document for use as aforesaid shall be such as to give a clear and legible impression and shall not be smaller than eleven point type for printing or elite type for type lithography, stencil duplicating or typewriting.

(4) Any document produced by a photographic or similar process giving a positive and permanent representation free from blemishes shall, to the extent that it contains a facsimile of any printed, written or typewritten matter, be treated for the purposes of these Rules as if it were printed, written or typewritten, as the case may be.

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Request for copies (O. 63, r. 3)

3. (1) Where a document prepared by a party for use in Court is printed the party by whom it was prepared shall, on receiving a written request from any other party entitled to a copy of that document, supply him with a copy, and on payment of the proper charges, supply him with such number of further copies thereof, not exceeding ten, as may be specified in the request.

(2) Where a document prepared by a party for use in Court is written or typewritten, the party by whom it was prepared shall supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it.

(3) The copy shall be ready for delivery within forty-eight hours after a written request for it, together with an undertaking to pay the proper charges, is received and shall be supplied thereafter on payment of those charges.

Endorsement on documents (O. 63, r. 4)

4. (1) *(There is no paragraph (1))*

(2) Before a copy of a document is supplied to a party under these Rules, it shall be endorsed with the name and address of the party or solicitor by whom it was supplied.

(3) The party by whom a copy is supplied under rule 3, or, if he sues or appears by a solicitor, his solicitor shall be answerable for the copy being the true copy of the original or of an office copy, as the case may be.

Effect of non-compliance (O. 63, r. 5)

5. Non-compliance of rules 1 to 4 does not render the documents defective, nor the proceedings related therein void.

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ORDER 63A

ELECTRONIC FILING

Definitions (O. 63A, r. 1)

1. In this Order—

"service bureau" means a service bureau which the Registrar has authorized to be established in pursuance of rule 4 for the purpose of assisting in the filing of documents using the electronic filing service;

"specified documents" means documents which are specified in any practice directions for the time being issued by the Registrar as being documents which may be or shall be filed in Court using the electronic filing service;

"authentication code" means any identification or identifying code, password or any other authentication method or procedure which has been assigned by the Registrar for the purpose of identifying and authenticating the access to and use of the electronic filing service;

"identification name" means the identification name assigned by the Registrar under rule 6(1);

"electronic transmission" means the electronic transmission by a registered user using the Court's computer system;

"registered user" means a person who has been registered by the Registrar to gain access to and use the electronic filing service under rule 5;

"electronic filing service" means the electronic filing service established under rule 2;

"Court's computer system" means any electronic applications used for the purpose of electronic filing and management of cases.

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Establishment of electronic filing service (O. 63A, r. 2)

2. The Registrar may, with the approval of the Chief Justice, establish an electronic filing service and make provision for specified documents to be filed using that service.

Service bureau (O. 63A, r. 3)

3. (1) The Registrar may establish or appoint agents to establish a service bureau to assist in the filing of documents using the electronic filing service.

(2) Any agent appointed by the Registrar in pursuance of paragraph (1) shall not be treated as such for the purposes of the acceptance of the payment of fees or service charges.

Registered user (O. 63A, r. 4)

4. (1) Any person or entity may apply to the Registrar to be a registered user in accordance with any procedures and on payment of such fees as may be prescribed for such applications in any practice directions for the time being issued by the Registrar.

(2) The Registrar may allow a person or entity to become a registered user on such terms and with such restrictions pertaining to the electronic filing of documents as he thinks fit.

Authentication code (O. 63A, r. 5)

5. (1) Before using the electronic filing service, the registered user shall apply to the Registrar for one or more identification names and authentication codes to be assigned to him or his authorized agent.

(2) The registered user or his authorized agent shall register his particulars with the Registrar and acknowledge in writing safe receipt of the identification name and authentication code assigned to him by the Registrar.

(3) The registered user or his authorized agent shall inform the Registrar in writing of any change in particulars.

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(4) When the authority of an authorized agent is revoked or terminated, the registered user shall immediately request the Registrar in writing to cancel the identification name and authentication code of that authorized agent in the manner specified in practice directions for the time being issued by the Registrar.

Security of authentication code (O. 63A, r. 6)

6. The registered user or his authorized agent shall ensure the confidentiality and security of his authentication code and shall not—

(a) divulge his authentication code to any other person; or

(b) permit any other person to use his authentication code.

Electronic filing (O. 63A, r. 7)

7. (1) Where a specified document is required to be filed with the Registrar under any other provision of these Rules, it shall be so filed using the electronic filing service in accordance with this Order and any practice directions for the time being issued by the Registrar.

(2) For the purpose of paragraph (1), any requirement for the filing of a specified document is satisfied by the filing of a single copy using the electronic filing service in accordance with this Order.

(3) The filing of a specified document using the electronic filing service in pursuance of paragraph (1) may be done—

(a) by electronic transmission; or

(b) via a service bureau.

(4) Notwithstanding anything in paragraph (1), the Registrar may allow a document, part of a document or any class of documents to be filed other than by using the electronic filing service.

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(5) The form of any specified document shall be as prescribed in any practice directions for the time being issued by the Registrar, and shall, in the absence of such prescription, be in the form prescribed by Order 1, rule 7.

Signing of electronic documents (O. 63A, r. 8)

8. Where a specified document is filed using the electronic filing service, any requirement under any other provision of these Rules relating to the signing by or the signature of—

(a) the registered user, shall be deemed to be complied with if the identification name of, authentication code of and endorsement by the registered user has been applied to the document; or

(b) the Registrar, shall be deemed to be complied with if the identification name, authentication code and signature of the Registrar has been applied to the document.

Date of filing (O. 63A, r. 9)

9. (1) Where a document is filed with the Registrar using the electronic filing service or service bureau and is subsequently accepted by the Registrar, it shall be deemed to be filed upon successful payment into the Court's computer system by the registered user or any person respectively of any prescribed fees required by the Rules.

(2) Where an originating process or document requiring a seal of the Court is filed using the electronic filing service or service bureau and it is subsequently accepted by the Registrar, it shall be deemed to be issued upon successful payment into the Court's computer system, by the registered user or any person respectively of any prescribed fees required by the Rules, into the Court's computer system.

(3) If upon application the Registrar is satisfied for any reason that a specified document should be treated as having been filed with the Registrar, or issued, at some earlier date and time, than the date and time of the payment referred to in paragraph (1) or (2), he may order the document be amended to reflect such earlier

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date and time, and that earlier date and time shall be deemed for all purposes to be the date and time on and at which the document was filed or issued, as the case may be.

When time for service begins to run (O. 63A, r. 10)

10. (1) Where a document not requiring a seal of the Court is filed with the Registrar by electronic transmission, the time for service of that document shall only begin to run from the time that the Registrar's notification of his acceptance of the document is received in the computer system of that registered user.

(2) Where a document not requiring a seal of the Court is filed with the Registrar via a service bureau, the time for service of that document shall only begin to run upon successful payment, by the registered user or any person of any prescribed fees required by the Rules, into the Court's computer system.

(3) Where an originating process or document requiring a seal of the Court is filed with the Registrar by electronic transmission or via a service bureau, the time for service shall only begin to run when the sealed copy is received in the computer system of the registered user.

(4) If a document is received in the computer system of the registered user on a day other than a working day, it shall be deemed for the purpose of this rule to have been received on the next working day.

Notification or delivery by Registrar (O. 63A, r. 11)

11. Where the Registrar is required by any other provision of these Rules to notify or to deliver or furnish any document to a person who is a registered user, the Registrar may do so using the electronic filing service.

Mode of amendment of electronic documents (O. 63A, r. 12)

12. Amendments to specified documents shall be effected in the manner prescribed in any practice directions for the time being issued by the Registrar.

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Affidavits in electronic form (O. 63A, r. 13)

13. (1) An affidavit which is filed in Court using the electronic filing service may be used in all proceedings to the same extent and for the same purposes as a paper affidavit filed in Court.

(2) An affidavit to be filed in Court using the electronic filing service may be sworn—

(a) electronically; or

(b) in the usual way in which the deponent signs the original paper affidavit.

(3) An affidavit may be sworn electronically if—

(a) the person before whom the affidavit to be sworn is at that time—

(i) a registered user; and

(ii) a person having authority to administer oaths;

(b) the person referred to in subparagraph *(a)* uses an attestation as prescribed in a practice direction for the time being issued by the Registrar for the swearing of affidavits by electronic means;

(c) the affidavit is affixed or encoded with the identification name and authentication code of the person referred to in subparagraph *(a)*;

(d) the swearing of the affidavit by electronic means is recorded in a register kept by the person referred to in subparagraph *(a)*, and the deponent signs under his own hand in the register against the affidavit he has sworn; and

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(e) the affidavit has not been altered in any way since it was sworn.

(4) Where an affidavit, which is not sworn electronically, is to be filed in Court using the electronic filing service, it shall comply with the following requirements:

(a) the affidavit shall be sworn in the usual way in which the deponent signs the original paper affidavit;

(b) a true and complete electronic image of the original paper affidavit shall be created; and

(c) the original paper affidavit shall be retained by the party who filed it for a period of seven years after it is filed.

(5) An affidavit in an electronic form which complies with paragraph (3) but which does not comply fully with the provisions of Order 41, may nonetheless be used in evidence to the same extent and for the same purposes as an affidavit which fully complies with the provisions of Order 41 if its non-compliance with Order 41 falls within some or all of the following descriptions:

(a) the affidavit is not signed by the deponent thereof;

(b) the alterations and erasures have not been signed or initialled by the person before whom the affidavit was sworn; or

(c) the attestation is not in one of the forms in Form 74.

(6) Notwithstanding subparagraph (4)*(c)*, if the original paper affidavit subsequently becomes unavailable within seven years after it was filed, the Court may grant leave for the electronic image of the original paper affidavit filed in Court using the electronic filing service to be continued to be used in the proceedings for which it was filed, or in any other proceedings.

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(7) If an affidavit which has been sworn electronically in compliance with paragraph (3) subsequently cannot be retrieved from the computer system of the Court for any reason, the contents of the affidavit and the fact that it was sworn by the deponent thereof may be proved by producing a copy of the paper affidavit that has been certified as a true copy by an officer of the Court.

Presumptions (O. 63A, r. 14)

14. (1) If a certificate is issued by the Registrar in respect of any registered user or his authorized agent, and was accepted by the registered user or his authorized agent, as the case may be, it shall be presumed unless proven otherwise that the information listed in the certificate is correct.

(2) Where a document is transmitted to the computer system of the Registrar and the authentication code assigned to a registered user or his authorized agent was affixed to the document or the transmission containing the document—

(a) with or without the authority of the registered user; and

(b) before the notification to the Registrar, in the manner specified in any practice direction for the time being issued by the Registrar, of cancellation of the authentication code,

it shall be presumed unless proven otherwise that—

(A) the document has not been altered since the authentication code was affixed;

(B) the document was transmitted accurately;

(C) the document was made and transmitted by the registered user or his authorized agent, as the case may be; and

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(D) the authentication code was affixed or applied to a document or the transmission containing a document, as the case may be, with the intention of signing or approving the document.

(3) Where a document is filed using the electronic filing service via a service bureau, and it is proved that—

(a) the document so filed was affixed with the authentication code assigned to a member of the personnel of the service bureau, or the transmission containing the document was so affixed with this authentication code;

(b) reasonable steps were taken by the personnel of the service bureau to verify and record the identity of the person tendering the document to the service bureau;

(c) reasonable steps were taken by the personnel of the service bureau to verify and record that the person tendering the document represented the person, if any, on whose behalf he purported to tender the document;

(d) the document was filed using the electronic filing service in the name of the person recorded by the personnel of the service bureau and in accordance with the instructions recorded by the personnel of the service bureau,

it shall be presumed unless proven otherwise that—

(A) the authentication code was duly affixed or applied to the transmission containing the document; and

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(B) the document was made and transmitted by the service bureau for and on behalf of, and with the authority of, the person tendering the document and the person, if any, he purported to represent.

(4) A certificate under the hand of the Registrar giving the authentication code, identification name and other particulars of the registered user and a description of the document transmitted shall be sufficient evidence of the matters referred to in subparagraphs (2)*(a)* and *(b)*.

Discrepancy (O. 63A, r. 15)

15. (1) Where a specified document was filed using the electronic filing service, and there is any inconsistency between—

(a) the information entered into the Court's computer system; and

(b) the information contained in the document,

the information in the Court's computer system shall prevail.

(2) Where a specified document was filed via a service bureau, and there is any inconsistency between—

(a) the information entered into the Court's computer system; and

(b) the information contained in the document,

the information in the document shall prevail.

(3) If the Registrar is satisfied that for any reason whatsoever, that the information entered into the Court's computer system is erroneous, he may cause the information in the Court's computer system to be rectified accordingly.

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Interpretation (O. 63A, r. 16)

16. (1) A registered user or his authorized agent who has been registered by the Registrar of the High Court, and for this purpose has been issued with an identification name and an authentication code, shall be treated for the purposes of this Order as if he had also been registered, and had similarly been issued with an identification name and an authentication code, by the Registrar of the Subordinate Courts.

(2) A registered user or his authorized agent who has been registered by the Registrar of the Subordinate Courts, and for this purpose has been issued with an identification name and an authentication code, shall be treated for the purposes of this Order as if he had also been registered, and had similarly been issued with an identification name and an authentication code, by the Registrar of the High Court.

(3) A service bureau established or authorized to be established by the Registrar of the High Court under rule 4 may be used to assist in the filing of documents pertaining to Subordinate Courts proceedings using the electronic filing service in such cases and circumstances as the Registrar of the Subordinate Courts may prescribe in practice directions issued from time to time.

(4) A service bureau established or authorized to be established by the Registrar of the Subordinate Courts under rule 4 may be used to assist in the filing of documents pertaining to High Court proceedings using the electronic filing service in such cases and circumstances as the Registrar of the High Court may prescribe in practice directions issued from time to time.

ORDER 64

CHANGE OF SOLICITOR

Change of solicitor by notice (O. 64, r. 1)

1. (1) A party to any cause or matter who sues or defends by a solicitor may change his solicitor without an order for that purpose but, unless and until a notice of the change is filed and served in accordance with this rule, the former solicitor shall,

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subject to rules 4 and 5, be considered the solicitor of the party until the final conclusion of the cause or matter.

(2) A notice of a change of solicitor in Form 136 shall be filed in the Registry.

(3) The party giving the notice shall serve on every other party to the cause or matter (not being a party in default as to entry of appearance) and on the former solicitor a copy of the notice.

(4) The party giving the notice may perform the duties prescribed by this rule in person or by his new solicitor.

Appointing a solicitor after having acted in person (O. 64, r. 2)

2. Where a party, after having sued or defended in person, appoints a solicitor to act in the cause or matter on his behalf, the change may be made without an order for that purpose and rules 1(2), (3) and (4) shall, with the necessary modifications, apply in relation to a notice of appointment of a solicitor in Form 136 as they apply in relation to a notice of change of solicitor.

Acting in person after appointing solicitor (O. 64, r. 3)

3. Where a party, after having sued or defended by a solicitor, intends and is entitled to act in person, the change may be made without an order for that purpose and rule 1 must, with the necessary modifications, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of solicitor except that the notice of intention to act in person in Form 137 shall contain an address for service of the party giving it.

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Party seeking an order that other party's solicitor has ceased acting (O. 64, r. 4)

4. (1) Where—

(a) a solicitor who has acted for a party in a cause or matter has died or become bankrupt or cannot be found or has failed to take out a practising certificate or has been struck off the roll of solicitors or has been suspended from practising or has any other reason ceased to practise; and

(b) the party has not given a notice of change of solicitor or a notice of intention to act in person in accordance with rules 1 to 3,

any other party to the cause or matter may apply to the Court or, if an appeal to the High Court (or the Court of Appeal or Federal Court) is pending in the cause or matter to such Court where the appeal is pending for an order declaring that the solicitor has ceased to be the solicitor acting for the first-mentioned party in the cause or matter, the Court or the Court where the appeal is pending, as the case may be, may make an order accordingly.

(2) An application for an order under this rule shall be made by notice of application in Form 138 or, in the case of an application to the Court of Appeal or Federal Court by motion, and the notice of application or notice of motion shall unless the Court or the Court of Appeal or Federal Court, as the case may be, otherwise directs, be served on the party to whose solicitor the application relates. The application shall be supported by an affidavit stating the grounds of the application.

(3) Where an order in Form 139 is made under this rule, the party on whose application it was made shall serve on every other party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order.

(4) An order made under this rule shall not affect the right of the solicitor and the party for whom he acted as between themselves.

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Application by solicitor that he has ceased to act (O. 64, r. 5)

5. (1) Where a solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given a notice of change in accordance with rule 1, or a notice of intention to act in person in accordance with rule 3, the solicitor may apply to the Court for an order declaring that the solicitor has ceased to be the solicitor acting for the party in the cause or matter, and the Court or the Court of Appeal or Federal Court, as the case may be, may make an order accordingly, but unless and until the solicitor serves on every party to the cause or matter (not being a party in default as to entry of appearance) a copy of the order, he shall, subject to the foregoing provisions of this Order, be considered the solicitor of the party till the final conclusion of the cause or matter, whether in the Court or the Court of Appeal or Federal Court.

(2) An application for an order under this rule shall be made by a notice of application in Form 140 or, in the case of an application to the Court of Appeal or Federal Court, by motion, and the notice of application or notice of motion shall, unless the Court or the Court of Appeal or Federal Court, as the case may be, otherwise directs, be served on the party for whom the solicitor acted. The application shall be supported by an affidavit stating the grounds of the application.

(3) An order in Form 141 made under this rule shall not affect the rights of the solicitor and the party for whom he acted as between themselves.

(4) Notwithstanding anything in paragraph (1), where the legal aid certificate of an assisted person within the meaning of the Legal Aid Act 1971 [*Act 26*] is revoked or discharged, the solicitor who acted for the assisted person shall cease to be the solicitor acting in the cause or matter, and if the assisted person whose certificate has been revoked or discharged desires to proceed with the cause or matter without legal aid and appoints that solicitor or another solicitor to act on his behalf, rule 2 shall apply as if that party had previously sued or defended in person.

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Address for service of party whose solicitor is removed (O. 64, r. 6)

6. Where—

(a) an order is made under rule 4;

(b) an order is made under rule 5, and the applicant for that order has complied with rule 5(1); or

(c) the legal aid certificate of an assisted person within the meaning of the Legal Aid Act 1971 is revoked or discharged,

then unless and until the party to whose solicitor or to whom, as the case may be, the order or certificate related either appoints another solicitor and complies with rule 2 or, being entitled to act in person, gives notice of his intention so to do and complies with rule 3, his last known address or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on him of any document not required to be served personally, be deemed to be his address for service.

ORDER 65

SERVICE OF FOREIGN PROCESS

Definition (O. 65, r. 1)

1. In this Order, "process" includes a citation.

Service of foreign legal process (O. 65, r. 2)

2. (1) This rule applies in relation to the service of any process required in connection with civil proceedings pending before a Court or other tribunal of a foreign country where a letter of request from such a tribunal requesting service on a person in Malaysia of any such process sent with the letter is received by the Minister and is sent by him to the High Court with an intimation that it is desirable that effect should be given to the request.

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(2) In order that service of the process may be effected in accordance with this rule, the letter of request shall be accompanied by a translation thereof in English, by two copies of the process to be served and by two copies of a translation of the process in English.

(3) Subject to paragraph (4) and to any written law, which provides for the manner in which documents may be served on bodies corporate, service of the process shall be effected by leaving a copy of it and of the translation with the person to be served. The service shall be effected by the process server.

(4) Where an application in that behalf is made by the Attorney General, the Court may make an order for substituted service of the process, and, where such an order is made, the service of the process shall be effected by taking such steps as the Court may direct to bring the process to the notice of the person to be served.

(5) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall file a copy of the process, an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, a copy of that affidavit and a statement of the costs incurred in effecting, or attempting to effect, service.

(6) The Registrar shall give a certificate in Form 142—

(a) identifying the documents annexed thereto, that is to say, the letter of request for service, a copy of the process received with the letter and a copy of the affidavit referred to in paragraph (5);

(b) certifying that the method of service of the process and the proof of service are such as are required by the Rules of Court regulating the service of process of that Court in Malaysia or, if such be the case, that service of the process could not be effected for the reason specified in the certificate; and

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(c) certifying that the cost of effecting or attempting to effect service is the amount so specified.

(7) The certificate given under paragraph (6) shall be sealed with the seal of the High Court for use out of the jurisdiction and shall be sent to the Minister.

Alternative mode of service of foreign legal process (O. 65, r. 2A)

2A. (1) Subject to rule 3, this rule applies in relation to the service of any process required in connection with civil proceedings pending before a Court or other tribunal of a foreign country where rule 2 does not apply or is not invoked.

(2) The service of any such process within Malaysia may be effected by a method of service authorized by these Rules for the service of analogous process issued by the Court.

(3) This rule shall apply notwithstanding that the foreign process is expressed to be or includes a command of the foreign sovereign.

Service of foreign legal process under Civil Procedure Convention (O. 65, r. 3)

3. (1) This rule applies in relation to the service of any process required in connection with civil proceedings pending before a Court or other tribunal of a foreign country, being a country with which there subsists a Civil Procedure Convention providing for service in Malaysia of process of the tribunals of that country, where a letter of request from a consular or other authority of that country requesting service on a person in Malaysia of any such process sent with the letter is received by the Registrar.

(2) In order that service of the process may be effected in accordance with this rule the letter or request shall be accompanied by a copy of a translation of the process to be served in English.

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(3) Subject to any written law which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the relevant Civil Procedure Convention, the service of the process shall be effected by leaving the original process or a copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served. The service shall be effected by the process server.

(4) After service of the process has been effected or (if such be the case) attempts to effect service of it have failed, the process server shall file an affidavit made by the person who served, or attempted to serve, the process stating when, where and how he did or attempted to do so, and a statement of the costs incurred in effecting, or attempting to effect, service.

(5) The Registrar shall give a certificate certifying—

(a) that the process or a copy thereof, as the case may be, was served on the person, at the time, and in the manner, specified in the certificate or (if such be the case) that service of the process could not be effected for the reason so specified; and

(b) that the cost of effecting, or attempting to effect, service is the amount so specified.

(6) The certificate given under paragraph (5) shall be sealed with the seal of the High Court for use out of the jurisdiction and shall be sent to the consular or other authority by whom the request for service was made.

Costs of service to be certified by Registrar (O. 65, r. 4)

4. A statement of the costs incurred in effecting, or attempting to effect, service under rule 2 or rule 3 shall be submitted to the Registrar who shall certify the amount properly payable in respect of those costs.

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ORDER 66

OBTAINING EVIDENCE FOR FOREIGN COURT

Jurisdiction of Registrar to make order (O. 66, r. 1)

1. (1) Subject to paragraph (2), the power of the High Court or a Judge thereof to make, in relation to a matter pending before a Court or tribunal in a place outside the jurisdiction, orders for the examination of witnesses and for attendance and for production of documents and to give directions may be exercised by the Registrar.

(2) The Registrar may not make such an order if the matter in question is a criminal matter.

Application for order (O. 66, r. 2)

2. (1) Subject to paragraph (3) and rule 3, an application for an order under rule 1 shall be made *ex parte* by a person duly authorized to make the application on behalf of the Court or tribunal in question and shall be supported by affidavit.

(2) There shall be exhibited to the affidavit in support the letter of request, certificate or other document evidencing the desire of the Court or tribunal to obtain for the purpose of a matter pending before it the evidence of the witness to whom the application relates to the production of any documents and, if that document is not in the English language, a translation thereof in that language.

(3) After an application for such an order as is mentioned in paragraph (1) has been made in relation to a matter pending before a Court or tribunal, an application for a further order or directions in relation to the same shall be made by a notice of application.

Application by Attorney General in certain cases (O. 66, r. 3)

3. Where a letter of request, certificate or other document requesting that the evidence of a witness within the jurisdiction in relation to a matter pending before a Court or tribunal in a foreign country be obtained—

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(a) is received by the Minister and sent by him to the Registrar with an intimation that effect should be given to the request without requiring an application for that purpose to be made by the agent in Malaysia of any party to the matter pending before the Court or tribunal; or

(b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Malaysia for the assistance of a Court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such party,

the Registrar shall send the document to the Attorney General and the Attorney General may make an application for an order and take such other steps as may be necessary to give effect to the request.

Person to take and manner of taking examinations (O. 66, r. 4)

4. (1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before the Registrar or before such other qualified person as to the Court seems fit.

(2) Subject to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in the manner provided by Order 39, rules 5 to 10 and 11(1) to (3), and an order may be made under Order 39, rule 14, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

Dealing with depositions (O. 66, r. 5)

5. Unless any order made in pursuance of this Order for the examination of any witness otherwise directs, the examiner before whom the examination was taken shall send the deposition of that witness to the Registrar and the Registrar shall—

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(a) give a certificate sealed with the seal of the High Court for use out of the jurisdiction identifying the documents annexed thereto, that is to say, the letter of request, certificate, or other document from the Court or tribunal out of the jurisdiction requesting the examination, 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, or, where the letter of request, certificate or other document was sent to the Registrar by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to that Court or tribunal.

ORDER 67

RECIPROCAL ENFORCEMENT OF JUDGMENTS

Powers under relevant Act exercisable by Judge or Registrar (O. 67, r. 1)

1. The powers conferred on the High Court by the Reciprocal Enforcement of Judgments Act 1958 [*Act 99*], which is referred to as "the Act" in this Order, may be exercised by a Judge in Chambers and the Registrar.

Application for registration (O. 67, r. 2)

2. An application under section 4 of the Act in respect of a judgment obtained in a superior court of the country in the First Schedule thereto to have the judgment registered in the High Court shall be made by an originating summons.

Evidence in support of application (O. 67, r. 3)

3. (1) An application for registration shall be supported by an affidavit—

(a) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof, and where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by affidavit;

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(b) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;

(c) stating to the best of the information or belief of the deponent—

(i) that the judgment creditor is entitled to enforce the judgment;

(ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied;

(iii) where the application is made under the Act, that the judgment does not fall within any of the cases in which a judgment may not be ordered to be registered under subsection 4(2) of the Act;

(iv) where the application is made under the Act, that at the date of the application the judgment can be enforced by execution in the country of the original Court and that, if it were registered, the registration would not be, or be liable to be, set aside under section 5 of the Act;

(d) specifying, where the application is made under the Act, the amount of the interest, if any, which under the law of the country of the original Court has become due under the judgment up to the time of registration.

(2) Where the sum payable under a judgment sought to be registered is expressed in a currency other than the currency of Malaysia, the affidavit shall also state the amount which that sum represents in the currency of Malaysia calculated at the rate of exchange prevailing at the date of the judgment.

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(3) Where a judgment sought to be registered under the Act is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit shall state the provisions in respect of which it is sought to register the judgment.

(4) In the case of an application under the Act, the affidavit shall be accompanied by such other evidence with respect to the enforceability of the judgment by execution in the country of the original Court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order under the Act extending the Act to that country.

Security for costs (O. 67, r. 4)

4. Save as otherwise provided by any notification made under section 5 of the Act or any relevant order under the Act, the Court may order the judgment creditor to give security for the cost of the application for registration and of any proceedings which may be brought to set aside the registration.

Order for registration (O. 67, r. 5)

5. (1) An order in Form 143 giving leave to register a judgment shall be drawn up by, or on behalf of, the judgment creditor and served on the judgment debtor.

(2) Every such order shall state the period within which an application may be made to set aside the registration and shall contain a notification that execution on the judgment will not issue until after the expiration of that period.

(3) 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.

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Register of judgments (O. 67, r. 6)

6. (1) There shall be kept in the Registry a register of the judgments ordered to be registered under the Act.

(2) There shall be included in such register particulars of any execution issued on a judgment ordered to be so registered.

Notice of registration (O. 67, r. 7)

7. (1) A notice of the registration of a judgment shall be served on the judgment debtor and, subject to paragraph (2), shall be served personally unless the Court otherwise orders.

(2) The service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a notice of an application.

(3) The notice of registration shall state—

(a) full particulars of the judgment registered and the order for registration;

(b) the name and address of the judgment creditor or of his solicitor on whom, and at which, any summons issued by the judgment debtor may be served;

(c) the right of the judgment debtor to apply to have the registration set aside; and

(d) the period within which an application to set aside the registration may be made.

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Endorsement of service (O. 67, r. 8)

8. (1) Within three days after service of the notice of registration or within such longer period as the Court may, in special circumstances, allow, the notice or a copy thereof shall be endorsed by the person who served it with the day of the week and date on which it was served, and if the notice is not so endorsed within the period aforesaid the judgment creditor may not issue execution on the judgment to which the notice relates without the leave of the Court.

(2) Every affidavit of service of any such notice shall state the date on which the notice was endorsed under this rule.

Application to set aside registration (O. 67, r. 9)

9. (1) An application to set aside the registration of a judgment shall be made by notice of application supported by affidavit and shall be filed, and a copy thereof served on the judgment creditor, within the time permitted for such application under rule 5(2).

(2) The Court hearing such application may order any issue between the judgment creditor and the judgment debtor to be tried in any manner in which an issue in an action may be ordered to be tried.

(3) Where the Court hearing an application to set aside the registration of a judgment registered under the Act is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under subsection 3(2) of the Act or that it is not just or convenient that the judgment should be enforced in Malaysia or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

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Issue of execution (O. 67, r. 10)

10. (1) Execution shall not be issued on a judgment registered under the Act until after the expiration of the period which, in accordance with rule 5(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 that period as so extended.

(2) If an application is made to set aside the registration of a judgment, execution on the judgment shall not be issued until after such application is finally determined.

(3) Any party wishing to issue execution on a judgment registered under the Act shall produce to the Sheriff an affidavit of service of the notice of registration of the judgment and any order made by the Court in relation to the judgment.

Determination of certain questions (O. 67, r. 11)

11. If, in any case under the Act, any question arises whether a foreign judgment can be enforced by execution in the country of the original Court, or what interest is payable under a foreign judgment under the law of the original Court, that question shall be determined in accordance with the provisions in that behalf contained in the Order extending the Act to that country.

Rules to have effect subject to orders of the Government (O. 67, r. 12)

12. The foregoing rules shall, in relation to any judgment registered or sought to be registered under the Act, have effect subject to any such provisions contained in the Order extending the Act to the country of the original Court as are declared by the Order to be necessary for giving effect to the agreement made between the Government and that country in relation to matters with respect to which there is power to make those rules.

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Certified copy of High Court judgment (O. 67, r. 13)

13. (1) An application under section 10 of the Act for a certified copy of a judgment entered in the High Court shall be made *ex parte* by a notice of application to the Registrar supported by affidavit.

(2) The affidavit in support of the application under section 10 of the Act shall give particulars of the judgment, show that the judgment debtor is resident in the territory to which that Act extends and state the name, trade or business and the usual or last known place of abode of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

(3) The affidavit in support of the application under section 10 of the Act shall—

(a) give particulars of the proceedings in which the judgment was obtained;

(b) have annexed to it a copy of the originating summons by which the proceedings were begun, the evidence of service thereof on, or appearance by, the defendant, copies of the pleadings, if any, and a statement of the grounds on which the judgment was based;

(c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;

(d) show that the judgment is not subject to any stay of execution;

(e) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been entered; and

(f) state the rate at which the judgment carries interest.

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(4) The certified copy of the judgment shall be an office copy sealed with the seal of the High Court and endorsed with a certificate in Form 144 signed by the Registrar certifying that the copy is a true copy of a judgment obtained in the High Court in Malaysia and that it is issued in accordance with section 4 or 10 of the Act, as the case may be.

(5) Where the application is made under section 10 of the Act, there shall also be issued a certificate in Form 145 (signed by the Registrar and sealed with the seal of the High Court) having annexed to it a copy of the originating summons by which the proceedings were begun, and stating—

(a) the manner in which the originating summons was served on the defendant or that the defendant appeared thereto;

(b) what objections, if any, were made to the jurisdiction;

(c) what pleadings, if any, were served;

(d) the grounds on which the judgment was based;

(e) that the time for appealing has expired or the date on which it will expire, as the case may be;

(f) whether a notice of appeal against the judgment has been entered; and

(g) such other particulars as it may be necessary to give to the Court in the foreign country in which it is sought to obtain execution of the judgment,

and a certificate (signed and sealed as aforesaid) stating the rate at which the judgment carries interest.

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ORDER 68

(There is no Order 68)

ORDER 69

ARBITRATION PROCEEDINGS

Interpretation (O. 69, r. 1)

1. (1) In this Order—

(a) "the 1952 Act" means the Arbitration Act 1952 [*Act 93*]; and

(b) "the 2005 Act" means the Arbitration Act 2005 [*Act 646*].

(2) This Order applies to proceedings in the High Court.

Claims under the 2005 Act (O. 69, r. 2)

2. (1) In this Order, "arbitration claim" means any application to the Court under the 2005 Act, including a claim to—

(a) appoint an arbitrator under subsection 13(7) of the 2005 Act;

(b) decide on the challenge of an arbitrator under subsection 15(3) of the 2005 Act;

(c) decide on the termination of the mandate of an arbitrator under subsection 16(2) of the 2005 Act;

(d) appeal against the ruling of the arbitral tribunal on jurisdiction under subsection 18(8) of the 2005 Act;

(e) enforce interlocutory orders or directions of an arbitral tribunal made under section 19 of the 2005 Act;

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(f) seek interlocutory orders or directions under section 11 of the 2005 Act;

(g) determine under section 41 of the 2005 Act, any question of law arising in the course of the arbitration proceedings;

(h) determine under section 42 of the 2005 Act, any question of law arising out of an award;

(i) set aside an award under section 37 of the 2005 Act;

(j) direct any matter in connection with bankruptcy proceedings under section 49 of the 2005 Act;

(k) enforce an award under section 38 of the 2005 Act;

(l) extend time under section 45 or 46 of the 2005 Act; and

(m) seek an order under subsection 44(4) of the 2005 Act where the arbitral tribunal withholds its award for non-payment of fees and expenses.

(2) An application under subparagraph (1)*(b)* or *(d)* shall be made within thirty days from the receipt of a notice by the applicant of the decision or ruling of the arbitral tribunal.

(3) An application under subparagraph (1)*(b)*, *(c)*, *(g)*, *(h)*, *(i)* or *(m)* shall be served on each arbitrator.

Claims under the 1952 Act (O. 69, r. 3)

3. (1) In this Order, "arbitration claim" means any application to the Court under the 1952 Act, including a claim to—

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(a) appoint an arbitrator under section 12 of the 1952 Act;

(b) revoke the authority of an arbitrator, or to order that an arbitration agreement shall cease to have effect, under section 25 of the 1952 Act;

(c) remove an arbitrator under subsection 24(1) of the 1952 Act;

(d) remit an award under section 23 of the 1952 Act;

(e) set aside an award under subsection 24(2) of the 1952 Act;

(f) decide any question of law arising in the course of the reference or award in the form of a special case stated, or to direct an arbitrator to state a case, under section 22 of the 1952 Act;

(g) enforce an award under section 27 of the 1952 Act; and

(h) to extend time under section 28 of the 1952 Act.

(2) An application under subparagraph (1)*(d)* or *(e)* shall be made within forty-two days after the award is made and published.

(3) An application under subparagraph (1)*(b)*, *(c)*, *(d)*, *(e)* or *(f)* shall be served on each arbitrator.

Starting the claim (O. 69, r. 4)

4. (1) An arbitration claim under rule 2 or rule 3 may be made using the originating summons procedure, and Form 5 shall be filed in the High Court. An arbitration claim originating summons shall—

(a) include a concise statement of—

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(i) the remedy claimed; and

(ii) any question on which the applicant seeks the decision of the Court;

(b) state the grounds in support of the originating summons;

(c) show that any statutory requirements have been met;

(d) specify the section of the 1952 Act or the 2005 Act under which the claim is made;

(e) specify the respondents on whom the arbitration claim originating summons is to be served, stating their role in the arbitration; and

(f) identify against which, if any, respondents an order of costs is sought.

(2) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons, including a copy of the arbitration agreement and the award, where relevant.

(3) Unless the Court orders otherwise, an arbitration claim originating summons and the affidavit shall be served on the respondents specified in subparagraph (1)*(e)*, within thirty days from the date of issue.

(4) Where relevant, rules 5 to 8 shall additionally apply.

Application to set aside an award (O. 69, r. 5)

5. (1) Subject to subparagraph (2), an application to the Court to set aside an award under section 37 of the 2005 Act may be made—

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(a) at any time within ninety days from the date on which the applicant received the award; or

(b) if a request has been made to the arbitral tribunal for a correction or interpretation of the award or for an additional award under section 35 of the Act, at any time within ninety days after the request has been disposed off by the arbitral tribunal.

(2) An application to the Court to set aside an award on the ground that the award was induced or affected by fraud or corruption may be made within ninety days after the alleged fraud or corruption became known to the party making the application.

(3) In every application to set aside an award, the originating summons shall, in addition to matters stated in rule 4(1)—

(a) give details of the award challenged;

(b) identify which part or parts of the award are challenged; and

(c) specify the grounds for the challenge.

(4) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his writ, including a copy of the arbitration agreement and the award.

(5) The originating summons and affidavit shall be served on each arbitrator and the respondents.

Application to refer questions of law arising out of an award (O. 69, r. 6)

6. (1) A reference of any question of law to the Court under section 42 of the 2005 Act may be made at any time within forty-two days of the publication and receipt of the award.

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(2) In every application for reference of a question of law under section 42 of the 2005 Act the originating summons shall, in addition to the matters stated in rule 4(1)—

(a) identify the question of law arising out of the award which is sought to be determined;

(b) state the grounds on which reference is sought; and

(c) give particulars of each ground on which it is contended that the arbitral tribunal erred in law, with references to the paragraphs or passages of the award where each alleged error is to be found.

(3) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons, including a copy of the arbitration agreement and the award.

(4) The originating summons and affidavit shall be served on each arbitrator and the respondents.

Preliminary question of law (O. 69, r. 7)

7. (1) An application under section 41 of the 2005 Act to determine any question of law arising in the course of the arbitral proceedings shall, in addition to the matters stated in rule 4(1)—

(a) be made either with—

(i) the agreement in writing of all the parties to the arbitral proceedings; or

(ii) the permission in writing of the arbitral tribunal; and

(b) identify the question of law to be determined.

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(2) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons, including a copy of the arbitration agreement and the written agreement or permission under subparagraph (1)*(a)*.

(3) The originating summons and affidavit shall be served on each arbitrator and the respondents.

Enforcement of awards (O. 69, r. 8)

8. (1) An application for permission to enforce an award in the same manner as a judgment or an order may be made without notice in an arbitration claim originating summons.

(2) The arbitration claim originating summons shall—

(a) state the name and the usual or last known place of abode or business of the applicant, and the respondent against whom it is sought to enforce the award, respectively; and

(b) state either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

(3) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons, including exhibiting the original arbitration agreement and the duly authenticated original award or, in either case, a duly certified copy thereof and where the award or agreement is in a language other than the national language or English, a translation of it in the English language, duly certified as a correct translation by a sworn translator or by an official or by a diplomatic or consular agent of the country in which the award was made.

(4) The Court may specify parties to the arbitration on whom the arbitration claim originating summons shall be served.

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(5) With the permission of the Court, the arbitration claim originating summons may be served out of the jurisdiction irrespective of where the award is, or is treated as, made.

(6) An order giving permission to enforce the award shall—

(a) be drawn up by the applicant; and

(b) be served on the respondent by—

(i) delivering a copy to him personally; or

(ii) sending a copy to him at his usual or last known place of residence or business.

(7) Within fourteen days after service of the order giving permission to enforce the award or, if the order is to be served out of the jurisdiction, within such other period as the Court may set—

(a) the respondent may apply to set aside such order; and

(b) the award shall not be enforced until—

(i) after the expiration of that period; or

(ii) if the respondent applies within that period to set aside, until after the application made by the respondent has been finally disposed of.

(8) The order giving permission for enforcement shall contain a statement of the right to make an application to set aside the order.

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(9) Where a body corporate is a party, any reference in this rule to a place of residence or business shall have effect as if the reference were to the registered or principal address of the body corporate.

(10) Where the award sought to be enforced is in the nature of an interim injunction under subsection 13(6) of the 1952 Act or subsection 19(1) of the 2005 Act, the order shall be granted only if the applicant undertakes to abide by any order the Court or the arbitral tribunal may make as to damages. The order shall be enforceable immediately, and subparagraph (7)*(b)* shall not apply.

Registration in High Court of foreign awards (O. 69, r. 9)

9. Where an award has, under the law in force in the place where it was made become enforceable in the same manner as a judgment given by a Court in that place, an applicant may enforce the award in the manner provided for under rule 8.

Stay of legal proceedings (O. 69, r. 10)

10. (1) An application seeking a stay of legal proceedings under section 10 of the 2005 Act shall be served on all parties to those proceedings who have given an address for service.

(2) A copy of an application under paragraph (1) shall be served on any other party to the legal proceedings (whether or not he is within the jurisdiction) who has not given an address for service, at—

(a) his last known address; or

(b) a place where it is likely to come to his attention.

(3) Where a question arises as to whether—

(a) an arbitration agreement has been concluded; or

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(b) the dispute which is the subject matter of the proceeding falls within the terms of such agreement,

the Court may decide that question or give directions to enable it to be decided and may order the proceeding to be stayed pending its decision.

Application to extend time (O. 69, r. 11)

11. (1) An application to extend time under section 46 of the 2005 Act for making an award may be made—

(a) by the arbitral tribunal, upon notice to the parties; or

(b) by any party to the proceedings, upon notice to the arbitral tribunal and the other parties.

(2) An application made under section 45 or 46 of the 2005 Act shall be served on all the other parties to the arbitration proceedings, including the arbitral tribunal in cases where the application is not made by the arbitral tribunal.

(3) Order 3, rule 5 shall apply to this Order.

Service out of the jurisdiction (O. 69, r. 12)

12. (1) The Court may give permission to serve an arbitration claim originating summons out of the jurisdiction if—

(a) the applicant seeks to set aside an award or a reference on a question of law arising out of an arbitration award made within the jurisdiction; or

(b) the applicant seeks some other remedy or requires a question to be decided by the Court affecting an arbitration agreement, or an arbitration, whether or not the arbitration is held within the

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jurisdiction and whether or not the arbitration has started, or an arbitration award, whether or not made within the jurisdiction.

(2) An application for permission under paragraph (1) shall be supported by written evidence—

(a) stating the grounds on which the application is made; and

(b) showing in what place or country the person to be served is to be found or probably may be found.

Notice (O. 69, r. 13)

13. Where notice shall be given to an arbitrator or any other person it may be given by sending him a copy of —

(a) the arbitration claim originating summons; and

(b) any affidavit of written evidence in support.

Subpoena (O. 69, r. 14)

14. Order 38, rules 13 to 23 shall apply in relation to the issue of subpoena and the taking of evidence for arbitration proceedings under section 13 of the 1952 Act or section 29 of the 2005 Act as they apply in relation to proceedings in the Court.

ORDER 70

ADMIRALTY PROCEEDINGS

Application and interpretation (O. 70, r. 1)

1. (1) This Order applies to Admiralty causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

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(2) In this Order—

"Sheriff's account" means the account which is maintained pursuant to Order 90, rule 18, and includes the bank account maintained in the name of the Sheriff;

"caveat book" means the book kept in the Registry in which caveats issued under this Order are entered;

"ship" includes any description of vessel used in navigation;

"caveat against release and payment" means a caveat entered in the caveat book under rule 13;

"caveat against arrest" means a caveat entered in the caveat book under rule 5;

"action *in rem*" means an Admiralty action *in rem*;

"limitation action" means an action by ship owners or other persons under any written law for the limitation of the amount of their liability in connection with a ship or other property.

(3) In this Order, any reference to payment into Court of proceeds of sale of any property sold by the Sheriff means payment of such proceeds into the Sheriff's account.

Issue of writ and entry of appearance (O. 70, r. 2)

2. (1) An action *in rem* shall be begun by writ and the writ shall be in Form 146.

(1A) The writ by which an Admiralty action *in personam* is begun must be in Form 2 and the words "admiralty action *in personam*" must be inserted above the space for the number of the writ.

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(1B) A party intending to commence proceedings *in rem* and *in personam* must issue separate writs.

(2) Order 12 shall apply in relation to such an action.

(3) The plaintiff in an action *in rem* may be named or may be described, but if not named in the writ shall identify himself by name if requested to do so by any other party.

(4) Where the defendants are described and not named on the writ, any memorandum of appearance in addition to stating that description shall also state the full names of the persons entering appearance and the nature of their ownership.

(5) A defendant who files a memorandum of appearance to an action *in rem* does not lose any right he may have to dispute the jurisdiction of the Court.

Proceedings against, or concerning, the International Oil Pollution Compensation Fund (O. 70, r. 2A)

2A. (1) For the purposes of subsection 23(3) of the Merchant Shipping (Oil Pollution) Act 1994, any party to proceedings brought against an owner or a guarantor in respect of liability under section 3 of that Act may give notice to the Fund of such proceedings by serving a notice in writing on the Fund together with a copy of the writ and copies of the pleadings (if any) served in the action.

(2) The Court shall, on the application made *ex parte* by the Fund, grant leave to the Fund to intervene in any proceedings to which the preceding paragraph applies, whether notice of such proceedings has been served on the Fund or not, and paragraphs (3) and (4) of rule 16 shall apply to such an application.

(3) Where judgment is given against the Fund in any proceedings under section 19 of the Merchant Shipping (Oil Pollution) Act 1994, the Registrar shall cause a stamped copy of the judgment to be sent by post to the Fund.

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(4) The Fund shall notify the Registrar of the matters set out in section 19(8)*(b)* of the Merchant Shipping (Oil Pollution) Act 1994 by a notice in writing, sent by post to, or delivered at, the Registry.

(5) In this rule "Fund" has the same meaning as in section 15 of the Merchant Shipping (Oil Pollution) Act 1994.

Service out of jurisdiction of notice of writ (O. 70, r. 3)

3. (1) Subject to the following provisions of this rule, service out of the jurisdiction of a notice of a writ, containing any such claim as is mentioned in Order 11, rule 1(1)*(a)*, *(b)* and *(c),* every limitation action and every action to enforce a claim under the Merchant Shipping (Oil Pollution) Act 1994 is permissible with the leave of the Court if—

(a) the defendant has his habitual residence or a place of business in Malaysia;

(b) the cause of action arose within the territorial waters of Malaysia;

(c) an action arising out of the same incident or series of incidents is proceeding in the High Court or has been heard and determined in the High Court; or

(d) the defendant has submitted or agreed to submit to the jurisdiction of the High Court.

(2) Order 11, rules 4 to 6 shall apply to service out of jurisdiction under this rule.

(3) Paragraph (1) shall not apply to an action *in rem*.

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Warrant of arrest (O. 70, r. 4)

4. (1) In an action *in rem* the plaintiff or defendant, as the case may be, may after the issue of the writ in the action and subject to the provisions of this rule, issue a warrant in Form 147 for the arrest of the property against which the action or any counterclaim in the action is brought.

(2) Before a warrant to arrest any property is issued, the party intending to issue it shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party intending to issue the same has filed a *praecipe* in Form 148 requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (6), (7) and (8); however, the Court may, if it thinks fit, give leave to issue the warrant notwithstanding that the affidavit does not contain all those particulars.

(4) Except with leave of the Court, a warrant of arrest shall not be issued in an action *in rem* against a foreign ship belonging to a port of a State having a consulate in Malaysia, being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(5) Except with leave of the Court, a warrant of arrest shall not be issued in an action *in rem* in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(6) Every affidavit shall state—

(a) the name, address and occupation of the applicant for the warrant;

(b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied;

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(c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs; and

(d) the amount of security sought, if any.

(7) Every affidavit in an action *in rem* brought against a ship shall state—

(a) whether the ship against which the action is brought is the ship in connection with which the claim in the action arose;

(b) that in the belief of the deponent the person who would be liable on the claim in an action *in personam* was, when the cause of action arose, the owner or charterer, or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, either the beneficial owner of all the shares in the ship against which the action is brought or the charterer of the ship under a charter by demise; and

(c) the grounds of the deponent's belief.

(7A) In the case of a claim in respect of a liability incurred under section 3 of the Merchant Shipping (Oil Pollution) Act 1994, every affidavit in an action *in rem* against a ship shall state the facts relied on as establishing that the Court is not prevented from entertaining the action by reason of section 23(2) of that Act.

(8) Every affidavit in an action *in rem* for possession of a ship or for wages shall state the nationality of the ship against which the action is brought and that the notice, if any, required by paragraph (4) has been sent. A copy of any such notice shall be annexed to the affidavit.

(9) An affidavit in such an action as is referred to in paragraph (5) shall have annexed thereto a certified copy of the bottomry bond, or of the translation thereof.

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(10) Issue of a warrant of arrest takes place upon its being sealed by an officer of the Registry.

(11) A warrant of arrest may not be issued as of right in the case of property whose beneficial ownership has, since the issue of the writ, changed as a result of a sale or disposal by any Court exercising Admiralty jurisdiction.

Caveat against arrest (O. 70, r. 5)

5. (1) A person who desires to prevent the arrest of any property shall file in the Registry a *praecipe*, in Form 149, signed by him or his solicitor undertaking—

(a) to enter an appearance in any action that may be begun against the property described in the *praecipe*; and

(b) within three days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the *praecipe* or to pay the amount so specified into Court,

and on the filing of the *praecipe* a caveat against the issue of a warrant to arrest the property described in the *praecipe* shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

Remedy where property protected by caveat is arrested without good and sufficient reason (O. 70, r. 6)

6. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by notice of application for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order

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discharge the warrant and may also order the last mentioned party to pay the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

Service of writ in action *in rem* (O. 70, r. 7)

7. (1) Subject to paragraph (2), a writ by which an action *in rem* is begun shall be served on the property against which the action is brought except—

(a) where the property is freight, in which case it shall be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried; or

(b) where the property has been sold and the proceeds of sale paid into Court, in which case it shall be served on the Registrar.

(2) A writ need not be served on the property or Registrar mentioned in paragraph (1) if the writ is deemed to have been duly served on the defendant in accordance with Order 10, rule 1(2) or (3).

(3) Where in accordance with this rule a writ is required to be served on any property, the plaintiff shall leave the writ and a copy thereof at the Registry and file therein a *praecipe* in Form 150 and where he does so the Sheriff or his officer shall serve the writ on the property described in the *praecipe*. The expenses incurred by the Sheriff or his officer in effecting service shall be paid to the Sheriff on demand by him.

(4) Where the plaintiff in an action *in rem*, or his solicitor, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he shall serve the writ forthwith on the person at whose instance the caveat was entered.

(5) Where a writ by which an action *in rem* is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2) shall not apply and, unless the Court otherwise directs on an application made *ex parte*, the amended writ shall be served on any intervener and any defendant who has entered an appearance in the action or, if no

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defendant has entered an appearance therein, on the property or Registrar mentioned in paragraph (1).

(6) Where a writ is served on any property by the Sheriff or his officer, the person effecting service shall endorse on the writ the following particulars, that is to say, where it was served, the property on which it was served, the day of the week and the date on which it was served, the manner in which it was served and the name and the address of the person effecting service, and the endorsement shall be evidence of the facts stated therein.

Committal of solicitor failing to comply with undertaking (O. 70, r. 8)

8. Where the solicitor of a party to an action *in rem* fails to comply with a written undertaking by him to any other party or his solicitor to enter an appearance in the action, give bail or pay money into Court in lieu of bail, he shall be liable to committal.

Execution of warrant of arrest (O. 70, r. 9)

9. (1) A warrant of arrest is valid for twelve months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the Sheriff or his officer.

(3) A warrant of arrest shall not be executed until an undertaking to pay on demand the fees of the Sheriff and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the Sheriff's office.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the Sheriff.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

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(6) Subject to paragraph (5), a warrant of arrest shall be served on the property against which it is issued.

(7) *(There is no paragraph 7)*

(8) Within seven days after the service of a warrant of arrest, the warrant shall be filed by the Sheriff.

(9) Where a writ in an action *in rem* has been issued and security sought, any person who has filed a memorandum of appearance may apply for an order specifying the amount and form of security to be provided.

(10) Paragraphs 11 and 12 apply if, in an action *in rem*, security has been given to—

(a) obtain the release of property under arrest; or

(b) prevent the arrest of property.

(11) The Court may order that—

(a) the amount of security be reduced and may stay the claim until the order is complied with; or

(b) the plaintiff or defendant, as the case may be, may arrest or re-arrest the property proceeded against to obtain further security.

(12) The Court may not make an order under subparagraph (11)*(b)* if the total security to be provided would exceed the value of the property at the time—

(a) of the original arrest; or

(b) security was first given (if the property was not arrested).

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Service on ships: How effected (O. 70, r. 10)

10. (1) Subject to paragraph (2), service of a warrant of arrest or writ in an action *in rem* against a ship, freight or cargo shall be effected by—

(a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and

(b) on removing the warrant or writ, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action *in rem* against freight or cargo or both shall, if the cargo has been landed or transhipped, be effected—

(a) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo; or

(b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

(3) A writ in an action *in rem* or warrant of arrest may be served on any day.

Applications with respect to property under arrest (O. 70, r. 11)

11. (1) The Sheriff may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall give notice of the application to all of the parties to every action against the property and all persons who have entered a caveat which is still in force.

(2) The Sheriff shall send a copy of any order made under paragraph (1) to all the parties to every action against the property to which the order relates and to all persons who have entered a caveat, which is still in force.

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(3) A person other than the Sheriff may make an application under this rule by notice of application in the action in which the property is under arrest and the notice of application together with copies of any affidavits in support shall be served upon the Sheriff and all parties to every action against the property and all persons who have entered a caveat which is still in force unless the Court otherwise orders on an application made *ex parte*.

Release of property under arrest (O. 70, r. 12)

12. (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall only be released under the authority of an instrument of release (which is referred to as a "release" in this rule) in Form 151, issued out of the Registry.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (5), be issued with respect to that property.

(3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Before a release is issued the party entitled to its issue shall—

(a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his solicitor requiring the caveat to be withdrawn; and

(b) file a *praecipe* in Form 152 requesting issue of a release.

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(6) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued shall, in accordance with the directions of the Sheriff, either pay the costs, charges and expenses due in connection with the care and custody of the property while under arrest or give a written undertaking to do so.

(7) The Court, on the application of any party who objects to directions given to him by the Sheriff under paragraph (6), may vary or revoke the directions.

(8) Where a ship—

(a) is not under arrest, but the cargo on board her is; or

(b) is under arrest, but the cargo on board her is not,

and persons interested in the ship or cargo wish to discharge the cargo, they may, without being made parties, request the Sheriff to authorize steps to discharge the cargo.

(9) If—

(a) the Sheriff considers the request under paragraph (8) reasonable; and

(b) the applicant gives an undertaking in writing acceptable to the Sheriff to pay—

(i) his fees; and

(ii) all expenses to be incurred by him or on his behalf on demand,

the Sheriff may apply to the Court for an order to permit the discharge of the cargo.

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(10) Where persons who are interested in the ship or cargo are unable or unwilling to give an undertaking as referred to in subparagraph (9)*(b)*, they may—

(a) intervene to be made parties to the action; and

(b) apply to the Court for an order for—

(i) discharge of the cargo; and

(ii) directions as to the fees and expenses of the Sheriff with regard to the discharge and storage of the cargo.

(11) Where the Court stays or dismisses an action *in rem* on the ground that the dispute in question should be submitted to the determination of the courts outside Malaysia under Order 12, rule 10, the Court may, if in those proceedings property has been arrested or bail or other security has been given to prevent or obtain release from arrest—

(a) order that the property arrested be retained as security for the satisfaction of any judgment which—

(i) is given in respect of the dispute in the legal proceedings in favour of which those proceedings are stayed or dismissed; and

(ii) is enforceable in Malaysia; or

(b) order that the stay or dismissal of those proceedings be conditional on the provision of equivalent security for the satisfaction of any such judgment.

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(12) Where the Court makes an order under paragraph (11), it may attach such conditions to the order as it thinks fit, in particular conditions with respect to the institution or prosecution of the relevant legal proceedings.

(13) The same law and practice shall apply in relation to property retained in pursuance of an order made by Court under paragraph (11) as would apply if it were held for the purposes of proceedings in that Court.

Caveat against release and payment (O. 70, r. 13)

13. (1) A person who desires to prevent the release of any property under arrest in an action *in rem* and the payment out of Court of any money in Court representing the proceeds of sale of that property shall file in the Registry a *praecipe* in Form 153, and on filing of the *praecipe* a caveat against the issue of a release with respect to that property and the payment out of Court of that money shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by notice of application for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

Duration of caveats (O. 70, r. 14)

14. (1) Every caveat entered in the caveat book is valid for six months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a *praecipe* in Form 154.

(2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

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Bail (O. 70, r. 15)

15. (1) Bail on behalf of a party to an action *in rem* shall be given by bond in Form 155 and the sureties to the bond shall enter into the bond before a Commissioner for Oaths, not being a Commissioner, who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given, or before the Registrar.

(2) Subject to paragraph (3), a surety to a bail bond shall make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, an affidavit shall not be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it shall be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given shall serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the Commissioner or Registrar before whom the bail bond was entered into; and after the expiration of twenty-four hours from the service of the notice, (or sooner with the consent of the opposite party) he may file the bond and shall at the same time file the affidavits, if any, made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice shall be exhibited.

Interveners (O. 70, r. 16)

16. (1) Where the property against which an action *in rem* is brought is under arrest or money representing the proceeds of sale of that property is in Court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

(2) An application for the grant of leave under this rule shall be made *ex parte* by notice of application supported by an affidavit showing the interest of the applicant in the property against which the action is brought or in the money in Court.

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(3) A person to whom leave is granted to intervene in an action shall thereupon become a party to the action and shall enter an appearance therein in the Registry within the period specified in the order granting leave; and Order 12, rules 1 to 4 shall, with the necessary modifications, apply in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

Preliminary acts (O. 70, r. 17)

17. (1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the plaintiff shall, within two months after service of the writ on the defendant, and the defendant shall, within two months after entering an appearance in the action, and before any pleading is served lodge in the Registry a document (which is referred to as a "preliminary act" in these rules) containing a statement of the following particulars:

(a) the names of the ships which came into collision and their ports of registry;

(aa) 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;

(b) the date and time of the collision;

(c) the place of the collision;

(d) the direction and force of the wind;

(e) the state of the weather;

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(f) the state, the direction and force of the tidal or other current;

(g) 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;

(h) the lights or shapes, if any, carried by the ship;

(i) the distance and bearing of the other ship if and when her echo was first observed by radar;

(j) the distance, bearing and approximate heading of the other ship when first seen;

(k) what light or shape or combination of lights or shapes, if any, of the other ship was first seen;

(l) what other lights or shapes or combination 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 subparagraph *(g)* 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;

(o) what sound signals, if any, were given, and when; and

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(p) what sound signals, if any, were heard from the other ship, and when.

(2) Every preliminary act shall before filing be sealed by the Registrar and shall be filed in closed envelope (stamped with an official stamp showing the date of filing) and, unless the Court otherwise orders, no envelope shall be opened until the pleadings are closed and a consent signed by each of the parties or his solicitor to the opening of the preliminary acts is filed with the Registrar.

(3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage shall give notice of his intention to do so to the other parties within seven days after the opening of the preliminary acts.

(4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.

(5) Order 18 rule 1, shall not apply to an action in which preliminary acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff shall serve a statement of claim on each defendant within fourteen days after the latest date on which the preliminary act of any party to the action is filed.

(6) A plaintiff shall serve a notice of filing his preliminary act on every defendant who has entered an appearance within three days of the service of the memorandum of appearance or upon filing his preliminary act, whichever is the later. A defendant shall, upon filing his preliminary act, serve notice that he has done so on the plaintiff and on every other defendant who has entered an appearance.

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Failure to lodge preliminary act: Proceedings against party in default (O. 70, r. 18)

18. (1) Where in such an action as is referred to in rule 17(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by notice of application for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action *in personam*, a defendant fails to lodge a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these Rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 73, rule 7, accordingly enter judgment against that defendant in accordance with the said rule 2 or rule 3, as the circumstances of the case require.

(3) Where in such an action, being an action *in rem*, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by notice of application for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the notice of application.

(4) On the hearing of a notice of application under paragraph (3), the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of the opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded. The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order

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the property against which the action is brought to be appraised and sold and the proceeds to be paid into Court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered pursuant to this rule.

(7) In this rule, references to the prescribed period shall be construed as references to the period within which in accordance with rule 17(1) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

Special provisions as to pleadings in collision, actions (O. 70, r. 19)

19. (1) Notwithstanding anything in Order 18, rule 3, the plaintiff in any such action as is referred to in Order 11, rule 1(1)*(a), (b)* and *(c)* may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

(2) If in such an action there is a counterclaim and no defence to counterclaim by the plaintiff, then notwithstanding Order 18, rule 14(3), but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

Judgment by default (O. 70, r. 20)

20. (1) Where a writ is served under rule 7(4) on a party at whose instance a caveat against arrest was issued, then if—

(a) the sum claimed in the action begun by writ does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of the caveat; and

(b) that party or his solicitor does not within fourteen days after service of the writ fulfill the undertaking given by him as aforesaid,

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the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action *in rem* fails to enter an appearance within the time limited for appearing, then, on the expiration of fourteen days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not endorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default. Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(2), or was served on the Registrar under rule 7 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ endorsed as mentioned in rule 1(2) or endorsed by the Registrar with a statement that he accepts service of the writ shall be lodged with the affidavit verifying the facts on which the action is based.

(4) Where a defendant to an action *in rem* fails to serve a defence on the plaintiff, then after the expiration of the period fixed by or under these Rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not endorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action *in rem* fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a

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copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the plaintiff in any such action as is referred to in Order 11, rule 1(1)*(a), (b)* and *(c)*.

(7) An application to the Court under this rule shall be made by notice of application and if, on the hearing of the notice of application, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into Court or may make such order as it thinks just.

(8) In default actions *in rem* evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

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

(10) Order 13 and Order 19 (except rule 1) shall not apply to actions *in rem*.

(11) Any application to the Court concerning—

(a) the sale of the property under arrest; or

(b) the proceeds of sale of property sold by the Court,

will be heard in open Court and the notice of application with any affidavit in support shall be served on—

(A) all parties to every action against the property;

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(B) all persons who have entered a caveat against release with regard to the property or the proceeds of sale; and

(C) the Sheriff.

Order for sale of ship: Determination of priority of claims (O. 70, r. 21)

21. (1) Where in an action *in rem* against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may—

(a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under subparagraph (2)*(a)*; or

(b) in any other case, after obtaining judgment,

apply to the Court by notice of application for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action *in rem* against a ship the Court orders the ship to be sold, it may further order—

(a) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of ninety days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into Court;

(b) that any party to the action or to any other action *in rem* against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is party to extend the period specified in the order;

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(c) that within seven days after the date of payment into Court of the proceeds of sale the Sheriff shall send for publication in the *Gazette* and such newspaper or publication, if any, as the Court may direct, a notice complying with paragraph (3).

(3) The notice referred to in subparagraph (2)*(c)* shall state—

(a) that the ship (naming her) has been sold by order of the High Court in an action *in rem*, identifying the action;

(b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into Court;

(c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and

(d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.

(4) The Sheriff shall lodge in the Registry a copy of each newspaper or publication in which the notice referred to in paragraph (2)*(c)* appeared.

(5) The expenses incurred by the Sheriff in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (2)*(a)* shall be made by notice of application, and a copy of the notice of application, shall, at least three days before the day fixed for the hearing thereof, be served on all persons referred to in rule 20(11).

(7) In this rule, "Court" means the Judge in person.

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Appraisement and sale of property (O. 70, r. 22)

22. (1) A commission for the appraisement and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a *praecipe* in Form 156.

(2) Such a commission shall, unless the Court otherwise orders, be executed by the Sheriff and shall be in Form 157.

(3) A commission for appraisement and sale shall not be executed until an undertaking in writing satisfactory to the Sheriff to pay the fees and expenses of the Sheriff on demand has been lodged in the Sheriff's office.

(4) The Sheriff shall pay into Court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into Court the account relating to the sale (with vouchers in support) for taxation.

(5) On the taxation of the Sheriff's account relating to a sale, any person interested in the proceeds of the sale shall be entitled to be heard.

(6) When—

(a) proceeds of sale are paid into Court by the Sheriff; and

(b) such proceeds are in a foreign currency,

the funds may be placed on one day call interest bearing account unless the Court orders otherwise and in all other cases, Order 90, rules 6, 7 and 18 shall apply.

(7) Unless made at the same time as an application for sale, or other prior application, an application to place foreign currency on longer term deposit may be made to the Registrar.

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(8) Notice of the placement of foreign currency in an interest bearing account shall be given to all parties interested in the fund by the party who made the application under rule 7.

(9) Any interested party who wishes to object to the mode of investment of foreign currency paid into Court may apply to the Registrar for directions.

Undertakings as to expenses (O. 70, r. 22A)

22A. (1) Every undertaking under this Order shall be given in writing to the satisfaction of the Sheriff.

(2) Where a party is required to give to the Sheriff an undertaking to pay any fees or expenses, the Sheriff may accept instead of an undertaking the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court may, on the application of any party who is dissatisfied with a direction or determination of the Sheriff under this Order, vary or revoke the direction or determination.

Payment into and out of Court (O. 70, r. 23)

23. (1) *(There is no paragraph (1))*

(2) Subject to paragraph (3), money paid into Court shall not be paid out except in pursuance of an order of the Judge in person.

(3) The Registrar may, with the consent of the parties interested in money paid into Court, order the money to be paid out to the person entitled thereto in the following cases:

(a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in Court in accordance with that decision;

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(b) where property has been sold and the proceeds of sale thereof paid into Court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons;

(c) where in any other case there is no dispute between the parties.

Application for directions (O. 70, r. 24)

24. (1) Unless a Judge in person otherwise directs, the pre-trial case management shall be heard by a Judge in person but, subject to that, Orders 33 and 34 shall apply to Admiralty actions (other than limitation actions) as they apply to other actions.

(2) An order made on the pre-trial case management shall determine whether the trial is to be without assessors or with one or more assessors, nautical or otherwise.

(3) An order may be made on the pre-trial case management, or a direction may be given at the trial, limiting the witnesses who may be called at the trial, whether they are expert witnesses or not.

(4) Any such order or direction as is referred to in paragraphs (2) and (3) including an order made on appeal may be varied or revoked by a subsequent order or direction made or given at or before the trial by the Judge in person or, with the Judge's consent, by the Registrar.

Fixing date for trial (O. 70, r. 25)

25. (1) The Court may at any stage of an action, either on an application made by a notice of application by any party or by order made by virtue of Order 34, fix a date for the trial and vacate or alter any such date.

(2) *(There is no paragraph (2))*

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(3) Not less than seven days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the Judge, the party by whom the action was fixed for trial shall, unless the Court otherwise orders, file in the Registry—

(a) if trial with one or more assessors has been ordered, a *praecipe* for his or their attendance; and

(b) three copies or in the case of a trial with one or more assessors, four copies (if with one assessor) and five copies (if with two) of any pleadings, preliminary acts, notices given under rule 17(3) and statements filed under rule 17(4).

(4) If an action which has been fixed for trial is settled or withdrawn, it shall be the duty of all the parties to notify the Registry of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

(5) Order 21, rule 2(4) shall not apply to Admiralty actions.

Stay of proceedings in collision, actions until security given (O. 70, r. 26)

26. (1) Where an action *in rem*, being an action to enforce any such claim as is referred to in Order 11, rule 1(1)*(a), (b)* and *(c)*, is begun and a cross action *in rem* arising out of the same collision or other occurrence as the first-mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first-mentioned action, then—

(a) if the ship in respect of or against which the first-mentioned action is brought has been arrested or security given to prevent her arrest; but

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(b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first-mentioned action until the security is given to satisfy any judgment given in favour of that party.

(2) Where the Court orders a stay of any action *in rem* —

(a) any property under arrest in the action remains under arrest; and

(b) any security representing the property remains in force,

unless the Court orders otherwise.

Inspection of ship (O. 70, r. 27)

27. Without prejudice to its powers under Order 29, rules 2 and 3, and Order 35, rule 5, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors) or by any party or witness, of any ship or other property, whether movable or immovable, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

Shorthand note of oral evidence (O. 70, r. 28)

28. (1) An official shorthand note shall, if the Court so directs, be taken of the proceedings in Court of any cause or matter. The reference in this paragraph to a shorthand note shall be construed as including a reference to a record of the proceedings made by mechanical means.

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(2) The Court may appoint official Admiralty shorthand writers who shall be paid such fees as may be fixed by the Court.

Examination of witnesses and other persons (O. 70, r. 29)

29. (1) The power conferred by Order 39, rule 1 shall extend to the making of an order authorizing the examination of a witness or person on oath before a Judge sitting in Court as if for the trial of the cause or matter, without the cause or matter having been set down for trial or called on for trial.

(2) The power conferred by rule 1 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect:

(a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;

(b) any representative, being a solicitor, of either of the parties shall have authority to administer the oath to the witness;

(c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the solicitor for the party whose witness was examined, and that solicitor shall file it in the Registry;

(d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the counsel or other persons who acted as solicitor at the examination, and if any of those persons is of the opinion that the transcript does not accurately represent the

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evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate shall be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 17, an order shall not be made under Order 39, rule 1, authorizing any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

(5) Order 39 shall apply in relation to an Admiralty cause or matter.

Issue of subpoena (O. 70, r. 30)

30. Order 38, rule 14 shall apply in relation to the issue of a subpoena to testify or subpoena to produce documents in an Admiralty cause or matter.

Proceedings for apportionment of salvage (O. 70, r. 31)

31. (1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be begun by notice of application.

(2) The notice of application, together with the affidavits in support thereof, shall be filed in the Registry at least seven days before the hearing of the notice of application, unless the Court gives leave to the contrary, and a copy of the notice and of the affidavits shall be served on all the other parties to the proceedings before the originals are filed.

(3) On the hearing of the notice of application the Judge may exercise any of the jurisdiction conferred by section 402 of the Merchant Shipping Ordinance 1952.

Filing and service of notice of application (O. 70, r. 32)

32. (1) A notice of application in any action, together with the affidavits, if any, in support thereof, shall be filed in the Registry at least three days before the hearing of the notice of application unless the Court gives leave to the contrary.

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(2) Subject to rule 20(11), a copy of the notice of application and of the affidavits, if any, in support thereof shall be served on all the other parties to the proceedings.

Agreement between solicitors may be made order of Court (O. 70, r. 33)

33. Any agreement in writing between the solicitors of the parties to a cause or matter, dated and signed by these solicitors, may, if the Registrar thinks it reasonable and such as the Judge would under the circumstances allow, be filed in the Registry, and the agreement shall thereupon become an order of Court and have the same effect as if such order had been made by the Judge in person.

Originating summons: Procedure (O. 70, r. 34)

34. *(There is no rule 34)*

Limitation action: Parties (O. 70, r. 35)

35. (1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff shall make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action shall be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ shall 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 36, 37 and 38, "name" includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has

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described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

Limitation action: Application for decree or directions (O. 70, r. 36)

36. (1) Within seven days after the entry of appearance by one of the defendants named by their names in the writ or, if none of them enters an appearance, within seven days after the time limited for appearing, the plaintiff, without serving a statement of claim, shall take out a notice of application returnable in Chambers before the Registrar asking for a decree limiting his ability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The notice of application shall be supported by an affidavit or affidavits proving—

(a) the plaintiff's case in the action; and

(b) if none of the defendants named in the writ by their names has entered an appearance, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the notice of application shall state—

(a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names; and

(b) the address of each of those persons, if known to the plaintiff.

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(4) The notice of application and every affidavit in support thereof shall, at least seven clear days before the hearing of the notice of application, be served on any defendant who has entered an appearance.

(5) On the hearing of the notice of application the Registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the notice of application the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the notice of application the Registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a notice of application for directions under Order 33 or 34.

(8) Any defendant who, after the Registrar has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability shall forthwith file a notice to that effect in the Registry, as the case may be, and serve a copy on the plaintiff and on any other defendant who has entered an appearance.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8), the plaintiff may take out a notice of application returnable in Chambers before the Registrar asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a notice of application under this paragraph as they apply to a notice of application under paragraph (1).

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Limitation action: Payment into Court (0. 70, r. 36A)

36A. (1) The plaintiff may constitute a limitation fund by paying into Court the Ringgit Malaysia equivalent of the number of special drawing rights or gold francs (as the case may be) to which he claims to be entitled to limit his liability under any Merchant Shipping law, together with interest thereon from the date of the occurrence giving rise to his liability to the date of payment into Court.

(2) Where the plaintiff does not know the Ringgit Malaysia equivalent of the said number of special drawing rights on the date of payment into Court he may calculate the same on the basis of the latest available published Ringgit Malaysia equivalent of a special drawing right as fixed by the International Monetary Fund, and in the event of the Ringgit Malaysia equivalent of a special drawing right on the date of payment into Court under paragraph (1) being different from that used for calculating the amount of that payment into Court the plaintiff may—

(a) make up any deficiency by making a further payment into Court which, if made within fourteen days after the payment into Court under paragraph (1), shall be treated, except for the purposes of the rules relating to the accrual of interest on money paid into Court, as if it had been made on the date of that payment into Court; or

(b) apply to the Court for payment out of any excess amount (together with any interest accrued thereon) paid into Court under paragraph (1).

(3) An application under paragraph (2)*(b)* may be made *ex parte* and must be supported by evidence proving the Ringgit Malaysia equivalent of the appropriate number of special drawing rights on the date of payment into Court.

(4) On making any payment into Court under this rule, the plaintiff shall give notice thereof in writing to every defendant, specifying the date of payment in, the amount paid in, the amount of interest included therein, the rate of such interest and the

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period to which it relates. The plaintiff shall also give notice in writing to every defendant of any excess amount (and any interest thereon) paid out to him under paragraph (2)*(b)*.

(5) Rule 23(2) and (3) of this Order shall apply, with the necessary modifications, to the payment out of money paid into Court under this rule.

Limitation action: Proceedings under decree (O. 70, r. 37)

37. (1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or entered an appearance, any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) need not be advertised, but shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action)—

(a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;

(b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which rule 38 applies, take out a notice of application if they think fit, to set the order aside.

(3) The advertisement to be required under subparagraph (2)*(a)* shall, unless for special reasons the Registrar or Judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has

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been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the entering of appearances, the filing of claims and the taking out of notices of application to set the decree aside. The plaintiff shall within the time fixed under subparagraph (2)*(b)* file in the Registry a copy of each newspaper in which the advertisement required under subparagraph (2)*(a)* appears.

(4) The time to be allowed under subparagraph (2)*(b)* shall, unless for special reasons the Registrar or Judge thinks fit otherwise to provide, be not less than two months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed, no appearance may be entered, claim filed or notice of application taken out to set aside the decree except with leave of the Registrar or, on an appeal, of the Judge.

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by a Registrar or on the trial of the action) may make any such provision as is authorized by the Merchant Shipping Ordinance 1952.

Limitation action: Proceedings to set aside decree (O. 70, r. 38)

38. (1) Where a decree limiting the plaintiff's liability (whether made by a Registrar or on the trial of the action) fixes a time in accordance with rule 37(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who—

(a) was not named by his name in the writ as a defendant to the action; or

(b) if so named, neither was served with the writ nor entered an appearance,

may, within that time, after entering an appearance, take out a notice of application returnable in Chambers before the Registrar asking that the decree be set aside.

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(2) The notice of application shall be supported by an affidavit or affidavits showing that the defendant in question has a *bona fide* claim against the plaintiff in respect of the casualty in question and that he has sufficient *prima facie* grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The notice of application and every affidavit in support thereof shall, at least seven clear days before the hearing of the notice of application, be served on the plaintiff and any defendant who has entered an appearance.

(4) On the hearing of the notice of application the Registrar, if he is satisfied that the defendant in question has a *bona fide* claim against the plaintiff and sufficient *prima facie* grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular a direction requiring the taking out of an application for directions under Order 34.

References to Registrar (O. 70, r. 39)

39. (1) Any party (which is referred to as the "claimant" in this rule), making a claim which is referred to the Registrar for decision shall, within two months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant's claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims, but, in any case, not less than twenty-eight days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by notice of application for directions as to the proceedings on the reference, and the Registrar shall give such directions, if any, as he thinks fit including, without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant's claim.

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(3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment shall be made by order on an application by notice of application made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than seven days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff shall enter the reference for hearing by lodging in the Registry a *praecipe* requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than fourteen days before the day appointed for the hearing of the reference the claimant shall file—

(a) a list, signed by him and every other party, of the items, if any, of his claim which are not disputed, stating the amount, if any, which he and the other parties agree should be allowed in respect of each such item; and

(b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed,

and, unless the reference is in a limitation action, he shall at the same time serve on every other party a copy of every document filed under this paragraph.

(7) If the claimant fails to comply with paragraph (1) or subparagraph (6)*(b)*, the Court may, on the application of any other party to the cause or matter, dismiss the claim.

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Hearing of reference (O. 70, r. 40)

40. (1) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(2) At or before the hearing of a reference, the Registrar may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may, on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon, and the evidence may, on the application of either party, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by the official shorthand writer, if any, and in such case a transcript of the shorthand writer's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the Registrar's decision.

(4) When the hearing of the reference has been concluded, the Registrar shall—

(a) reduce to writing his decision on the question arising in the reference (including any order as to costs) and cause it to be filed;

(b) cause to be filed either with his decision or subsequently such statement, if any, of the grounds of the decision as he thinks fit; and

(c) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given by the Registrar that he intends to file such a statement later, any party to the reference may, within fourteen days after the filing of the decision, make a written request to the Registrar to file such a statement.

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Objection to decision on reference (O. 70, r. 41)

41. (1) Any party to a reference to the Registrar may, by notice of application in objection, apply to a Judge in Court to set aside or vary the decision of the Registrar on the reference, but the notice of application, specifying the points of objection to the decision, shall be filed within fourteen days after the date on which notice of the filing of the decision was sent to that party under rule 40(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within fourteen days after the date on which that notice was sent.

(2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but unless he or the Judge otherwise directs, the decision shall not be acted upon until the time has elapsed for the filing of a notice of application in objection thereto, or while such a notice of application is pending or remains undisposed of.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard, but may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 40(4).

Drawing up and entry of judgments and orders (O. 70, r. 42)

42. Every judgment given or order made in an Admiralty cause or matter shall be drawn up and shall be entered by an officer of the Registry in the book kept for the purpose.

Inspection of document filed in Registry (O. 70, r. 43)

43. (1) Order 60, rule 4, shall apply in relation to documents filed in the Registry.

(2) For the purposes of rule 4, as applied by paragraph (1), a decree made in Chambers in a limitation action shall be deemed to have been made in Court.

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ORDER 71

NON-CONTENTIOUS PROBATE PROCEEDINGS

Application (O. 71, r. 1)

1. These Rules apply to non-contentious probate proceedings subject to the following rules of this Order.

Interpretation (O. 71, r. 2)

2. In this Rules, unless the context otherwise requires—

"Act" means the Probate and Administration Act 1959 [*Act 97*];

"gross value", in relation to any estate, means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;

"District Registry" means the respective office of any Assistant Registrar as provided under subsection 77A (2) of the Act;

"Principal Registry" means the Principal Registry in Kuala Lumpur or the Principal Registry in Kuching, as the case may be;

"applicant" means a person who has applied for a grant;

"personal applicant" means a person other than a trust corporation who seeks to obtain a grant without employing a solicitor, and "personal application" has a corresponding meaning;

"Collector" means a Collector of Land Revenue and includes any officer acting under the provisions of the Small Estates (Distribution) Act 1955 [*Act 98*];

"Registrar" means the Registrar and any Deputy Registrar, Senior Assistant Registrar and Assistant Registrar (qualified under subsection 77A (2) of the Act) of the High Court;

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"Registrar of the Principal Registry" means the Registrar of the High Court and does not include any other Registrar;

"testamentary guardian" means a person as defined in section 7 of the Guardianship of Infants Act 1961[*Act 351*];

"statutory guardian" means a guardian of an infant appointed by the High Court under section 6, 9 or 13 of the Guardianship of Infants Act 1961;

"trust corporation" means a company registered as a trust company under the Trust Companies Act 1949 [*Act 100*] and includes Amanah Raya Berhad;

"will" includes a nuncupative will and any testamentary document or copy or reconstruction thereof.

Personal application (O. 71, r. 3)

3. (1) A personal applicant may apply for a grant at the Registry.

(2) A personal applicant may not apply through an agent, whether paid or unpaid, and may not be attended by any person acting or appearing to act as his adviser.

(3) A personal application shall not be received or proceeded with if—

(a) it becomes necessary to bring the matter before the Court by action;

(b) an application has already been made by a solicitor on behalf of the applicant and has not been withdrawn; or

(c) the Registrar otherwise directs.

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(4) After a will has been deposited in the Registry by a personal applicant, it may not be delivered to the applicant or to any other person unless in special circumstances the Registrar so directs.

(5) A personal applicant shall produce a certificate of death of the deceased or such other evidence of the death as the Registrar may approve.

(6) Every oath, affidavit or bond required on a personal application (other than a bond given by a corporation in accordance with rule 34) shall be sworn or executed by all the deponents or obligors before a Commissioner for Oaths.

Duty of Registrar on receiving application for grant (O. 71, r. 4)

4. (1) The Registrar shall not allow any grant to be issued until all inquiries which he may see fit to make have been answered to his satisfaction.

(2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the originating summons.

(3) Except with the leave of the Registrar, a grant of probate or of administration with the will annexed shall not be issued within seven days of the death of the deceased and a grant of administration shall not be issued within fourteen days thereof.

(4) When an application for a grant is filed, the Registrar shall give notice in Form 158 to the Registrar of the Principal Registry and notify the serial number of the Probate to the latter, who shall enter that number in the Probate Book.

(5) The Registrar shall notify the Registrar of the Principal Registry of all grants made under the Act and the rules of this Order.

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Application for grant (O. 71, r. 5)

5. (1) Every application for a grant shall be made by originating summons in Form 5 and shall be supported by an affidavit setting out the information in Form 159 and any other information and/or documents as the Registrar may require.

(2) On an application for a grant of administration the originating summons shall state whether, and if so, in what manner all persons having a prior right to a grant have been cleared off, and whether any minority or life interest arises under the will or intestacy.

(3) Where the deceased died domiciled outside Malaysia, the originating summons shall state where the deceased died domiciled.

(4) If the originating summons states where the deceased died domiciled (whether in or outside Malaysia) a statement as to the country in which he died domiciled may be included in the grant.

(5) In every originating summons—

(a) where any person is named as a relative of the deceased, he shall, if a lawful relative, be so described, and where the legality of any such relationship is alleged by virtue of any law or custom, such law or custom shall be stated; and

(b) where it is alleged that any person is entitled to share in the distribution of an intestate's estate, it shall be stated how such person is related to the deceased, and whether he is the only or one of the next-of-kin and by what law or custom so entitled.

(6) Where an application for a grant is, for the first time, made after the lapse of three years from the death of the deceased, the reason for the delay in making the application shall be set out in the originating summons.

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Grant in additional name (O. 71, r. 6)

6. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the originating summons the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

Marking of wills (O. 71, r. 7)

7. (1) Every will in respect of which an application for a grant is made shall be exhibited to the originating summons and a certified true copy of the will shall be annexed thereto.

(2) Where the will is not in the English language, there shall also be annexed to the application under paragraph (1) a translation certified by a court interpreter or a translation verified by the affidavit of a person qualified to translate it.

Engrossments for purposes of record (O. 71, r. 8)

8. (1) Where the Registrar considers that in any particular case a photographic copy of the original will would not be satisfactory for purposes of record, he may require an engrossment suitable for photographic reproduction to be filed.

(2) Where a will contains alterations which are not admissible to proof, there shall be filed an engrossment of the will in the form in which it is to be proved.

(3) Any engrossment filed under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and, if it is one to which paragraph (2) applies, it shall be on durable paper.

(4) Where any pencil writing appears on a will, there shall be filed a copy of the will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red ink those portions which appear in pencil in the original.

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Evidence as to due execution of will (O. 71, r. 9)

9. (1) Where a will contains no attestation clause or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution of the will, he shall, before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.

(2) If no affidavit can be obtained in accordance with paragraph (1), the Registrar may, if he thinks fit having regard to the desirability of protecting the interest of any person who may be prejudiced by the will, accept evidence on affidavit from any person he may think fit to show that the signature on the will is in the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the execution of the will.

(3) If the Registrar, after considering the evidence—

(a) is satisfied that the will was not duly executed, he shall refuse probate and shall order accordingly; or

(b) is doubtful whether the will was duly executed, he may refer the matter to the Court.

Execution of will of blind or illiterate testator (O. 71, r. 10)

10. Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the Registrar shall satisfy himself that the testator had such knowledge.

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Evidence as to terms, conditions and date of exercise of will (O. 71, r. 11)

11. (1) Where there appears in a will any obliteration, interlineation, or other alteration which is not authenticated in the manner prescribed by section 15 of the Wills Act 1959 [*Act 346*] or by the re-execution of the will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved:

Provided that this paragraph shall not apply to any alteration which appears to the Registrar to be of no practical importance.

(2) If from any mark on the will it appears to the Registrar that some other document has been attached to the will, or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the Registrar may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.

(3) Where there is a doubt as to the date on which a will was executed, the Registrar may require such evidence as he thinks necessary to establish the date.

Attempted revocation of will (O. 71, r. 12)

12. Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstances leading to a presumption of revocation by the testator, shall be accounted for to the Registrar's satisfaction.

Affidavit as to due execution, terms, of will (O. 71, r. 13)

13. The Registrar may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any of the matters referred to in rules 10, 11 and 12, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a will the deponent shall depose to the manner in which the will was executed.

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Wills not proved under section 5 of Wills Act (O. 71, r. 14)

14. Nothing in rule 9, 10, 11 or 12 shall apply to any will which it is sought to establish otherwise than by reference to section 5 of the Wills Act 1959 but the terms and validity of any such will shall be established to the Registrar's satisfaction.

Wills of persons on military service and seamen (O. 71, r. 15)

15. If it appears to the Registrar that there is *prima facie* evidence that a will is one to which section 26 of the Wills Act 1959 applies the will may be admitted to proof if the Registrar is satisfied that it was signed by the testator or, if unsigned, that it is in the testator's handwriting.

Evidence of foreign law (O. 71, r. 16)

16. Where evidence of the law of a country outside Malaysia is required on any application for a grant, the affidavit of any person who practises, or has practised, as a barrister or an advocate in that country and who is conversant with its law may be accepted by the Registrar unless the deponent is a person claiming to be entitled to the grant or his attorney, or is the spouse of any such person or attorney:

Provided that the Registrar may in special circumstances accept the affidavit of any other person who does not possess the qualifications required by this rule if the Registrar is satisfied that by reason of such person's official position or otherwise he has knowledge of the law of the country in question.

Order of priority for grant where deceased left a will (O. 71, r. 17)

17. The person or persons entitled to a grant of probate or administration with the will annexed shall be determined in accordance with sections 3 and 16 of the Act.

Grants to attesting witnesses (O. 71, r. 18)

18. Where a gift to any person fails by reason of section 9 of the Wills Act 1959 (which provides that gifts to attesting witnesses or their spouses shall be void), such person shall not have any right to a grant as a beneficiary named in the will, without prejudice to his right to a grant in any other capacity.

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Order of priority for grant in case of intestacy (O. 71, r. 19)

19. Where the deceased died wholly intestate, the person entitled to a grant of administration shall be determined in accordance with the provisions of section 30 of the Act.

Right of assignee to grant (O. 71, r. 20)

20. (1) Where all the persons entitled to the estate of the deceased (whether under a will or on intestacy) have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace, in the order of priority for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest priority.

(2) Where there are two or more assignees, administration may be granted with the consent of the others to any one or more (not exceeding four) of them.

(3) In any case where administration is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Registry.

Additional personal representatives (O. 71, r. 21)

21. (1) An application under subsection 4(2) of the Act to add a personal representative shall be made by notice of application to the Registrar and shall be supported by affidavit by the applicant, the consent of the person proposed to be added as personal representative and such other evidence as the Registrar may require.

(2) A notice of application under paragraph (1) shall be served on all persons entitled in the same degree as the applicant.

(3) On any such application the Registrar may direct that a note shall be made on the original grant of the addition of a further personal representative, or he may impound or revoke the grant or make such other order as the circumstances of the case may require.

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Grants where two or more persons entitled in same degree (O. 71, r. 22)

22. (1) A grant may be made to any person entitled thereto without notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree shall be brought by notice of application before the Registrar.

(3) Unless the Registrar otherwise directs, administration shall be granted to a living person in preference to the personal representative of a deceased person who would, if living, be entitled in the same degree and to a person not under disability in preference to an infant entitled in the same degree.

(4) If the issue of a notice of application under this rule is known to the Registrar, he shall not allow any grant to be extracted until such notice of application is finally disposed of.

Exceptions to rules as to priority (O. 71, r. 23)

23. (1) Nothing in rule 17, 19 or 22 shall operate to prevent a grant being made to any person to whom a grant may or may require to be made under any written law.

(2) The rules mentioned in paragraph (1) shall not apply where the deceased died domiciled outside Malaysia, except in a case to which the proviso to rule 25 applies.

Grants to persons having expectation of succession (O. 71, r. 24)

24. When the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant and has consented to administration being granted to the person who could be entitled to his estate if he himself had died intestate, administration may be granted to such person or one of more (not exceeding four) of such persons.

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Grants where deceased died domiciled outside Malaysia (O. 71, r. 25)

25. Where the deceased died domiciled outside Malaysia, an application may be made to the Registrar for an order for a grant—

(a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;

(b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;

(c) if there is no such person as is mentioned in subparagraph *(a)* or *(b)* or if in the opinion of the Registrar the circumstances so require to such person as the Registrar may direct;

(d) if, by virtue of section 4 of the Act, a grant is required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not less than two administrators to such person as the Registrar may direct jointly with any such person as is mentioned in subparagraph *(a)* or *(b)* or with any other person:

Provided that without any such application as aforesaid—

(A) probate of any will which is admissible to proof may be granted—

(i) if the will is in the English language, to the executor named therein;

(ii) if the will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, to that person;

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(B) where the whole of the estate in Malaysia consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in Malaysia.

Grants to attorneys (O. 71, r. 26)

26. Where a person entitled to a grant resides outside Malaysia, administration may be granted to his lawfully constituted attorney for his use and benefit, limited until such person shall obtain a grant or in such other way as the Registrar may direct:

Provided that the attorney shall file a certified true copy of the power of attorney with the originating summons or prove that he has deposited it or a certified copy of it in the Registry of the High Court in the manner provided by section 4 of the Powers of Attorney Act 1949:

And provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any, unless such notice is dispensed with by the Registrar.

Grants on behalf of infants (O. 71, r. 27)

27. (1) Where the person to whom a grant would otherwise be made is an infant, administration for his use and benefit until he attains the age of majority shall, subject to paragraphs (3) and (5), be granted—

(a) to both parents of the infant jointly or to the statutory or testamentary guardian of the infant or to any guardian appointed by a Court of competent jurisdiction; or

(b) if there is no such guardian able and willing to act and the infant has attained the age of sixteen years, to any next-of-kin nominated by the infant or where the infant is a married woman, to any such next-of-kin or to her husband if nominated by her.

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(2) Any person nominated under subparagraph (1)*(b)* may represent any other infant whose next-of-kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the infant until he attains the age of majority may be granted to any person assigned as guardian by order of the Registrar in default of, or jointly with, or to the exclusion of, any such person as is mentioned in paragraph (1); and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Registrar, an affidavit of fitness sworn by a responsible person.

(4) Where in accordance with section 4 of the Act, a grant is required to be made to not less than two administrators and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, administration may, unless the Registrar otherwise direct, be granted to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where an infant who is sole executor has no interest in the residuary estate of the deceased, administration for the use and benefit of the infant until he attains the age of twenty-one years shall, unless the Registrar otherwise directs, be granted to the person entitled to the residuary estate.

(6) An infant's right to administration may be renounced only by a person assigned as guardian under paragraph (3) and authorized to renounce by the Registrar.

Grants where infant co-executor (O. 71, r. 28)

28. (1) Where one of two or more executors is an infant, probate may be granted to the other executor or executors not under disability, with power reserved of making the like grant to the infant on his attaining the age of majority, and administration for the use and benefit of the infant until he attains the age of majority may be granted under rule 27 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefore.

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(2) An infant executor's right to probate on attaining the age of majority may not be renounced by any person on his behalf.

Grants in case of mental or physical incapacity (O. 71, r. 29)

29. (1) Where the Registrar is satisfied that a person entitled to a grant is by reason of unsoundness of mind or physical incapacity incapable of managing himself or his affairs, administration for his use and benefit, limited during his incapacity or in such other way as the Registrar may direct, may be granted—

(a) in the case of unsoundness of mind, to the person authorized by the High Court; or

(b) where there is no person so authorized, or in the case of physical incapacity—

(i) if the person incapable is entitled as executor, to the person entitled to the residuary estate of the deceased;

(ii) if the person incapable is entitled otherwise than as an executor, to the person who would be entitled to a grant in respect of his estate if he had died intestate,

or to such other person as the Registrar may by order direct.

(2) Unless the Registrar otherwise directs, a grant of administration shall not be made under paragraph (1) unless all persons entitled in the same degree as the person incapable have been cleared off.

(3) In the case of physical incapacity, notice of intended application for a grant under paragraph (1) shall, unless the Registrar otherwise directs, be given to the person alleged to be so incapable.

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Grants to trust corporations and other corporate bodies (O. 71, r. 30)

30. (1) Where a trust corporation applies for a grant through one of its officers, such officer shall file a certified copy of the resolution authorizing him to make the application and shall depose in the originating summons that the corporation is a trust corporation, and that it has power to accept a grant:

Provided that it shall not be necessary to file a certified copy of the resolution where the officer through whom the application is made is included in a list of persons authorized to make such applications kept by the Registrar.

(2) Where a trust corporation applies for a grant of administration otherwise than as attorney for some person, there shall be filed with the originating summons the consents of all persons entitled to a grant and all persons interested in the residuary estate of the deceased, unless the Registrar directs that such consents be dispensed with on such terms, if any, as he may think fit.

(3) Where a corporation (not being a trust corporation) would, if an individual, be entitled to a grant, administration for its use and benefit, limited until further representation is granted, may be granted to its nominee or, if the corporation has its principal place of business outside Malaysia, its nominee or lawfully constituted attorney, and a copy of the resolution appointing the nominee or the power of attorney, as the case may be, sealed by the corporation or otherwise authenticated to the Registrar's satisfaction shall be filed with the originating summons for the grant, and the originating summons shall state that the corporation is not a trust corporation.

Renunciation of probate and administration (O. 71, r. 31)

31. (1) A renunciation of probate by an executor shall not operate as a renunciation of any right which he may have to a grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless the Registrar otherwise directs, no person who has renounced administration in one capacity may obtain a grant thereof in some other capacity.

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(3) A renunciation of probate of administration may be retracted at any time by leave of the Court in accordance with the provisions of section 10 of the Act:

Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

(4) A written renunciation of a right to a grant under section 3 of the Act shall be in one of the forms in Form 160.

Notice to Attorney General of intended application for grant (O. 71, r. 32)

32. In any case in which it appears that the Government is or may be beneficially interested in the estate of a deceased person, a notice of intended application for a grant shall be given by the applicant to the Attorney General, and the Registrar may direct that a grant shall not be issued within a specified time after the notice has been given.

Administration oath (O. 71, r. 33)

33. An administration oath shall be in Form 161 and shall be attested by a Commissioner for Oaths.

Administration bonds (O. 71, r. 34)

34. (1) An administration bond under section 35 of the Act shall be in Form 162 and the signature of the administrator and any surety (not being, in either case, a corporation) shall be attested by a Commissioner for Oaths.

(2) Except in a case to which paragraph (3) applies or where the Registrar otherwise directs, there shall be two sureties to every administration bond.

(3) A surety shall not be required on an application for a grant of administration—

(a) by a trust corporation, whether alone or jointly with an individual;

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(b) by a servant of the Government acting in his official capacity; or

(c) where the deceased left no estate.

(4) The Registrar shall so far as possible satisfy himself that every surety to an administration bond is a responsible person.

(5) Unless the Registrar otherwise directs, a person shall not be accepted as a surety unless he is resident in Malaysia.

(6) An officer of the Registry shall not become a surety without the leave of the Registrar.

(7) Where the proposed surety is a corporation (other than a trust corporation), there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the bond in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the Registrar that its assets are sufficient to satisfy all claims which may be made against it under any administration bond in respect of which it is or is likely to become a surety:

Provided that the Registrar may, instead of requiring an affidavit in every case, accept an affidavit made not less often than once in every year together with an undertaking by the corporation to notify the Registrar forthwith in the event of any alteration in its constitution affecting its power to become surety to administration bonds.

(8) An application under section 37 of the Act for an order to assign an administration bond shall be made by notice of application to the Registrar and the notice of application shall be served on the administrator and on every surety.

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Forms of grant (O. 71, r. 35)

35. A grant made under the Act and the rules of this Order shall be in one of the forms in Form 163.

Amendment and revocation of grant (O. 71, r. 36)

36. (1) If the Registrar is satisfied that a grant should be amended or revoked, he may make an order accordingly:

Provided that except in special circumstances no grant should be amended or revoked under this rule except on the application or with the consent of the person to whom the grant was made.

(2) The Registrar shall notify the Registrar of the Principal Registry of any amendment or revocation of a grant under paragraph (1).

Caveats (O. 71, r. 37)

37. (1) Any person who wishes to ensure that no grant is made without notice to himself may enter a caveat.

(2) When a caveat is entered, the Registrar shall forward a copy of the caveat and give notice in Form 158 to the Registrar of the Principal Registry.

(3) Any person who wishes to enter a caveat (which is referred to as "the caveator" in this rule) may do so by filing the caveat Form 164 in the Registry and obtaining an acknowledgement of entry from the proper officer, or by sending through the post at his own risk the caveat to the Registry.

(4) Where the caveat is entered by a solicitor on the caveator's behalf, the name of the caveator shall be stated.

(5) Except as otherwise provided by this rule, a caveat shall remain in force for six months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

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(6) The Registrar of the Principal Registry shall maintain an index of caveats entered in all Registries and on receiving a notice of an application for a grant made in any Registry or to a Collector he shall cause the index to be searched and shall notify the appropriate Registrar or Collector in the event of a caveat having been entered against the sealing of a grant for which application has been made in the Registry or to the Collector.

(7) The Registrar shall not make any grant if he has knowledge of an effective caveat in respect thereof:

Provided that a caveat shall not operate to prevent the making of a grant on the day on which the caveat is filed.

(8) A caveat may be warned by the issue from Registry of a warning in Form 165 at the instance of any person interested (which is referred to as "the person warning" in this rule) which shall state his interest and, if he claims under a will, the date of the will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator and the Registrar of the Principal Registry.

(9) A caveator who has not entered an appearance in Form 166 to a warning may at any time withdraw his caveat by giving notice at the Registry and serving a copy of it on the Registrar of the Principal Registry and the caveat shall thereupon cease to have effect and, if he has been warned, the caveator shall give notice of withdrawal of the caveat to the person warning.

(10) A caveator having an interest contrary to that of the person warning may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under paragraph (12), enter an appearance in Form 166 in the Registry, and shall serve on the person warning and the Registrar of the Principal Registry a copy of it sealed with the seal of the Court.

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(11) A caveator having no interest contrary to that of the person warning but wishing to show cause against the making of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under paragraph (12), issue and serve a summons for directions, which shall be returnable before the Registrar.

(12) If the time limited for appearance in Form 166 has expired and the caveator has not entered an appearance, the person warning may file in the Registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under paragraph (11), and thereupon the caveat shall cease to have effect.

(13) Except with the leave of the Registrar, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under paragraph (12) or rule 40.

(14) Upon an appearance being entered in answer to the warning of a caveat, the matter shall be deemed to be contested and the expenses of entry of such caveat and the warning thereof shall be considered as costs in the cause.

(15) In this rule, "grant" includes a grant by any Court outside Malaysia which is produced for resealing by the High Court.

Contested matters (O. 71, r. 38)

38. (1) Every contested matter shall be referred to a Judge who may dispose of the matter in dispute in a summary manner or direct that the provisions of Order 72 shall apply.

(2) Where a matter is directed to be disposed of summarily the originating summons, if any, shall ordinarily be adjourned into open Court for hearing and the Court may on such adjourned hearing either grant or refuse the prayer in the originating summons or make such other order as may be just.

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Notice of commencement of probate action (O. 71, r. 39)

39. Upon the commencement of a probate action, the Registrar shall, in respect of each caveat then in force (other than a caveat entered by a party to the probate action) give to the caveator notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action.

Effect of caveat upon commencement of probate action (O. 71, r. 40)

40. Unless the Registrar by order made on notice of application otherwise directs—

(a) any caveat in force at the commencement of proceedings by way of citation or originating summons shall, unless withdrawn pursuant to rule 37(9), remain in force until an application for a grant is made by the person to be entitled thereto by the decision of the Court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;

(b) any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;

(c) the commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant (other than a grant under section 19 of the Act) until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such action, and upon such application any caveat entered by a party who had notice of the action, or by a caveator who was given notice under rule 39, shall cease to have effect.

Citations (O. 71, r. 41)

41. (1) Every citation in one of the forms in Form 167 shall be issued from the Registry.

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(2) Every averment in a citation, and such other information as the Registrar may require, shall be verified by an affidavit sworn by the person issuing the citation (which is referred to as "the citor" in these rules) or if there are two or more citors, by one of them:

Provided that the Registrar may in special circumstances accept an affidavit sworn by the citor's solicitor.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in a citation shall be filed in the Registry before the citation is issued, except where the will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be filed.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day of such service, or, at anytime thereafter if no application has been made by the citor under rule 42(5) or 43(2), enter an appearance in Form 166 in the Registry, and shall thereafter serve on the citor a copy of it sealed with the seal of the Court.

Citation to accept or refuse or to take a grant (O. 71, r. 42)

42. (1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the executors of the last survivor of deceased executors who have proved.

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(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased:

Provided that a citation to take a grant shall not be issued while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may apply *ex parte* by notice of application to the Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance in Form 166 and that he has now been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may—

(a) in the case of a citation under paragraph (1), apply to the Registrar for an order for a grant to himself;

(b) in the case of a citation under paragraph (2), apply to the Registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;

(c) in the case of a citation under paragraph (3), apply to the Registrar by notice of application (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or some other person specified in the notice of application.

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(6) An application under paragraph (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under paragraph (4), or has failed to prosecute his application with reasonable diligence, the citor may—

(a) in the case of a citation under paragraph (1), apply by notice of application to the Registrar for an order for a grant to himself;

(b) in the case of a citation under paragraph (2), apply by notice of application to the Registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in subparagraph (5)*(b)*; and

(c) in the case of a citation under paragraph (3), apply by notice of application to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or some other person specified in the notice of application,

and the notice of application shall be served on the person cited.

Citation to propound a will (O. 71, r. 43)

43. (1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired and no person cited has entered an appearance, or if no person who has appeared proceeds with reasonable diligence to propound the will, the citor may apply by way of notice of application for an order for a grant as if the will were invalid.

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Address for service (O. 71, r. 44)

44. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

Applications for order to bring in a will or to attend for examination (O. 71, r. 45)

45. An application under section 41 of the Act for an order requiring a person to bring in a will or to attend for examination shall be made to a Judge by originating summons, which shall be served on every such person as aforesaid.

Applications in respect of nuncupative wills and of copies of wills (O. 71, r. 46)

46. (1) An application for an order admitting to proof a nuncupative will, or a will contained in a copy, a completed draft, a reconstruction or other evidence or its contents where the original will is not available, may be made to the Court by notice of application:

Provided that where a will is not available owing to it being retained in the custody of a foreign Court or official, a duly authenticated copy of the will may be admitted to proof by virtue of section 27 of the Act without any such order as aforesaid.

(2) The application shall be supported by affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to—

(a) the due execution of the will;

(b) its existence after the death of the testator; and

(c) the accuracy of the copy or other evidence of the contents of the will,

together with any consents in writing to the application given by any persons not under disability who would be prejudiced by the grant.

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Issue of office copy of will (O. 71, r. 47)

47. (1) An office copy of the whole or any part of a will may, on payment of the prescribed fee, be obtained from the Registry.

(2) Where copies are required of original wills or other documents such copies may be photographic copies certified under the hand of the Registrar to be true copies and sealed with the seal of the Court.

(3) Copies, not being photographic copies, of original wills or other documents deposited under rule 47A(1) shall be examined against the documents of which they purport to be copies only if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of the Registrar to be a true copy and sealed with the seal of the Court.

Deposit and receipt for wills and inspection (O. 71, r. 47A)

47A. (1) Any will or other testamentary document that is the subject matter of an application for a grant under the Act or the rules of this Order, shall be deposited in the Registry and shall be kept in such a place of safe custody as the Registrar may appoint, and the original will or document shall not be taken therefrom or inspected without the order of the Registrar.

(2) No original will or other testamentary document in the custody of the Registrar may be inspected or copied except in the presence of a proper officer under the directions of the Registrar.

Power to require application to be made by summons (O. 71, r. 48)

48. *(There is no rule 48)*

Memorandum of resealing and notice of resealing (O. 71, r. 49)

49. The memorandum of resealing a grant of probate or administration and the form of notice of resealing the grant pursuant to the Act shall be in Form 168 and Form 169 respectively.

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Small estates (O. 71, r. 50)

50. (1) In the case of any originating summons for letters of administration to the estate of a person who died intestate—

(a) if the originating summons discloses that the assets of the estate include immovable property in any State, the Registrar shall before fixing a date for the hearing of the originating summons require the applicant to satisfy him that the estate is not a small estate as defined under the Small Estates (Distribution) Act 1955, and may make such further and other inquiries regarding the value of the estate as he deems proper and unless so satisfied he shall transfer the originating summons to a Collector having jurisdiction under the Small Estates (Distribution) Act 1955;

(b) if it appears to the Registrar that proceedings are already pending before a Collector then—

(i) if the Registrar is satisfied that the estate is a small estate, he shall transfer the originating summons to the Collector; but

(ii) if the Registrar is satisfied that the estate is not a small estate, he shall so inform the Collector and shall not proceed to hear the originating summons until the Collector has had an opportunity of referring to him the proceedings before the Collector.

(2) When any originating summons for probate or letters of administration with will annexed is filed in the High Court and it appears to the Registrar that proceedings relating to the same estate are pending before a Collector, the Registrar shall request the Collector not to take any further step in the proceedings before him until the validity or otherwise of the alleged will is established and shall furnish to the Collector all necessary particulars regarding the proceedings in the High Court.

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(3) In any case in which a caveat has been entered before any originating summons for probate or letters of administration has been filed in the High Court and the Registrar is satisfied that an application to a Collector is pending relating to the same estate, he shall inform the caveator of the application to the Collector and the Collector of the caveat.

(4) In any case in which originating summons under the provisions of the Small Estates (Distribution) Act 1955 is referred to the High Court under subsection 8(7) thereof, the Registrar to whom such originating summons is referred may require the originating summons to be amended so as to comply with the provisions of these Rules and the payment of fees which would have been payable if the originating summons had been filed in the High Court but in all other respects the originating summons shall be proceeded with as though it had originally been filed in the High Court.

ORDER 72

CONTENTIOUS PROBATE PROCEEDINGS

Application and interpretation (O. 72, r. 1)

1. (1) This Order applies to probate causes and matters and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order.

(2) In these Rules, "probate action" means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious.

(3) In this Order, "will" includes a codicil.

Requirements in connection with issue of writ (O. 72, r. 2)

2. (1) A probate action shall be begun by writ, and the writ shall be issued out of the Registry.

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(2) Before a writ beginning a probate action is issued, it must be endorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates.

(3) A writ beginning an action for the revocation of the grant of probate of the will, or letters of administration of the estate, of a deceased person shall not be issued unless a citation under rule 7 has been issued or the probate or letters of administration, as the case may be, has or have been lodged in the Registry.

Service out of the jurisdiction of Notice of a Writ (O. 72, r. 3)

3. (1) Subject to paragraph (2), service out of the jurisdiction of a notice of a writ, by which a probate action is begun is permissible with the leave of the Court.

(2) Order 11, rules 3 and 4 shall apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

Intervener in probate action (O. 72, r. 4)

4. (1) A person not a party to a probate action may apply to the Court for leave to intervene in a probate action.

(2) An application under this rule must be made by notice of application supported by an affidavit showing the interest of the applicant in the estate of the deceased.

(3) An applicant who obtains leave to intervene in a probate action shall not be entitled to be heard in the action unless he enters an appearance therein.

(4) Where the Court grants leave under this rule, it may give such directions as to the service of pleadings, the filing of an affidavit of testamentary scripts or other matters as it thinks necessary.

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Citation to see proceedings (O. 72, r. 5)

5. (1) On the application of the plaintiff, or of any other party who has pleaded in a probate action, a citation may be issued against any person not a party to the action who has an adverse interest to the applicant notifying him that if he does not enter an appearance in the action judgment may be given therein without further notice to him.

(2) Where a person on whom a citation under this rule is served fails to enter an appearance in the action, the party on whose application the citation was issued shall not be entitled to be heard at the trial of the action without the leave of the Court unless he has filed an affidavit proving due service of the citation on that person.

Entry of appearance (O. 72, r. 6)

6. (1) The office for entry of appearance in a probate action is in all cases the Registry and Order 12, in its application to such an action, shall have effect accordingly.

(2) Without prejudice to paragraph (1), Order 12, rules 1, 2 and 3 shall apply to the entry of appearance by a person authorized to intervene in a probate action, and by a person cited under rule 5, as if—

(a) that person were a defendant; and

(b) the parties to the action (in the case of an intervener) or the party at whose instance the citation was issued (in the case of a person cited) were the plaintiff.

Citation to bring in grant (O. 72, r. 7)

7. In an action for the revocation of the grant of probate of the will, or letters of administration of the estate of a deceased person, a citation against the person to whom the probate or letters of administration, as the case may be, was or were granted requiring him to bring into and leave at the Registry the probate or letters of administration, as the case may be, may be issued on the application of the plaintiff.

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Citations (O. 72, r. 8)

8. (1) A citation under rules 5 and 7 shall be issued out of the Registry and shall be settled by the Court before it is issued.

(2) Before such a citation is issued, an affidavit verifying the statements of fact to be made in the citation must be sworn by the person applying for it to be issued:

Provided that the Court may in special circumstances allow the affidavit to be sworn by that person's solicitor.

(3) The issue of a citation takes place upon its being sealed by an officer of the Registry.

(4) Without prejudice to Order 62, rule 5, a citation under rule 5 or 7 must be served personally on the person cited.

(5) A service out of the jurisdiction of a citation under rule 5 or 7 is permissible but, in the case of a citation under rule 7, only with the leave of the Court.

(6) Order 11, rule 4 shall apply in relation to an application for the grant of leave under paragraph (5) as it applies in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(7) An order granting leave to serve a citation under rule 7 out of the jurisdiction must limit a time within which the person to be served with the citation must comply with it.

(8) Order 11, rules 5, 6 and 8, shall apply in relation to a citation under rule 7 as they apply in relation to notice of a writ.

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Affidavit of testamentary scripts (O. 72, r. 9)

9. (1) Unless the Court otherwise directs, the plaintiff and every defendant who has entered an appearance in a probate action must swear an affidavit—

(a) describing any testamentary script of the deceased person, whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and

(b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person; and any such script which is in the possession or under the control of the deponent must be annexed to his affidavit.

(2) An affidavit required by this rule (together with any testamentary script) must be filed within fourteen days after the entry of appearance by a defendant to the action or, if no defendant enters an appearance therein and the Court does not otherwise direct, before the action is set down for trial.

(3) Where any testamentary script required by this rule to be filed 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 filed and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed under this rule by any other party to the action, or any testamentary script annexed thereto, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

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(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.

Default of appearance (O. 72, r. 10)

(1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to enter an appearance, the plaintiff, upon filing an affidavit proving due service of the writ, or notice of the writ, on that defendant may, after the time limited for appearing, proceed with the action as if that defendant had entered an appearance.

(3) Where the defendant, or all the defendants, to a probate action, fails or fail to enter an appearance, and none of the persons, if any, cited under rule 5 has entered an appearance, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for appearing by the defendant apply to the Court for leave to set down the action for trial.

(4) Before making an application for the grant of leave under paragraph (3), the plaintiff must file an affidavit proving due service of the writ, or notice of the writ, on the defendant and of the citation, if any.

(5) Where the Court grants leave under paragraph (3), it may order the plaintiff to file an affidavit of testamentary scripts under rule 9.

Service of statement of claim (O. 72, r. 11)

11. The plaintiff in a probate action must, unless the Court gives leave to the contrary or a statement of claim is endorsed on the writ, serve a statement of claim on every defendant who enters an appearance in the action and must do so before the expiration of six weeks after entry of appearance by that defendant or of fourteen days after the filing by him of an affidavit under rule 9, whichever is the later.

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Counterclaim (O. 72, r. 12)

12. Notwithstanding anything in Order 15, rule 2(1), a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action shall add to his defence a counterclaim in respect of that matter.

Contents of pleadings (O. 72, r. 13)

13. (1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.

(3) Without prejudice to Order 18, rule 7, any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas:

(a) that the will was not duly executed;

(b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; and

(c) that the execution of the will was obtained by undue influence or fraud,

shall be made by that party unless that other plea is also pleaded.

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Default of pleadings (O. 72, r. 14)

14. (1) Order 19 shall not apply in relation to a probate action.

(2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these Rules to serve on that other party, then, unless the Court orders the action to be discontinued, that other party may, after the expiration of the period fixed by or under these Rules for service of the pleading in question, apply to the Court for leave to set down the action for trial.

Discontinuance (O.72, r. 15)

15. (1) Order 21 shall not apply in relation to a probate action.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has entered an appearance therein, order the action to be discontinued on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action be made to the person entitled thereto.

(3) An application for an order under this rule may be made by notice of application.

Compromise of action (O. 72, r. 16)

16. Where whether before or after service of the defence in a probate action the parties to the action agree to a compromise, the action may, with the leave of the Court, be set down for trial.

Case for motion application (O. 72, r. 17)

17. *(There is no rule 17)*

Application to Court (O. 72, r. 18)

18. Except where these Rules otherwise provide, any application to the Court in a probate cause or matter may be made by notice of application.

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Form of judgment and orders (O. 72 r. 19)

19. (1) Every judgment of the Court in a probate cause or matter shall be signed by the Registrar.

(2) Every order made in such a cause or matter shall be entered by an officer of the Registry in a book kept for the purpose.

Administration pending trial (O. 72, r. 20)

20. (1) An application under section 19 of the Probate and Administration Act 1959 for the grant of administration may be made to the Registrar by writ.

(2) An administrator to whom a grant is made under section 19 of the Act must, at the time when he begins proceedings for taxation of his costs, or at such other time as the Registrar may direct, produce at the Registry an account (verified by affidavit) of the moneys and other property received or paid or otherwise dealt with by him in his capacity as an administrator.

(3) Unless the Court otherwise directs, the account shall be referred to the Registrar for examination and the Registrar shall give such directions as may be necessary for examination of the administrator's costs.

(4) Except where the remuneration of the administrator has been fixed by a Judge, the Registrar shall, on the completion of the examination of the administrator's account, and taxation of his costs, assess and provide for the administrator's remuneration.

ORDER 73

PROCEEDINGS BY AND AGAINST THE GOVERNMENT

Application and interpretation (O. 73, r. 1)

1. (1) These Rules apply to civil proceedings to which the Government is a party subject to the following rules of this Order.

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(2) In this Order—

"order" includes a judgment, decree, rule, award or declaration;

"civil proceedings by the Government", "civil proceedings against the Government" and "civil proceedings by or against the Government" have the same respective meanings as in Part III of the Government Proceedings Act 1956;

"civil proceedings to which the Government is a party" has the same meaning as it has for the purposes of Part V of the Government Proceedings Act 1956, in accordance with subsection 2(3) of that Act;

"order against the Government" means any order (including an order for costs) made in any civil proceedings by or against the Government, or in connection with any arbitration to which the Government is a party, in favour of any person against the Government or against a Government department or against an officer of the Government as such.

Particulars to be included in the endorsement of claim (O. 73, r. 2)

2. (1) In the case of a writ which begins civil proceedings against the Government the endorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the Government's liability is alleged to have arisen and as to the Government department and officers of the Government concerned.

(2) If in civil proceedings against the Government a defendant considers that the writ does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for appearing, apply to the plaintiff by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where a defendant gives a notice under this rule, the time limited for appearing shall not expire until four days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied in compliance with

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the notice or four days after the Court has, on the application of the plaintiff by notice of application served on the defendant not less than seven days before the return day, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

Service on the Government (O. 73, r. 3)

3. (1) Order 10, Order 11 and any other provision of these Rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Government are begun.

(2) Personal service of any document required to be served on the Government for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Government, service on the Government must be effected—

(a) in the case of proceedings by or against the Federal Government, on the Attorney General or such other officer as may be designated in that behalf, either generally or specially, by the Attorney General by notification in the *Gazette*; and

(b) in the case of proceedings by or against the Government of a State, on the State Secretary of such State.

(3) In relation to the service of any document required to be served on the Government for the purpose of or in connection with any civil proceedings by or against the Government, Order 62, rules 6 and 10 shall not apply, and Order 62, rule 8 shall apply as if the reference therein to rules 3 and 6(1)*(a)* of that Order were a reference to subparagraph (2)*(a)* of this rule.

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Counterclaim and set-off (O. 73, r. 4)

4. (1) Notwithstanding Order 15, rule 2 and Order 18, rules 17 and 18, a person may not in any proceedings by the Government make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

(2) Notwithstanding Order 15, rule 2 and Order 18, rules 17 and 18, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the Government in proceedings against the Government, or by any person in proceedings by the Government—

(a) if the Government is sued or sues in the name of a Government department and the subject matter of the counterclaim or set-off does not relate to that department; or

(b) if the Government is sued or sues in the name of the Attorney General.

(3) Any application for leave under this rule must be made by a notice of application.

Summary judgment (O. 73, r. 5)

5. (1) An application against the Government shall not be made under Order 14, rule 1 or Order 81, rule 1 in any proceedings against the Government nor under Order 14, rule 5 in any proceedings by the Government.

(2) Where an application is made by the Government under Order 14, rule 1, Order 14, rule 5 or Order 81, rule 1, the affidavit required in support of the application may be made by—

(a) the solicitor acting for the Government; or

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(b) an officer duly authorized by the solicitor so acting or by the department concerned,

and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

Summary applications to the Court in certain revenue matters (O. 73, r. 6)

6. (1) This rule applies to applications under section 19 of the Government Proceedings Act 1956.

(2) An application to which this rule applies must be made by originating summons.

(3) The person from whom any account or information or payment is claimed or by whom any books are required to be produced must be made defendant to the application.

(4) An originating summons under this rule—

(a) must be intituled in the matter or matters out of which the need for the application arises and in the matter of the Government Proceedings Act 1956; and

(b) must refer to the written law under which the account or information or payment or the production of books is claimed and, where information is claimed, must show (by appropriate questions or otherwise) what information is required.

(5) Upon an application to which this rule applies an affidavit by a duly authorized officer of the Government department concerned setting out the state of facts upon which the application is based and stating that he has reason to think that

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those facts exist shall be evidence of those facts; and if evidence is filed disputing any of those facts, further evidence may be filed, and the Court may either decide the matter upon the affidavits (after any cross-examination that may have been ordered) or may direct that it be decided by oral evidence in Court.

(6) An order in favour of the Government on an application to which this rule applies shall, unless the Court otherwise determines, name a time within which each of its terms is to be complied with.

(7) Nothing in this rule shall, in relation to any case in which the only relief claimed by the Government is the payment of money, be construed as requiring the Government to proceed by way of an application to which this rule applies or as preventing the Government from availing itself of any other procedure which is open to it under these Rules.

Judgment in default (O. 73, r. 7)

7. (1) Except with the leave of the Court, no judgment in default of appearance or of pleading shall be entered against the Government in civil proceedings against the Government or in third party proceedings against the Government.

(2) Except with the leave of the Court, Order 16, rule 5(1)*(a)* shall not apply in the case of third party proceedings against the Government.

(3) An application for leave under this rule must be made by notice of application, and the notice of application must be served not less than seven days before the return day.

Third party notice (O. 73, r. 8)

8. (1) Notwithstanding anything in Order 16, a third party notice, including a notice issuable in accordance with Order 16, rule 9, for service on the Government shall not be issued without the leave of the Court, and the application for the grant of such leave must be made by notice of application, and the notice of application must be served on the plaintiff and the Government.

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(2) Leave to issue such a notice for service on the Government shall not be granted unless the Court is satisfied that the Government is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Government has arisen and as to the departments and officers of the Government concerned.

Interpleader: Application for order against Government (O. 73, r. 9)

9. An order shall not be made against the Government under Order 17, rule 5(3), except upon an application by notice of application served not less than seven days before the return day.

Interim orders against the Government (O. 73, r. 9A)

9A. An application against the Government shall not be made under Order 22A, rule 2 in any proceedings against the Government or under Order 22A, rule 10 in any proceedings by the Government.

Discovery and interrogatories (O. 73, r. 10)

10. (1) *(There is no paragraph (1))*

(2) In any civil proceedings to which the Government is a party any order of the Court made under the powers conferred by subsection 36(1) of the Government Proceedings Act 1956 shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of a Minister, be injurious to the public interest to disclose.

(3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for discovery against the Government shall be verified by affidavit, the affidavit shall be made by such officer of the Government as the Court may direct.

(4) Where in any such proceedings an order is made under section 36 of the Government Proceedings Act 1956 for interrogatories to be answered by the

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Government, the Court shall direct by what officer of the Government the interrogatories are to be answered.

(5) In any proceedings by the Government for the enforcement of any right for the enforcement of which proceedings by way of information might have been taken if the Government Proceedings Act 1956 had not been passed, the Government may serve interrogatories or further interrogatories (except any third or subsequent set of interrogatories) under Order 26 without the leave of the Court.

Evidence (O. 73, r. 11)

11. For the avoidance of doubt it is declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the Government as they are exercisable in proceedings between subjects.

Execution and satisfaction of orders (O. 73, r. 12)

12. (1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Government.

(2) An application under the proviso to subsection (1) of section 33 of the Government Proceedings Act 1956, for a direction that a separate certificate shall be issued under that subsection with respect to the costs, if any, ordered to be paid to the applicant, may be made to the Court *ex parte* by notice of application.

(3) Any such certificate must be in Form 170.

Attachment of debts (O. 73, r. 13)

13. (1) An order—

(a) for the attachment of debts under Order 49; or

(b) for the appointment of a receiver under Order 30 or 51,

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shall not be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Government.

(2) Every application to the Court for an order under subsection 35(1) of the Government Proceedings Act 1956, restraining any person from receiving money payable to him by the Government and directing payment of the money to the applicant or some other person must be made by notice of application served at least four days before the return day on the Government, and unless the Court otherwise orders, on the person to be restrained or his solicitor and the application must be supported by an affidavit setting out the facts giving rise to it, and in particular identifying the particular debt from the Government in respect of which it is made.

(3) Order 49, rules 5 and 6, shall apply in relation to such an application as is mentioned in paragraph (2) for an order restraining a person from receiving money payable to him by the Government as those rules apply to an application under Order 49, rule 1, for an order for the attachment of debt owing to any person from a garnishee, except that the Court shall not have power to order execution to issue against the Government.

Applications under sections 21, 22, 27 and 37 of Government Proceedings Act 1956 (O. 73, r. 14)

14. (1) Every application to the Court under subsections 21(2), 22(2) and section 27 of the Government Proceedings Act 1956 may be made by a notice of application.

(2) An application such as is referred to in subsection 37(2) of the Government Proceedings Act 1956 may be made to the Court at any time before the trial by notice of application, or may be made at the trial of the proceedings.

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ORDER 74

DEBTORS ACT 1957

Application and interpretation (O. 74, r. 1)

1. (1) These Rules apply to proceedings under the Debtors Act 1957 subject to the following rules of this Order and the rules under Order 48 as may be applicable.

(2) In this Order—

"the Act" means the Debtors Act 1957;

"judgment" includes any order for the payment of money.

Arrest of judgment debtor

Application under section 6 (O. 74, r. 2)

2. An application for an order of arrest under section 6 of the Act shall be made *ex parte* by notice of application supported by an affidavit to a Judge in Chambers, unless the Court otherwise directs.

Form of order of arrest (O. 74, r. 3)

3. An order for arrest under section 6 of the Act shall be in Form 171.

Where judgment debtor summons issued under section 4 (O. 74, r. 3A)

3A. The issue of a judgment debtor summons under section 4 of the Act shall not prevent a judgment creditor from applying to the Court for an order of arrest under section 6 of the Act. An order for arrest under section 4 of the Act shall be in Form 172.

Conveyance and subsistence money (O. 74, r. 4)

4. (1) Before any arrest is made under section 6 of the Act, the judgment creditor shall, unless the Registrar otherwise orders, deposit in the Registry a sufficient sum of money to defray the cost of bringing the debtor before the Court, and detaining him in custody pending his appearance.

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(2) Before an order of commitment made under the Act is executed, the judgment creditor shall deposit in the Registry a sufficient sum of money to provide for the subsistence of the debtor for the period of imprisonment at such rate as may be prescribed by the Minister by notification in the *Gazette*.

(3) Order 46, rules 12 and 13 shall apply with the necessary modifications to the sums of money deposited under this rule.

Arrest or attachment before judgment

Applications for arrest and attachment before judgment under section 15 or 19 of the Act (O. 74, r. 5)

5. (1) An application under section 15 or 19 of the Act shall be made *ex parte* by notice of application supported by an affidavit to a Judge in Chambers, unless the Court otherwise orders.

(2) An affidavit under paragraph (1) and any order made thereon, shall be served on the defendant as soon as possible.

Endorsement and form of order (O. 74, r. 6)

6. (1) An order of arrest or attachment of property before judgment shall state the amount of claim and costs in respect of which it is issued and before delivery to the Sheriff or bailiff, be endorsed with the plaintiff's address for service.

(2) An order under paragraph (1) shall be in one of the forms in Form 173.

Plaintiff to provide defendant's subsistence (O. 74, r. 7)

7. Rule 4 shall, with the necessary modifications, apply to a plaintiff at whose instance a defendant is arrested or committed under Part IV of the Act.

Mode of seizure before judgment (O. 74, r. 8)

8. Any property liable to seizure under Part V of the Act shall be seized in the same manner as a seizure under a writ of seizure and sale.

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Deposit against cost of attachment (O. 74, r. 9)

9. (1) Before any order of attachment of property is executed, the plaintiff shall deposit in the Registry a sufficient sum of money to defray the cost of the attachment and of keeping possession of the property.

(2) Order 46, rules 12 and 13 shall apply with the necessary modification to the sums of money deposited under this rule.

Release on payment of claim and costs (O. 74, r. 10)

10. Where any property attached under an order of attachment is released by the Sheriff on the defendant paying to the Sheriff the sum stated in the order of attachment as the amount claimed by the plaintiff and costs as stated therein together with the costs of the execution up to the time of such payment, or under section 20 of the Act, the proper officer shall give a receipt and keep the monies in such place as directed by the Sheriff to abide the order of the Court.

Claims by third party (O. 74, r. 11)

11. Any claim by a third party to property seized under Part V of the Act shall be dealt with in the manner relating to interpleader proceedings.

Judgment debtor summons

Request for judgment debtor summons (O. 74, r. 11A)

11A. Any person entitled to enforce a judgment or an order for the payment of money, whether by instalments or otherwise, may apply for a judgment debtor summons under section 4 of the Act by filling a request in Form 174 signed by the applicant or his solicitor.

Where two or more judgment debtors (O. 74, r. 11B)

11B. Where a judgment has been given or an order made against two or more persons, the person entitled to enforce the judgment or order may require a judgment debtor summons to be issued against each or any of the persons liable under the judgment or order.

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Where judgment or order against a firm (O. 74, r. 11C)

11C. (1) Where a judgment is given or an order made against a firm, a judgment debtor summons may be issued against any person against whom execution may be issued to enforce such judgment or order under Order 77.

(2) Where the person entitled to enforce such judgment or order desires to issue a judgment debtor summons against any other person, he shall apply for leave of the Court by *ex parte* summons in Form 175 supported by affidavit in Form 176.

(3) Where an order is made under paragraph (2), a copy of the affidavit shall be served with the judgment debtor summons.

(4) If the person alleged to be liable does not appear on the day fixed for the hearing of the judgment debtor summons, he shall be deemed to admit his liability to pay the amount due, but if he appears and denies his liability the Court may determine the question of liability on the evidence then before it or may order the issue of liability to be tried in such manner as it thinks fit.

Form of judgment debtor summons (O. 74, r. 11D)

11D. (1) A judgment debtor summons shall be in one of the forms in Form 177.

(2) Unless the Court otherwise orders, a judgment debtor summons shall be served personally on the person summoned at least seven days before the day fixed for the hearing thereof.

Judgment notice

Application for judgment notice (O. 74, r. 12)

12. Every application for a notice (which is referred to as a "judgment notice") under section 4 of the Act shall be by *praecipe* in Form 178 verified by the oath of the applicant.

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Judgment notice (O. 74, r. 13)

13. A judgment notice shall be in Form 179 and shall be served personally, not less than four clear days before the day appointed for the debtor's attendance unless the Court otherwise orders.

Hearing of judgment notice (O. 74, r. 14)

14. (1) On the hearing of a judgment notice the Court may make an order of commitment to vary the instalment order as it thinks just.

(2) If an order of commitment is made, the Court may direct the execution of such order to be suspended to enable the debtor to pay the amount in respect of which the order is made.

Commitment

Order of commitment (O. 74, r. 15)

15. An order of commitment under subsection 4(8) or section 17 of the Debtors Act 1957 shall be in Form 180.

Payment by debtor (O. 74, r. 16)

16. Where an order of commitment for non-payment of money is made the debtor may, at any time, either to the Sheriff or, if he is in prison, to the officer in charge of the prison, pay the amount stated in the order and obtain his discharge.

Certificate of satisfaction (O. 74, r. 17)

17. (1) Where any judgment debt, in respect of which a debtor is imprisoned under the Act is satisfied by payment or otherwise, the judgment creditor shall lodge with the Registrar a certificate of satisfaction signed by him in Form 181.

(2) If the judgment creditor makes default in lodging such certificate as aforesaid, the debtor, or any person on his behalf, may apply to the Court for an order for his discharge, and the Court in making such order may direct that the costs of the application be paid by the judgment creditor.

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(3) An order under this rule shall be in Form 182.

Miscellaneous

Security, how given (O. 74, r. 18)

18. (1) Where an order is made requiring a defendant to give security under the Act, the security shall be given in such manner, at such time, and on such terms, if any, as the Court may direct.

(2) When security has been given as ordered, the defendant, if he is in custody shall be released.

Discharge of surety (O. 74, r. 19)

19. Whenever the Court discharges a surety under section 16 of the Act, it may at the same time order the defendant to be taken into custody and committed to prison for a term which may extend to six weeks unless he sooner gives fresh security.

Control of the Court (O. 74, r. 20)

20. The money deposited, if any, and the security and all proceedings thereon shall be subject to the order and control of the Court.

Bankruptcy or administration order against debtor (O. 74, r. 21)

21. Where at the hearing of any proceedings under the Act the debtor satisfies the Court that a receiving order or an order of adjudication in bankruptcy or an administration order under section 106 of the Bankruptcy Act 1967 has been made against him and that the debt was provable in the bankruptcy or in the administration, an order shall not be made:

Provided that where an order of commitment has been made, the order if not executed shall be recalled and cancelled, and if the debtor is in prison, he shall be discharged.

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Date of order of arrest (O. 74, r. 22)

22. Any order of commitment or arrest of a judgment debtor under the Act, shall bear the date of the day on which it was made, and shall continue in force for one year from and including such date and no longer, but it may be renewed subject to the conditions and in the manner prescribed for the renewal of writs of execution.

Order for discharge under section 5 (O. 74, r. 22A)

22A. An order for the discharge of a debtor under section 5 of the Act shall be in Form 183.

Costs (O. 74, r. 23)

23. Unless in any case it is otherwise ordered, the costs of and incidental to orders for arrest, commitment and attachment under the Act, and any amount spent by the plaintiff under rules 5 and 10, shall be the plaintiff's costs in the cause in any event.

ORDER 75

DISTRESS ACT 1951

Application and interpretation (O. 75, r. 1)

1. (1) These Rules apply to proceedings under the Distress Act 1951 subject to the following rules of this Order.

(2) In this Order—

"Act" means the Distress Act 1951;

"landlord" and "tenant" have the respective meanings assigned to them by section 2 of the Act.

Application for writ of distress (O. 75, r. 2)

2. (1) Every application for a writ of distress shall be made *ex parte* by originating summons supported by affidavit in Form 184.

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(2) Where the application is made by a duly authorized agent of the landlord, he shall produce his written authority in Form 185.

Writ of distress (O. 75, r. 3)

3. A writ of distress shall be in Form 186.

Notice of seizure (O. 75, r. 4)

4. A notice of seizure under section 9 of the Act shall be in Form 91.

Applications under section 10 or 16 (O. 75, r. 5)

5. (1) An application under section 10 or 16 of the Act for the discharge or suspension of the writ or for the release of any part of the property distrained shall be made by a notice of application within seven days of the seizure supported by affidavit stating the grounds on which the application is made.

(2) A copy of the application and the affidavit shall be served on the landlord or his agent, as the case may be, before the hearing thereof.

Sale by public auction (O. 75, r. 6)

6. Order 46, rules 23 and 24 shall apply to all sales under the Act.

Return of property unsold (O. 75, r. 7)

7. (1) As soon as the amount recoverable under the writ of distress has been realized by the sale of any of the movable property seized, the balance of the property seized shall be released and, if it had been removed, returned to the premises at which the seizure was made.

(2) The amount recoverable under the writ shall for the purposes of this rule be deemed to include the rent in respect of which the writ was issued, the expenses of the sale and of execution of the writ, the Court fees and all costs due to the landlord.

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Procedure in cases under section 20 (O. 75, r. 8)

8. (1) In such cases as are provided for in section 20 of the Act, the Sheriff shall, unless he is already in possession under a writ of execution, deliver a copy of the writ of distress to the officer in possession under the writ of execution, and inform him by notice of the amount due to the landlord for the last six months' rent, or any less period for which rent is due, and the amount of all fees and costs due in respect of the issue and execution of the writ of distress.

(2) An application under subsection 20(3) of the Act to discharge or suspend the writ of distress shall be made within the time and in the manner prescribed by rule 5.

Officer in possession to notify Sheriff of intended release (O. 75, r. 9)

9. Where the property seized under a writ of execution is to be released, the officer in possession under such writ shall, before giving up possession, notify the Sheriff of his intention so to do.

Application under subsection 21(1) (O. 75, r. 10)

10. (1) An application by the Sheriff under subsection 21(1) of the Act shall be supported by affidavit of a person having knowledge of the facts stating the circumstances of the alleged removal.

(2) An authority to the Sheriff under this section shall be in Form 187.

Application under subsection 22(2) (O. 75, r. 11)

11. An application under subsection 22(2) of the Act shall be supported by affidavit, and notice of the application shall be served on the landlord or his agent, as the case may be, at his address for service at least two clear days before the hearing thereof.

Address for service (O. 75, r. 12)

12. Any person making any application to a Court under this Act shall give an address of service.

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Suspension of execution of writ (O. 75, r. 13)

13. Whenever the execution of a writ of distress is ordered to be suspended, unless the Court otherwise orders, any property already seized thereunder shall remain under seizure and in the possession of the Sheriff or other officer in possession but the sale thereof under the writ of distress shall be postponed till the expiration of the period for which the execution of the writ is suspended.

Costs (O. 75, r. 14)

14. The costs of all proceedings taken under the Act shall be in the discretion of the Court.

ORDER 76

DISABILITY

Interpretation (O. 76, r. 1)

1. In this Order—

"the Act " means the Mental Health Act 2001 [*Act 615*];

"person under disability" means a person who is a minor or a patient;

"patient" means a mentally disturbed person within the meaning of the Act.

Application for leave to institute proceedings (O. 76, r. 1A)

1A. (1) The jurisdiction of the High Court to grant leave pursuant to the Mental Health Act 2001 to bring proceedings against a person may be exercised only by a High Court Judge.

(2) The application shall be supported by an affidavit setting out the grounds on which such leave is sought and any facts necessary to substantiate those grounds.

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Person under disability shall sue by litigation representative (O. 76, r. 2)

2. (1) A person under disability may not bring, make a claim in, defend, make a counterclaim in, or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his litigation representative.

(2) Subject to the provisions of these Rules, anything which in the ordinary conduct of any proceedings is required or authorized by a provision of these Rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his litigation representative.

(3) A litigation representative of a person under disability shall act by a solicitor.

Appointment of litigation representative (O. 76, r. 3)

3. (1) This rule shall not apply in relation to a probate action.

(2) Except as provided by paragraph (4) or (5) or by rule 6, an order appointing a litigation representative of a person under disability is not necessary.

(3) Where a person is authorized under the Act to conduct legal proceedings in the name of a patient or on his behalf, that person shall be entitled to be litigation representative of the patient in any proceedings to which his authority extends unless, in a case to which paragraph (4) or (5) or rule 6 applies, some other person is appointed by the Court under that paragraph or rule to be litigation representative of the patient in those proceedings.

(4) Where a person has been or is a litigation representative of a person under disability in any proceedings, no other person shall be entitled to act as such litigation representative of the person under disability in those proceedings unless the Court makes an order appointing him such litigation representative in substitution for the person previously acting in that capacity.

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(5) Where, after any proceedings have been begun, a party to the proceedings becomes a patient, an application shall be made to the Court for the appointment of a person to be litigation representative of that party.

(6) Except where the litigation representative of a person under disability has been appointed by the Court—

(a) the name of any person shall not be used in a cause or matter as litigation representative of a person under disability;

(b) an appearance shall not be entered in a cause or matter for a person under disability; and

(c) a person under disability shall not be entitled to appear by his litigation representative on the hearing of an originating summons which has been served on him,

unless and until the documents listed in paragraph (7) have been filed in the Registry.

(7) The documents referred to in paragraph (6) are the following:

(a) a written consent in Form 188 to be litigation representative, of the person under disability in the cause or matter in question given by the person proposing to be such litigation representative;

(b) where a person proposing to be such litigation representative of the person under disability, being a patient, is authorized under the Act to conduct the proceedings in the cause or matter in question in the name of the patient or on his behalf, an office copy, sealed with the seal of the Court, of the order or other authorization made or given under the Act by virtue of which he is so authorized; and

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(c) except where the person proposing to be such litigation representative of the person under disability, being the patient, is authorized as mentioned in subparagraph *(b)*, a certificate in Form 189 made by the solicitor for the person under disability certifying—

(i) that he knows or believes, as the case may be, that the person to whom the certificate relates is a minor or a patient, giving (in the case of a patient) the grounds of his knowledge or belief; and

(ii) where the person under disability is a patient, that there is no person authorized as aforesaid; and

(iii) that the person so named has no interest in the cause or matter in question adverse to that of the person under disability.

Probate action, appointment of litigation representative (O. 76, r. 4)

4. (1) This rule applies in relation to a probate action to which a person under disability is a party or in which he intervenes or is cited under Order 72, rule 5.

(2) Where the person under disability is a patient and a person is authorized under the Act to conduct legal proceedings in the name of the patient or on his behalf, the person so authorized shall be entitled to be litigation representative of the patient in any probate action to which his authority extends, provided that he shall not be entitled by virtue of this paragraph to be litigation representative of a patient in a probate action if some other person has been appointed by the Court under rule 6 to be litigation representative of the patient in that action.

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(3) Where the person under disability is a minor who is not a patient and he has a statutory guardian or testamentary guardian who is qualified to be his litigation representative by virtue of paragraph (8), that guardian shall be entitled to be the litigation representative of the minor in a probate action.

(4) Where the person under disability is a minor who has attained the age of sixteen years and is not a patient, and there is no person qualified by virtue of paragraph (3) to be his litigation representative the minor may appoint as his litigation representative a person who is qualified to be such litigation representative by virtue of paragraph (8) and who is one of his next of kin or, where the minor is a married woman, one of her next-of-kin or her husband.

(5) Where a minor appoints a person under paragraph (4) to be his litigation representative in a probate action, the person so appointed may be litigation representative of any other minor in that action provided that the other minor is under sixteen years of age, is not a patient and his interest in the action is the same as that of the minor making the appointment.

(6) Where there is no person qualified in accordance with paragraph (2) or (3), as the case may be, to be the litigation representative of a person under disability in a probate action and that person is either not entitled under paragraph (4) to appoint a person to be his litigation representative or, being so entitled, makes no appointment thereunder, the litigation representative of the person under disability in the action shall be such one of his next–of–kin or other person as the Court may appoint.

(7) An application under paragraph (6) for the appointment of a litigation representative of a person under disability may be made *ex parte* by summon*s* and shall be supported by an affidavit showing—

(a) that there is no person entitled to be such litigation representative in accordance with paragraph (2) or (3), or appointed as such under paragraph (4), as the circumstances require; and

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(b) if such be the case, that the person proposed as litigation representative is a next–of– kin of the person under disability; and

(c) that the person proposed as litigation representative is willing and a proper person to act as such and has no interest in the action adverse to that of the person under disability.

(8) A person is qualified to be litigation representative of a person under disability if he is competent and willing to act as such and has no interest in the action in question adverse to that of the person under disability.

Probate action: Further provision (O. 76, r. 5)

5. (1) Where a party to a probate action is a person under disability, then, unless the litigation representative of that person has been appointed such litigation representative by the Court, the originating summons beginning the action (where that person is a plaintiff) shall not be issued, and an appearance shall not be entered for him in the action, where he is a defendant, intervener, or person cited under Order 72, rule 5, without the consent of the Registrar.

(2) On the making of an application for a consent under paragraph (1) in relation to a minor who is not a patient, there shall be produced to the Registrar—

(a) where the litigation representative of the minor is his statutory guardian or testamentary guardian, an affidavit deposing to the guardianship and age of the minor and showing that the guardian has no interest in the action adverse to that of the minor;

(b) where the litigation representative of the minor is a person appointed under rule 4(4)—

(i) the appointment; and

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(ii) a written consent to act as litigation representative given by the person so appointed; and

(iii) an affidavit deposing to the age of the minor and containing the evidence which would be required by rule 4(7), to be contained in an affidavit in support of an application for the appointment of that person as litigation representative by the Court.

(3) On the making of an application for consent under paragraph (1) in relation to a patient, there shall be produced to the Registrar an office copy, sealed with the seal of the Court, of the order or other authorization made or given under the Act by virtue of which the litigation representative of the patient, is authorized to conduct legal proceedings in the probate action in question in the name of the patient or on his behalf.

Appointment of litigation representative where person under disability does not appear (O. 76, r. 6)

6. (1) Where—

(a) in an action against a person under disability begun by originating summons, no appearance is entered for that person; or

(b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action and no appearance is entered for that person,

an application for the appointment by the Court of litigation representative of that person shall be made by the plaintiff or defendant, as the case may be, after the time limited, as respects that person, for appearing and before proceeding further with the action or counterclaim.

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(2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no appearance is entered for that person to that notice, an application for the appointment by the Court of a litigation representative of that person shall be made by that party after the time limited (in respect of that person) for appearing and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability that person does not appear by a litigation representative at the hearing of the originating summons, the Court hearing it may appoint a litigation representative of that person in the proceedings or direct that an application be made by the applicant, for the appointment of such a litigation representative.

(4) At any stage in the proceedings under any judgment or order, notice of which has been served on a person under disability, the Court may, if no appearance is entered for that person in the originating summons, appoint a litigation representative of that person in the proceedings or direct that an application be made for the appointment of such litigation representative.

(5) An application under paragraph (1) or (2) shall be supported by evidence proving—

(a) that the person to whom the application relates is a person under disability;

(b) that the person proposed as litigation representative is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability;

(c) that the originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability; and

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(d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for appearing and at least seven days before the day fixed for hearing, so served on him.

(6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a litigation representative made in compliance with a direction of the Court given under paragraph (3) or (4) shall be supported by evidence proving the matters referred to in subparagraph (5)*(b)*.

Application to discharge or vary certain orders (O. 76, r. 7)

7. An application to the Court on behalf of a person under disability served with an order made *ex parte* under Order 15, rule 7, for the discharge or variation of the order shall be made—

(a) if a litigation representative is acting for that person in the cause or matter in which the order is made, within fourteen days after the service of the order on that person;

(b) if there is no litigation representative acting for that person in that cause or matter, within fourteen days after the appointment of such a litigation representative to act for him.

Admission not to be implied from pleading of person under disability (O. 76, r. 8)

8. Notwithstanding anything in Order 18, rule 13(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

Discovery and interrogatories (O. 76, r. 9)

9. Orders 24 and 26 shall apply to a person under disability and to his litigation representative.

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Compromise by person under disability (O. 76, r. 10)

10. Where in any proceedings money is claimed by or on behalf of a person under disability, a settlement, compromise or payment and an acceptance of money paid into Court, whenever entered into or made, shall not, so far as it relates to that person's claim, be valid without the approval of the Court.

Approval of settlement (O. 76, r. 11)

11. (1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then notwithstanding, anything in Order 5, rule 2, the claim may be made in proceedings begun by originating summons and in the originating summons an application may also be made for—

(a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under rule 12; or

(b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under section 7 of the Civil Law Act 1956, the originating summons shall include the particulars required under the Act.

(3) In this rule, "settlement" includes a compromise.

Control of money recovered by person under disability (O. 76, r. 12)

12. (1) Where in any proceedings—

(a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability; or

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(b) money paid into Court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into Court and invested or otherwise dealt with.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into Court, to the plaintiff, or to the litigation representative in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's solicitor in respect of costs.

(4) Where, in pursuance of directions given under this rule money is paid into Court to be invested or otherwise dealt with, the money, including any interest thereon, shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of Court, except in accordance with an order of the Court.

(5) Paragraphs (1) to (4) shall apply in relation to a counterclaim by or on behalf of a person under disability, and a claim made by or on behalf of such a person in an action by any other person for relief under section 361 of the Merchant Shipping Ordinance 1952 as if for references to a plaintiff and a litigation representative there were substituted references to a defendant.

Proceedings under Civil Law Act 1956: Apportionment by Court (O. 76, r. 13)

13. (1) Where money is paid into Court under Order 76, rule 12 in satisfaction of causes of action arising under the Civil Law Act 1956 and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it or when authorising its payment out of Court.

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(2) Where, in an action in which a claim under the Civil Law Act 1956 is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or a sum of money paid into Court under Order 76, rule 12 is accepted in satisfaction of the cause of action under the Civil Law Act 1956, it shall be apportioned between those persons by the Court. The reference in this paragraph to a sum of money paid into Court shall be construed as including a reference to part of a sum so paid, being the part apportioned by the Court under the directions given to the cause of action under the Civil Law Act 1956.

Service of certain documents on person under disability (O. 76, r. 14)

14. (1) Where in any proceedings a document is required to be served personally on any person and that person is a person under disability this rule shall apply.

(2) Subject to the following provisions of this rule and to Order 26, rule 7(3), the document shall be served—

(a) in the case of a minor who is not also a patient on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;

(b) in the case of a patient, on the person, if any, who is authorized under the Act to conduct in the name of the patient or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorised, on the person with whom he resides or in whose care he is,

and shall be served in the manner required by these rules with respect to the document in question.

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

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(4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of application or originating summons for the committal of any person, and a subpoena against any person, shall if that person is a person under disability, be served personally on him unless the Court otherwise orders. This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

ORDER 77
PARTNERS

Action by and against firms within jurisdiction (O. 77, r. 1)

1. Subject to the provisions of any written law, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within the jurisdiction may sue or be sued, in the name of the firm, if any, of which they were partners at the time when the cause of action accrued.

Disclosure of partners' names (O. 77, r. 2)

2. (1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued and if the notice is not complied with the Court may order in Form 190 the plaintiffs or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the action be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or an order given or made under paragraph (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiffs in the writ.

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(3) Paragraph (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively, and with the omission of the words "or may order" to the end.

Service of writ (O. 77, r. 3)

3. (1) Where in accordance with rule 1 partners are sued in the name of a firm, the writ may, except in the case mentioned in paragraph (2), be served—

(a) on any one or more of the partners; or

(b) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there,

and where service of the writ is effected in accordance with this paragraph, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of the jurisdiction.

(2) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun must be served on every person within the jurisdiction sought to be made liable in the action.

(3) Every person on whom an writ is served under paragraph (1) must at the time of service, be given a written notice in Form 191 stating whether he is served as a partner or as a person having control or management of the partnership business or both as a partner and as such a person, and any person on whom an writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

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Entry of appearance in an action against firm (O. 77, r. 4)

4. (1) Where persons are sued as partners in the name of their firm, appearance may not be entered in the name of the firm but only by the partners thereof in their own names, but the action shall nevertheless continue in the name of the firm.

(2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may enter an appearance in the action and state in the memorandum of appearance that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time. An appearance entered in accordance with this paragraph shall, unless and until it is set aside, be treated as an appearance for the defendant firm.

(3) Where an appearance has been entered for a defendant in accordance with paragraph (2)—

(a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;

(b) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's claim either his liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in an action in which a defendant has entered an appearance in accordance with paragraph (2), on the application of the plaintiff or of that defendant order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

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(5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not enter an appearance in the action unless he is a member of the firm sued.

Enforcing judgment or order against the firm (O. 77, r. 5)

5. (1) Where a judgment is given or an order is made against a firm, execution to enforce the judgment or order may, subject to rule 6, issue against any property of the firm within the jurisdiction.

(2) Where a judgment is given or an order is made against a firm, execution to enforce the judgment or order may, subject to rule 6 and to the next following paragraph, issue against any person who—

(a) entered an appearance in the action as a partner;

(b) having been served as a partner with the writ, failed to enter an appearance in the action;

(c) admitted in his pleading that he is a partner; or

(d) was adjudged to be a partner.

(3) Execution to enforce a judgment or an order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ was issued unless he—

(a) entered an appearance in the action as a partner;

(b) was served within the jurisdiction with the writ as a partner; or

(c) was, with the leave of the Court given under Order 11, served out of the jurisdiction with the notice of the writ, as a partner,

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and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(4) Where a party who has obtained a judgment or an order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person, the application to be made by notice of application which must be served personally on that person.

(5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3), give leave to issue execution against that person and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Enforcing judgment or order in action between partners (O. 77, r. 6)

6. (1) Execution to enforce a judgment or an order given or made in—

(a) an action by or against a firm in the name of the firm, against or by a member of the firm; or

(b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not be issued except with the leave of the Court.

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(2) The Court hearing an application under this rule may give such directions including directions as to the taking of accounts and the making of inquiries as may be just.

Attachment of debts owed by firm (O. 77, r. 7)

7. (1) An order may be made under Order 49, rule 1 in relation to debts due or accruing due from a firm carrying on business within the jurisdiction notwithstanding that one or more members of the firm is resident out of the jurisdiction.

(2) An order to show cause under rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.

(3) Where an order made under rule 1 requires a firm to appear before the Court, an appearance by a member of the firm shall constitute a sufficient compliance with the order.

Actions begun by originating summons (O. 77, r. 8)

8. Rules 2 to 7 shall, with the necessary modifications, apply in relation to an action by or against partners in the name of their firm begun by originating summons as they apply in relation to such action begun by writ.

Application to person carrying on business in another name (O. 77, r. 9)

9. An individual carrying on business within the jurisdiction in a name or style other than his own name may be sued in that name or style as if it were the name of a firm, and rules 2 to 8 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

Applications for orders charging partner's interest in partnership property (O. 77, r. 10)

10. (1) Every application to the Court by a judgment creditor of a partner of an order under section 25 of the Partnership Act 1961 [*Act 135*] (which authorizes the High Court or a Judge thereof to make certain orders on the application of a judgment

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creditor of a partner including an order charging the partner's interest in the partnership property) and every application to the Court by a partner of the judgment debtor may in consequence of the first mentioned application must be made by notice of application.

(2) The Registrar may exercise the powers conferred on a Judge under section 25 of the Partnership Act 1961.

(3) Every notice of application issued by a judgment creditor under this rule and every order made on such notice of application, must be served on the judgment debtor and on such of his partners as are within the jurisdiction.

(4) Every notice of application issued by a partner of a judgment debtor under this rule and every order made on such notice of application, must be served—

(a) on the judgment creditor;

(b) on the judgment debtor; and

(c) on such of the other partners of the judgment debtor who do not join in the application and are within the jurisdiction.

(5) A notice of application or an order served in accordance with this rule on some of the partners of a partnership shall be deemed to have been served on all the partners of that partnership.

ORDER 78
DEFAMATION ACTIONS

Application (O. 78, r. 1)

1. These Rules apply to actions for libel or slander subject to the following rules of this Order.

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Endorsement of claim in libel action (O. 78, r. 2)

2. *(There is no rule 2)*

Obligations to give particulars (O. 78, r. 3)

3. (1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in respect of such sense.

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

Provisions as to offer of settlement (O. 78, r. 4)

4. (1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with Order 22B, accepts any offer of settlement or offer of contribution, by any of those defendants in satisfaction of his cause of action

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against that defendant, then, notwithstanding anything in rule 3 of that Order, the action shall be stayed as against that defendant only, but—

(a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the action by way of damages shall not exceed the amount, if any, by which the amount of the damages exceeds the amount paid into Court by the defendant as against whom the action has been stayed; and

(b) the plaintiff shall not be entitled to his costs of the action against the other defendant after the date of the payment into Court unless either the amount of the damages awarded to him is greater than the amount paid into Court and accepted by him or the Judge is of the opinion that there was reasonable ground for him to proceed with the action against the other defendant.

(2) Where in an action for libel a party pleads the defence for which subsection 10(2) of the Defamation Act 1957 [*Act 286*] provides, Order 22B, rule 5 shall not apply in relation to that pleading.

Statement in open Court (O. 78, r. 5)

5. (1) Where a party accepts an offer of settlement or offer of contribution in satisfaction of a cause of action for libel or slander, the plaintiff or defendant, as the case may be, may apply by notice of application for leave to make in open Court a statement in terms approved by the Court.

(2) Where a party to an action for libel or slander which is settled before trial desires to make a statement in open Court, an application shall be made to the Court for an order that the action be set down for trial, and before the date fixed for the trial the statement shall be submitted for the approval of the Court before whom it is to be made.

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Interrogatories not allowed in certain cases (O. 78, r. 6)

6. In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

Evidence in mitigation of damages (O. 78, r. 7)

7. In an action for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without leave of the Judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

Fulfilment of offer of amends under section 7 of Defamation Act 1957 (O. 78, r. 8)

8. (1) An application to the Court under section 7 of the Defamation Act 1957 to determine any question as to the steps to be taken in fulfilment of an offer of amends made under that section shall, unless the application is made in the course of proceedings for libel or slander in respect of the publication to which the offer relates, be made in Chambers, but only a Judge may determine such question.

(2) *(There is no paragraph (2))*

ORDER 79

MONEYLENDERS' ACTIONS

Application and interpretation (O. 79, r. 1)

1. (1) These rules apply to a moneylender's action subject to the following rules of this Order.

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(2) In these rules—

"moneylender" has the meaning assigned to it under section 2 of the Moneylenders Act 1951 [*Act 400*];

"moneylender's action" means an action for the recovery of money lent by a moneylender or for the enforcement of any agreement or security relating to money so lent, being an action brought by the lender or an assignee.

Endorsement of writ (O. 79, r. 2)

2. Before a writ beginning a moneylender's action is issued it shall be endorsed with a statement that at the time of the making of the loan or contract or the giving of the security in question the lender was licensed as a moneylender.

Particulars to be included in statement of claim (O. 79, r. 3)

3. Every statement of claim in a moneylender's action shall state—

(a) the date on which the loan was made;

(b) the amount actually lent to the borrower;

(c) the rate per cent per annum of interest charged;

(d) the date when the contract for repayment was made;

(e) the fact that a note or memorandum of the contract was made and was signed by the borrower;

(f) the date when a copy of the note or memorandum was delivered or sent to the borrower;

(g) the amount repaid;

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(h) the amount due but unpaid;

(i) the date upon which such unpaid sum or sums became due;

(j) the amount of interest accrued due and unpaid on every such sum; and

(k) the form in which the money was lent.

Judgment in default of appearance or defence (O. 79, r. 4)

4. (1) In a moneylender's action, judgment in default of appearance or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this rule shall be made by notice of application, and the notice of application shall, notwithstanding anything in Order 62, rule 10, be served on the defendant.

(3) If the application is for leave to enter judgment in default of appearance, the notice of application shall not be issued until after the time limited for appearing.

(4) On the hearing of such an application, whether the defendant appears or not, the Court—

(a) may exercise the powers of the Court under subsection 21(2) of the Moneylenders Act 1951;

(b) where it refuses leave under this rule to enter judgment on a claim or any part of a claim, may make or give any such order or direction as it might have made or given had the application been an application under Order 14, rule 1, for judgment on the claim.

Particulars to be included in originating summons (O. 79, r. 5)

5. *(There is no rule 5)*

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ORDER 80

ADMINISTRATION AND SIMILAR ACTIONS

Interpretation (O. 80, r. 1)

1. In this Order, "administration action" means an action for the administration under the direction of the Court of the estate of a deceased person or for the execution under the direction of the Court of a trust.

Determination of questions without administration (O. 80, r. 2)

2. (1) An action may be brought for the determination of any question or for any relief which could be determined or granted, as the case may be, in an administration action and a claim need not be made in the action for the administration or execution under the direction of the Court of the estate or trust in connection with which the question arises or the relief is sought.

(2) Without prejudice to the generality of paragraph (1), an action may be brought for the determination of any of the following questions:

(a) any question arising in the administration of the estate of a deceased person or in the execution of a trust;

(b) any question as to the composition of any class of persons having a claim against the estate of a deceased person or a beneficial interest in the estate of such a person or in any property subject to a trust;

(c) any question as to the rights or interests of a person claiming to be a creditor of the estate of a deceased person or to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust.

(3) Without prejudice to the generality of paragraph (1), an action may be brought for any of the following reliefs:

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(a) an order requiring an executor, administrator or trustee to furnish and, if necessary, verify accounts;

(b) an order requiring the payment into Court of money held by a person in his capacity as executor, administrator or trustee;

(c) an order directing a person to do or abstain from doing a particular act in his capacity as executor, administrator or trustee;

(d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as executor, administrator or trustee;

(e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.

Parties (O. 80, r. 3)

3. (1) All the executors or administrators of the estate or trustees of the trust, as the case may be, to which an administration or such an action as is referred to in rule 2 relates shall be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff shall be made a defendant.

(2) Notwithstanding anything in Order 15, rule 4(2) and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the action; but the plaintiff may make such of those persons whether all or

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any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without leave of the Court, and the Court may direct or allow any other party to appear either in addition to, or in substitution for, the executors or administrators on such terms as to costs or otherwise as it thinks fit.

Grant of relief in action begun by originating summons (O. 80, r. 4)

4. In an administration action or such an action as is referred to in rule 2, the Court may make any certificate or order and grant any relief to which the plaintiff may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant.

Judgments or orders in administration actions (O. 80, r. 5)

5. (1) A judgment or order for the administration or execution under the direction of the Court of an estate or trust need not be given or made unless in the opinion of the Court the questions at issue between the parties cannot properly be determined otherwise than under such a judgment or order.

(2) Where an administration action is brought by a creditor of the estate of a deceased person or by a person claiming to be entitled under a will or on the intestacy of a deceased person or to be beneficially entitled under a trust, and the plaintiff alleges that no or insufficient accounts have been furnished by the executors, administrators or trustees, as the case may be, then, without prejudice to its other powers, the Court may—

(a) order that proceedings in the action be stayed for a period specified in the order and that the executors, administrators, or

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trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;

(b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the action relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without leave of the Judge in person.

Conduct of sale of trust property (O. 80, r. 6)

6. Where in an administration action an order is made for the sale of any property vested in executors, administrators or trustees, those executors, administrators or trustees, as the case may be, shall have conduct of the sale unless the Court otherwise directs.

ORDER 81

ACTIONS FOR SPECIFIC PERFORMANCE, SUMMARY JUDGMENT

Application by plaintiff for summary judgment (O. 81, r. 1)

1. (1) In an action begun by writ endorsed with a claim—

(a) for specific performance of an agreement (whether in writing or not) for the sale, purchase or exchange of any property, or for the grant or assignment of a lease of any property, with or without an alternative claim for damages;

(b) for rescission of such an agreement; or

(c) for the forfeiture or return of any deposit made under such an agreement,

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the plaintiff may, on the ground that the defendant has no defence to the action, apply to the Court for judgment.

(2) An application may be made against a defendant under this rule whether or not he has entered an appearance in the action.

Manner in which application under rule 1 shall be made (O. 81, r. 2)

2. (1) An application under rule 1 shall be made by notice of application supported by an affidavit made by some person who can swear positively to the facts verifying the cause of action and stating that in his belief there is no defence to the action.

(2) The notice of application shall set out or have attached thereto minutes of the judgment sought by the plaintiff.

(3) The notice of application, a copy of the affidavit in support and of any exhibit referred to therein shall be served on the defendant within fourteen days from the date of issue of the notice of application.

Affidavits (O. 81, r. 2A)

2A. Order 32, rule 13(2) shall apply *mutatis mutandis* to all affidavits in respect of an application under this Order.

Judgment for plaintiff (O. 81, r. 3)

3. Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.

Leave to defend (O. 81, r. 4)

4. (1) A defendant may show cause against an application under rule 1 by affidavit or otherwise to the satisfaction of the Court.

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(2) The Court may give a defendant against whom such an application is made leave to defend the action either unconditionally or on such terms as to giving security or time or mode of trial or otherwise as it thinks fit.

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

(a) to produce any document;

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

Directions (O. 81, r. 5)

5. Where the Court orders that a defendant have leave to defend the action, the Court shall give directions as to the further conduct of action.

Costs (O. 81, r. 6)

6. If the plaintiff makes an application under rule 1 where the case is not within this Order, or if it appears to the Court that the plaintiff knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, then, without prejudice to Order 59, and, in particular, to rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him forthwith.

Setting aside judgment (O. 81, r. 7)

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

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ORDER 82

DEBENTURE HOLDERS' ACTION: RECEIVER'S REGISTER

Receiver's register (O. 82, r. 1)

1. Every receiver appointed by the Court in an action to enforce a registered debenture or registered debenture stock shall, if so directed by the Court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (which is referred to as the "receiver's register" in this Order).

Registration of transfers (O. 82, r. 2)

2. (1) Where a receiver is required by rule 1 to keep a receiver's register, then, on the application of any person entitled to any debentures or debenture stock in accordance with any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver shall, unless the due execution of the transfer is proved by affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address a notice stating—

(a) that an application for the registration of the transfer has been made; and

(b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration, and a transfer shall not be registered until the period so specified has elapsed.

The period to be specified in the notice shall in no case be less than seven days after a reply from the registered holder would in the ordinary course of post reach the receiver

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if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this rule the receiver shall endorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the action and to the order appointing him receiver.

Application for rectification of receiver's register (O. 82, r. 3)

3. (1) Any person aggrieved by anything done or omission made by a receiver under rule 2 may apply to the Court for rectification of the receiver's register, the application to be made by notice of application in the action in which the receiver was appointed.

(2) The notice of application shall in the first instance be served only on the plaintiff or other party having the conduct of the action but the Court may direct the notice of application or notice of the application to be served on any other person appearing to be interested.

(3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

Receiver's register evidence of transfers (O. 82, r. 4)

4. Any entry made in the receiver's register, if verified by an affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in the action in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the action certifying the holders of the debentures or debenture stock certificates.

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Proof of title of holder of bearer debenture (O. 82, r. 5)

5. (1) This rule applies in relation to an action to enforce bearer debentures or to enforce debenture stock in respect of which the company has issued debenture stock bearer certificates.

(2) Notwithstanding that judgment has been given in the action and that a certificate has been made therein certifying the holders of such debentures or certificates as are referred to in paragraph (1), the title of any person claiming to be such a holder shall (in the absence of notice of any defect in the title) be sufficiently proved by the production of the debenture or debenture stock certificates, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person giving his name and address who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in the chambers of the Judge, the solicitor of the plaintiff in the action shall cause to be endorsed thereon a notice stating—

(a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in the chambers of the Judge as the holder of the debenture or debenture stock certificate, as the case may be;

(b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2); and

(c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.

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(4) The solicitor of the plaintiff in the action shall preserve any certificate of identification produced under paragraph (2) and shall keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, shall verify the record by affidavit.

Requirements in connection with payments (O. 82, r. 6)

6. (1) Where in an action to enforce any debenture or debenture stock an order is made for payment in respect of the debenture or stock, the Accountant General shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment, the debenture or debenture stock certificate shall be produced to the solicitor of the plaintiff in the action or to such other person as the Court may direct and that solicitor or person shall endorse thereon a memorandum of payment and shall make and sign a certificate certifying that the statement set out in the certificate has been endorsed on the debenture or debenture stock certificate, as the case may be, and send the certificate to the Accountant General.

ORDER 83

CHARGE ACTIONS

Application and interpretation (O. 83, r. 1)

1. (1) This Order applies to any action (whether begun by writ or originating summons) by a chargee or chargor or by any person having the right to foreclose or redeem any charge, being an action in which there is a claim for any of the following reliefs:

(a) payment of moneys secured by the charge;

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(b) sale of the charged property;

(c) foreclosure;

(d) delivery of possession (whether before or after foreclosure or without foreclosure) to the chargee by the chargor or by any other person who is or is alleged to be in possession of the property;

(e) redemption;

(f) reconveyance of the property or its release from the security;

(g) delivery of possession by the chargee.

(2) In this Order, "charge" includes a legal and an equitable charge.

(3) An action to which this Order applies is referred to in this Order as a charge action.

(4) These rules apply to charge actions subject to the following provisions of this Order.

Claims for delivery of possession or payments of moneys (O. 83, r. 2)

2. (1) Where in a charge action begun by originating summons, being an action in which the plaintiff is the chargee and claims delivery of possession or payments of moneys secured by the charge or both, the following provisions of this rule shall apply.

(2) Not less than four clear days before the day fixed for the first hearing of the originating summons the plaintiff shall serve on the defendant the originating summons and a copy of the affidavit in support of the summons.

(3) Where the plaintiff claims delivery of possession there shall be endorsed on the outside fold of the copy of the affidavit served on the defendant a notice

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informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the charged property and for such other relief, if any, claimed by the originating summons as the plaintiff intends to apply for at the hearing.

(4) Where the hearing is adjourned and the defendant was absent from the hearing, then, subject to any directions given by the Court, the plaintiff shall serve a written notice of the adjourned hearing, together with a copy of any further affidavit intended to be used at the hearing, on the defendant not less than two clear days before the day fixed for the hearing.

(5) The service under paragraph (4), and the manner in which it was effected, may be proved by an affidavit of service signed by the plaintiff, if he sues in person, and otherwise by his solicitor.

(6) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (2) or (4).

Action for delivery of possession or payment of moneys (O. 83, r. 3)

3. (1) The affidavit in support of the originating summons by which an action to which this rule applies is begun shall comply with the following provisions of this rule. This rule applies to a charge action begun by originating summons in which the plaintiff is the chargee and claims delivery of possession or payment of moneys secured by the charge or both.

(2) The affidavit shall exhibit a copy of the charge.

(3) Where the plaintiff claims delivery of possession the affidavit shall show the circumstances under which the right to possession arises and, except where the Court in any case or class otherwise directs, the particulars of the amount remaining due under the charge as at the hearing date of the originating summons.

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(4) Where the plaintiff claims delivery of possession, the affidavit shall give particulars of every person who to the best of the plaintiff's knowledge is in possession of the charged property.

(5) If the charge creates a tenancy other than a tenancy at will between the chargor and chargee, the affidavit shall show how and when the tenancy was determined and if by service of notice when the notice was duly served.

(6) Where the plaintiff claims payment of moneys secured by the charge, the affidavit shall prove that the money is due and payable and give the particulars mentioned in paragraph (3).

Action by writ: Judgment in default (O. 83, r. 4)

4. (1) Notwithstanding anything in Order 13 or Order 19, in a charge action begun by writ, judgment in default of appearance or in default of defence shall not be entered except with leave of the Court.

(2) An application for the grant of leave under this rule shall be made by notice of application and the notice of application shall, notwithstanding anything in Order 62, rule 10, be served on the defendant.

(3) Where a notice of application for leave under this rule is issued, rules 2(3), (4) and (5) shall apply in relation to the action subject to the modification that for references therein to the originating summons, there shall be substituted references to the notice of application.

(4) Where a notice of application for leave under this rule is issued in an action to which rule 3 would apply had the action been begun by originating summons, the affidavit in support of the notice of application shall contain the information required by that rule.

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Foreclosure in redemption action (O. 83, r. 5)

5. Where foreclosure has taken place by reason of the failure of the plaintiff in a charge action for redemption to redeem, the defendant in whose favour the foreclosure has taken place may apply by notice of application for an order for delivery to him of possession of the charged property, and the Court may make such order thereon as it thinks fit.

ORDER 84

PROCEEDINGS RELATING TO INFANTS

Applications under Guardianship of Infants Act 1961 (O. 84, r. 1)

1. Where there is pending any action or other proceedings by reason of which an infant is a ward of Court, any application under the Guardianship of Infants Act 1961 [*Act 351*] (which is referred to as "the Act" in this Order), with respect to that infant may be made by notice of application in the proceeding, but except in that case any such application must be made by originating summons.

Defendants to summons (O. 84, r. 2)

2. (1) Where the infant with respect to whom an application under the Act is made is not the plaintiff, he shall not, unless the Court otherwise directs, be made a defendant to the summons or, if the application is made by notice of application, be served with the notice of application, but, subject to paragraph (2), any other person appearing to be interested in, or affected by, the application shall be made a defendant or be served with the summons, as the case may be.

(2) The Court may dispense with service of the summons or notice of application on any person and may order it to be served on any person not originally served.

Applications as to guardianship, maintenance (O. 84, r. 3)

3. (1) An application as to the guardianship, maintenance or advancement of infants may be disposed of in Chambers.

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(2) A guardian's account must be verified and passed in the same manner as that provided by Order 30 in relation to a receiver's account or in such other manner as the Court may direct.

ORDER 85

BILLS OF SALE ACT 1950

Rectification of register (O. 85, r. 1)

1. (1) Every application to the Court under section 15 of the Bills of Sale Act 1950 [*Act 268*], which is referred to as "the Act" in this Order, for an order—

(a) that any omission to register a bill of sale or an affidavit of renewal thereof within the time prescribed by the Act be rectified by extending the time for such registration; or

(b) that any omission or misstatement of the name, residence or occupation of any person be rectified by the insertion in the register of his true name, residence or occupation,

shall be made by *ex parte* originating summons to the Registrar.

(2) Every application for such an order as is described in paragraph (1) shall be supported by an affidavit setting out particulars of the bill of sale and of the omission or misstatement in question and stating the grounds on which the application is made.

Entry of satisfaction (O. 85, r. 2)

2. (1) Every application under section 16 of the Act to the Registrar for an order that a memorandum of satisfaction be written on a registered copy of a bill of sale shall—

(a) if a consent to the satisfaction signed by the person entitled to the benefit of the bill of sale can be obtained, be made by *ex parte* originating summons;

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(b) in all other cases, be made by *inter partes* originating summons.

(2) An *ex parte* application under subparagraph (1)*(a)* shall be supported by—

(a) particulars of the consent referred to in that paragraph; and

(b) an affidavit by a witness who attested the consent verifying the signature on it.

(3) An originating summons under subparagraph (1)*(b)* shall be served on the person entitled to the benefit of the bill of sale, and shall be supported by evidence that the debt, if any, for which the bill of sale was made has been satisfied or discharged.

Restraining removal on sale of goods seized (O. 85, r. 3)

3. *(There is no rule 3)*

Search of register (O. 85, r. 4)

4. The Registrar shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the register of bills of sale and issue a certificate of the result of the search.

ORDER 85A

PROCEEDINGS ARISING OUT OF HIRE-PURCHASE AGREEMENTS

Application (O. 85A, r. 1)

1. These Rules apply to proceedings to which this Order applies subject to the following rules of this Order.

Mode of application under Hire-Purchase Act 1967 (O. 85A, r. 2)

2. An application under the proviso to section 11, 33, 41 or 42 of the Hire-Purchase Act 1967 [*Act 212*] shall be made by originating summons in Form 191A supported by an affidavit setting out the facts and the grounds on which the application is made.

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Particulars to be provided (O. 85A, r. 3)

3. Where the plaintiff's claim is for the recovery of money arising out of a hire-purchase agreement, he shall commence the action by writ and state the following particulars in his statement of claim:

(a) the date of the agreement and the parties thereto;

(b) the goods let under the agreement;

(c) the amount of the hire-purchase price;

(d) the amount paid by or on behalf of the hirer;

(e) the amount, if any, claimed as being due and unpaid in respect of any installment of the hire-purchase price;

(f) the amount of any other claim and the circumstances in which it arises.

ORDER 86

INHERITANCE (FAMILY PROVISION) ACT 1971

Interpretation (O. 86, r. 1)

1. In this Order, "the Act" means the Inheritance (Family Provision) Act 1971 [*Act 39*].

Powers of Courts as to parties (O. 86, r. 2)

2. (1) Without prejudice to its powers under Order 15, the Court may at any stage of proceedings under the Act by order direct that any person be added as a party to the proceedings or that notice of the proceedings be served on any person.

(2) Order 15, rule 13 shall apply to proceedings under the Act as it applies to the proceedings mentioned in paragraph (1) of that rule.

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Affidavit in support to be filed (O. 86, r. 3)

3. An affidavit in support of an originating summons by which an application under section 3 of the Act is made shall be filed before the first hearing of the originating summons. The applicant in an *ex parte* originating summons shall file an affidavit in support at the time of filing the originating summons.

Disposal of application in Chambers (O. 86, r. 4)

4. Any application under the Act in which it appears to the Court that the interests of an infant or other person under disability are affected may, if the Court thinks fit so direct, be disposed of in Chambers, but any order under section 3 or 6 of the Act shall be made by the Judge in person.

Applications in proceedings under section 3 of the Act (O. 86, r. 5)

5. Where an order has been made on an application under section 3 of the Act, any subsequent application, whether made by a party to the proceedings in which such order was made, or by a person on whom notice of the application for the order was served or by or on behalf of such person as is mentioned in subsection 6(2) of the Act, shall be made by notice of application in those proceedings.

Endorsement of memorandum on probate (O. 86, r. 6)

6. (1) The personal representatives of the deceased to whose estate an application under section 3 or 6 of the Act relates shall produce in Court at the hearing of the application the probate or letters of administration under which the estate is being administered and if the Court makes an order under the Act or an order dismissing the application the probate or letters of administration shall remain in the custody of the Court until subsection 5(3) of the Act has been complied with.

(2) The memorandum of the order required by subsection 5(3) of the Act to be endorsed or annexed as therein mentioned shall set out the title of the proceedings in question and the operative part of the order in full.

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ORDER 86A

EMPLOYMENT ACT 1955

Application (O. 86A, r. 1)

1. These Rules apply to proceedings under the Employment Act 1955 subject to the following rules of this Order.

Orders of Director General of Labour (O. 86A, r. 2)

2. Where the Director General of Labour (which is referred to as "the Director General") has made an order under the Employment Act 1955 and it is sought to enforce the order in a Sessions Court (which is referred to as "the Court" in this Order), he shall submit a certificate of the order and a request in Form 192 for the enforcement of it to the Court.

Certificate of order (O. 86A, r. 3)

3. (1) The certificate of order shall state—

(a) the number and title of the case in which the order was made;

(b) the date of the order;

(c) the name, occupation and address of every person ordered to pay any sum of money;

(d) the amount ordered to be paid by such person;

(e) the name, occupation and address of every person to whom any sum is ordered to be paid and the amount to be paid to each such person;

(f) any other material terms or conditions of the order; and

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(g) the extent to which the order has been satisfied and the balance remaining due thereunder.

(2) Where the persons are numerous**,** the particulars referred to in paragraph (1) may be set out in a schedule attached to the certificate.

(3) Where the order is that the amount is to be paid to the Director General for distribution among the persons, it shall be sufficient to state the name of each person and the amount to be paid on his account.

(4) The certificate shall be sealed with the seal of the Director General and it shall be dated and signed by him.

Registration of certificate (O. 86A, r. 4)

4. (1) On receipt of the certificate, the Registrar shall record it in a register in Form 193 and assign it with a serial number.

(2) The Registrar shall make a memorandum of the registration on the certificate and it shall be filed.

Registered order enforceable as judgment (O. 86A, r. 5)

5. When the certificate of the order has been registered under rule 4, the order may be enforced by the Court as if it were a judgment of the Court.

Title of proceedings (O. 86A, r. 6)

6. Any proceedings in respect of an order of the Director General, which has been registered shall be marked with the registered number of the certificate of the order and shall be entitled as Form 194.

Payment of sums recovered (O. 86A, r. 7)

7. Unless the Director General otherwise orders, all sums of money recovered by the Court under the order, after payment of the costs, charges and expenses of enforcing the order, shall be paid to the Director General.

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ORDER 87

TRADE MARKS ACT 1976

Interpretation (O. 87, r. 1)

1. In this Order—

"the Act" means the Trade Marks Act 1976 [*Act 175*];

"Registrar" means the Registrar of Trade Marks appointed under section 4 of the Act.

Application by originating summons (O. 87, r. 2)

2. An application to the Court under the Act shall be begun by originating summons.

Appeals by originating summons (O. 87, r. 3)

3. An appeal to the Court under the Act shall be brought by originating summons within one calendar month from the date of decision appealed against.

Service of application on parties and Registrar (O. 87, r. 4)

4. All applications to the Court under the Act whether by way of appeal or otherwise shall be served on the parties and the Registrar.

Time for application (O. 87, r. 5)

5. Whether the Registrar decides to refer an application or appeal to the Court, the applicant or appellant shall apply to the Court within one calendar month from the date of the decision so to refer, and unless he so applies he shall be deemed to have abandoned the application or appeal.

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Notice of intention to withdraw application (O. 87, r. 6)

6. Where under subsection 25(8) or subsection 28(8) of the Act, an applicant becomes entitled and intends to withdraw his application, he shall give notice of the intention in writing to the Registrar and to the other parties, if any, to the appeal within one month after the leave referred in those subsections has been obtained.

Counterclaim for rectification of register (O. 87, r. 7)

7. A defendant in an action for infringement may, in regard to any registered trade mark in issue, counterclaim for the rectification of the register and shall within the time limited for the delivery of the counterclaim serve the Registrar with the same, and the Registrar shall be entitled to take such part in the action as he may think fit without delivering a defence or other pleading.

Extension of time (O. 87, r. 8)

8. The time specified in rules 3 and 5 of this Order may be extended by the Court or Registrar upon the application of any party interested and notwithstanding that the time so specified has expired.

Proceeding for infringement of registered trade mark: Validity of registration disputed (O. 87, r. 9)

9. (1) Where in any proceedings a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may in his defence put in issue the validity of the registration of that trade mark or may counterclaim for an order that the register of trade marks be rectified by cancelling or varying the relevant entry or may do both those things.

(2) A party to any such proceedings who in his pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered trade mark shall serve with the pleading particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of trade marks be rectified shall serve on the Registrar a copy of the

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counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Registrar shall be entitled to take such part in the proceedings as he may think fit but need not serve a defence or other pleading unless ordered to do so by the Court.

ORDER 88

COMPANIES ACT 1965

Interpretation (O. 88, r. 1)

1. In this Order, "the Act" means the Companies Act 1965 [*Act 125*].

Proceedings (O. 88, r. 2)

2. Except for the proceedings specified in Appendix C relating to the winding up of companies and capital reduction under the Act, proceedings under the Act shall be commenced by originating summons.

Application to be made by originating summons or motion (O. 88, r. 3)

3. *(There is no rule 3)*

Application to be made by motion (O. 88, r. 4)

4. *(There is no rule 4)*

Application to be made by petition (O. 88, r. 5)

5. *(There is no rule 5)*

Entitlement of proceedings (O. 88, r. 6)

6. *(There is no rule 6)*

Summons for directions (O. 88, r. 7)

7. (1) *(There is no paragraph (1))*

(2) *(There is no paragraph (2))*

(3) *(There is no paragraph (3))*

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(4) Where an application is to confirm a reduction of the share capital, the share premium account, or the capital redemption reserve fund, of a company, the Court may give directions—

(a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;

(b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to which the list is to be made,

and the power of the Court under subsection 64(3) of the Act to direct that subsection 64(2) thereof shall not apply as regards any class of creditors may be exercised on any hearing of the application.

(5) Rules 8 to 13 shall have effect subject to any directions given by the Court under this rule.

Inquiry as to debts: Company to make list of creditors (O. 88, r. 8)

8. (1) Where under rule 7 the Court orders such an inquiry as is mentioned in paragraph (4) thereof, the company in question shall, within seven days after the making of the order, file in the Registry an affidavit made by an officer of the company competent to make it verifying a list containing—

(a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends;

(b) the amount due to each creditor in respect of such debt or claim, or in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof; and

(c) the total of those amounts and values.

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(2) The deponent shall state in the affidavit his belief that at the date fixed by the Court as the date by reference to which the list is to be made there is no debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, other than the debts or claims set out in the list and any debts or claims to which the inquiry does not extend, and shall also state his means of knowledge of the matters deposed to.

(3) The list shall be left at the Registry not later than one day after the affidavit is filed.

Inspection of list of creditors (O. 88, r. 9)

9. (1) Copies of the list made under rule 8 with the omission, unless the Court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered office of the company and at the office of that company's solicitor.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of fifty ringgit, to inspect the list at any such office and to take extracts therefrom.

Notice to creditors (O. 88, r. 10)

10. Within seven days after filing the affidavit required by rule 8 the company shall send by post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating—

(a) the amount of the reduction sought to be confirmed;

(b) the effect of the order directing an inquiry as to debts and claims;

(c) the amount or value specified in the list as due or estimated to be due to that creditor; and

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(d) the time fixed by the Court within which, if he claims to be entitled to a larger amount, he shall send particulars of his debt or claim and the name and address of his solicitor, if any, to the company's solicitor.

Advertisement of petition and list of creditors (O. 88, r. 11)

11. After filing the affidavit required by rule 8 the company shall insert, in such newspapers and at such times as the Court directs, a notice stating—

(a) the date of presentation of the summons and the amount of the reduction thereby sought to be confirmed;

(b) the inquiry ordered by the Court under rule 7;

(c) the places where the list of creditors may be inspected in accordance with rule 9; and

(d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends shall send his name and address, the name and address of the solicitor, if any, and particulars of his debt or claim to the company's solicitor.

Affidavit as to claims made by creditors (O. 88, r. 12)

12. Within such time as the Court directs the company shall file in the Registry an affidavit made by the company's solicitor and an officer of the company competent to make it—

(a) proving service of the notices mentioned in rule 10 and advertisement of the notice mentioned in rule 11;

(b) verifying a list containing the names and addresses of the persons, if any, who in pursuance of such notices sent in particulars of debts or claims, specifying the amount of each debt or claim;

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(c) distinguishing in such list those debts or claims which are wholly, or as to any and what part thereof, admitted by the company, disputed by the company or alleged by the company to be outside the scope of the inquiry; and

(d) stating which of the persons named in the list made under rule 8, and which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

Adjudication of disputed claims (O. 88, r. 13)

13. If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim, the company shall, if the Court so directs, send to that person by post at his last known address a notice requiring him—

(a) within such time as may be specified in the notice, being not less than four clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company; and

(b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the Court for the adjudication of debts and claims.

Certifying list of creditors entitled to object to reduction (O. 88, r. 14)

14. The list of creditors entitled to object to such reduction as is mentioned in rule 7(4), as settled by the Court under subsection 64(2) of the Act, shall be certified and filed by the Registrar and his certificate shall—

(a) specify the debts or claims, if any, disallowed by the Court;

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(b) distinguish the debts or claims, if any, the full amount of which is admitted by the company, the debts or claims, if any, the full amount of which, though not admitted by the company, the company is willing to appropriate, the debts or claims, if any, the amount of which has been fixed by adjudication of the Court under subsection 64(2) of the Act and other debts and claims;

(c) specify the total amount of the debts or claims payment of which has been secured by appropriation under subsection 64(2) of the Act;

(d) show which creditors consent to the reduction and the total amount of their debts or claims; and

(e) specify the creditors who sought to prove their debts or claims under rule 13 and state which of such debts or claims were allowed.

Evidence of consent of creditor (O. 88, r. 15)

15. The consent of a creditor to such reduction as is mentioned in rule 7(4) may be proved in such manner as the Court thinks sufficient.

Time of hearing of application for confirmation of reduction (O. 88, r. 16)

16. (1) An application for the confirmation of any such reduction as is mentioned in rule 7(4) shall not, where the Court has directed an inquiry pursuant to that rule, be heard before the expiration of at least eight clear days after the filing of the certificate mentioned in rule 14.

(2) Before the hearing of such an application, a notice specifying the day appointed for the hearing shall be published at such times and in such newspapers as the Court may direct.

Restriction on taking effect of order under section 59 (O. 88, r. 17)

17. Unless the Court otherwise directs, an order under section 59 of the Act confirming the issue of shares at a discount shall direct that an office copy of the order

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be delivered to the Registrar of Companies within ten days after the making of the order or such extended time as the Court may allow and that the order shall not take effect until such copy has been so delivered.

ORDER 89

SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

Proceedings to be brought by originating summons (O. 89, r. 1)

1. Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

Forms of originating summons (O. 89, r. 2)

2. (1) The originating summons shall be in Form 8A and an acknowledgement of service is not required. An originating summons filed under this Order shall include the following note at the end thereof:

> "*Note*: Any person occupying the premises who is not named as a defendant by this originating summons may apply to the Court personally or by solicitor to be joined as a defendant. If a person occupying the premises does not attend personally or by solicitor at the time and place abovementioned, such order will be made as the Court may think just and expedient.".

Affidavit in support (O. 89, r. 3)

3. (1) The plaintiff shall file in support of the originating summons an affidavit stating—

(a) his interest in the land;

(b) the circumstances in which the land has been occupied without licence or consent and in which his claim to possession arises; and

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(c) that he does not know the name of any person occupying the land who is not named in the summons.

(2) Where the plaintiff is unable, after taking reasonable steps, to identify every person occupying the land for the purpose of making him a defendant, the plaintiff shall state in his affidavit that he has taken reasonable steps (describing them) to identify the persons occupying the land who are not named in the summons.

Service of originating summons (O. 89, r. 4)

4. (1) Where any person in occupation of the land is named in the originating summons, the summons together with a copy of the affidavit in support shall be served on him—

(a) personally or in accordance with Order 10, rule 5;

(b) by leaving a copy of the summons and of the affidavit or sending them to him, at the premises; or

(c) in such other manner as the Court may direct.

(2) The originating summons shall, in addition to being served on the named defendants, if any, in accordance with paragraph (1) be served, unless the Court otherwise directs, by—

(a) affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; and

(b) if practicable, inserting through the letter-box at the premises a copy of the summons and a copy of the affidavit enclosed in a sealed envelope addressed to "the occupiers".

(3) Every copy of an originating summons for service under paragraph (1) or (2) shall be sealed with the seal of the Court out of which the summons was issued.

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Application by occupier to be made a party (O. 89, r. 5)

5. Without prejudice to Order 15, rules 6 and 10, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

Order for possession (O. 89, r. 6)

6. (1) A final order shall not be made on the originating summons except by a Judge in person and shall, except in case of urgency and by leave of the Court, not be made less than five clear days after the date of service.

(2) An order for possession in proceedings under this Order shall be in Form 195.

(3) Nothing in this Order shall prevent the Court from ordering possession to be given on a specified date, in the exercise of any power, which could have been exercised if possession had been claimed in an action begun by writ.

Writ of possession (O. 89, r. 7)

7. Order 45, rule 3(2) shall not apply in relation to an order for possession under this Order but a writ of possession to enforce such an order shall not be issued after the expiry of three months from the date of the order without the leave of the Court.

Setting aside order (O. 89, r. 8)

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

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ORDER 90

LODGMENT IN COURT AND PAYMENT TO SHERIFF

Interpretation (O. 90, r. 1)

1. In this Order –

"bank" means a bank approved by the Accountant General;

"carry over", in relation to a fund in Court, means to transfer the fund or any part thereof from one account to another in the books of the Accountant General;

"interest" means the dividends and interest on all the funds referred to in the heading thereof;

"funds" or "funds in Court" means any money, securities, or other investments standing or to be placed to the account of the Accountant General, and includes money placed on deposit;

"ledger credit" means the title of the cause or matter and the separate account opened or to be opened under an order or otherwise in the books of the Accountant General to which any funds are credited or to be credited;

"lodge in Court" means pay or transfer into Court, or deposit in Court;

"order" means an order or judgment of the Subordinate Courts, High Court, Court of Appeal or the Federal Court, whether made in Court or in Chambers.

Lodgment in Court

Payment into Court under Trustee Act 1949 (O. 90, r. 2)

2. (1) Subject to paragraph (2), any trustee intending to make a payment into Court under section 65 of the Trustee Act 1949, shall apply by summons supported by an affidavit setting out—

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(a) a short description of the trust and of the instrument creating it or of the circumstances in which the trust arose, as the case may be;

(b) the names of the persons interested in or entitled to the money or securities to be paid into Court with their addresses so far as known to him;

(c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct; and

(d) an address where he may be served with any summons or order, or notice of any proceedings, relating to the money or securities paid into Court.

(2) Where the money or securities represents or represent a legacy, or residue or any share, thereof, to which an infant or a person resident outside Malaysia is absolutely entitled, no affidavit need be filed under paragraph (1).

Notice of lodgment (O. 90, r. 3)

3. Any person who has lodged money or securities in Court shall forthwith give notice of the lodgment to every person appearing to be entitled to, or to have an interest in, the money or securities lodged.

Funds: How lodged (O. 90, r. 4)

4. (1) Money to be lodged in Court shall be lodged by means of a direction to the Accountant General in form *(a)* in Form 129.

(2) Securities issued by a company or by any body corporate constituted under any written law, being fully paid up and free from liability, may be transferred to the Accountant General in his official name.

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(3) The person lodging under paragraph (2) shall execute a transfer thereof, and send such transfer together with the authority in Form 196 to the registered office of the company or body corporate in whose books the securities are to be transferred.

(4) Such company or body corporate shall, after registering such transfer, forward the authority to the Accountant General with a certificate in Form 196, that the securities have been transferred as therein authorized.

(5) Securities, other than those described in paragraph (2), may be placed in a box or packet and lodged with a direction in form *(a)* in Form 129 with the Accountant General.

(6) After inspecting the contents in the box or packet in the presence of the person lodging the same, and seeing that such box or packet is properly marked and secured, the Accountant General shall receive the same and give the person lodging a receipt.

(7) The Accountant General shall, after receiving the money or securities, send to the Registrar a duplicate of the receipt that had been issued to the person lodging the same, to be filed in the Registry.

Crediting lodgment and dividends (O. 90, r. 5)

5. Any principal money or dividends received by the Accountant General in respect of securities in Court shall be placed in his books, in the case of principal money, to the credit to which the securities whereon such money arose were standing at the time of the receipt thereof, and in the case of dividends, to the credit to which the securities whereon such dividends accrued were standing at the time of closing of the transfer books of such securities previously to the dividends becoming due.

Interest on money lodged in court (O. 90, r. 6)

6. (1) Subject to paragraph (3), money lodged in Court to the credit of any account shall be deemed to be placed on deposit, and shall be credited with interest at such rate as is from time to time fixed by the Minister of Finance, not being greater than

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the highest rate of interest which for the time being may be obtained by the Government on current account from any bank in the State except—

(a) when the money is paid into Court under Order 14 or 23; or

(b) when the amount is less than one thousand ringgit.

(2) Money on deposit shall be deemed to be withdrawn from the deposit when the amount is reduced below one thousand ringgit.

(3) Nothing in these Rules shall affect the right of parties to the action from applying to the Court for the money lodged in Court to be deposited in an interest bearing account with any licensed bank or financial institution in Malaysia.

Computation of interest (O. 90, r. 7)

7. (1) Interest upon money on deposit shall not be computed on a fraction of one ringgit.

(2) Interest upon money on deposit accrues by calendar months, and shall not be computed by any lesser period.

(3) Such interest begins on the first day of the calendar month next succeeding that in which the money is placed on deposit, and ceases from the last day of the calendar month next preceding the day of the withdrawal of the money from deposit.

(4) Interest which has accrued for or during the half-year ending on the thirtieth day of June and thirty-first day of December in every year, on money then on deposit shall, on or before the fifteen days of the months respectively following, be placed by the Accountant General to the credit to which such money is standing on every such half-yearly day.

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(5) When money on deposit is withdrawn from deposit, the interest thereon which has accrued and has not been credited shall be placed to the credit to which the money is then standing.

(6) When money on deposit consists of sums which have been placed on deposit at different times, and an order is made dealing with the money, and part of such money has to be withdrawn from deposit for the purpose of executing such order, the part or parts of the money dealt with by such order last placed and remaining on deposit at the time of such withdrawal shall, for the purpose of computing interest, be treated as so withdrawn unless the order otherwise directs.

(7) Unless otherwise directed by an order, interest credited on money on deposit shall, when or so soon as it amounts to or exceeds one thousand ringgit, be placed on deposit and, for the purpose of computing interest upon it, shall be treated as having been placed on deposit on the last half-yearly day on which any such interest became due.

Applications with respect to funds in Court (O. 90, r. 8)

8. (1) Where an application to the High Court—

(a) for the payment or transfer to any person of any funds in Court standing to the credit of any cause or matter or for the transfer of any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such fund;

(b) for the investment, or change of investment, of any funds in Court;

(c) for payment of the dividends of or interest on any funds in Court representing or comprising money or securities lodged in Court under any written law; or

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(d) for the payment or transfer out of Court of any such funds as are mentioned in subparagraph *(c)*,

is made, the application may be disposed of in Chambers, if applicable.

(2) Subject to paragraph (3), any such application shall be made by summons or in a pending cause or matter, by notice of application.

(3) Where an application under paragraph 1*(d)* is required to be made by summons, then, if the funds to which the application relates do not exceed fifty thousand ringgit in value, the application may be made to the Registrar.

Payment out of funds in Court (O. 90, r. 9)

9. (1) Money paid under Order 14 or 23 shall be paid out on a direction to the Accountant General in form *(b)* in Form 129.

(2) In all other cases the person entitled to withdraw the funds shall lodge with the Accountant General a copy of the order authorizing withdrawal, and the Accountant General shall act in accordance with such order.

(3) When an order directs any sums to be ascertained by the certificate of the Registrar, both the order and the certificate in form *(c)* in Form 129 shall be sent to the Accountant General.

(4) When an order directs payment out of a fund in Court of any costs directed to be taxed, the Registrar shall state in his certificate, the name and address of the person to whom such costs are payable.

Name of payee to be stated in order (O. 90, r. 10)

10. (1) Every order which directs funds in Court to be paid, transferred, or delivered shall state in full the name of every person to whom such payment, transfer, or delivery is to be made, unless the name is to be stated in a certificate of the Registrar.

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(2) In the case of payment to a firm it is sufficient to state the business name of such firm.

(3) When money in Court is by an order directed to be paid to any persons described in the order, or in a certificate of the Registrar, as co-partners, such money may be paid to any one or more of such co-partners, or to the survivor of them.

Payment out on death of payee (O. 90, r. 11)

11. (1) When funds in Court are by an order directed to be paid, transferred, or delivered to any person named or described in an order, or in a certificate of the Registrar, except to a person therein expressed to be entitled to such funds as trustee, executor, or administrator, or otherwise than in his own right, or for his own use, such funds, or any portion thereof for the time being remaining unpaid, untransferred, or undelivered, may, unless the order otherwise directs, on proof of the death of such person, whether on or after or, in the case of payment directed to be made to a creditor as such, before the date of such order, be paid, transferred, or delivered to the legal personal representatives of such deceased person, or to the survivors or survivor of them.

(2) If no administration has been taken out to the estate of such deceased person who has died intestate, and whose assets do not exceed the value of one hundred thousand ringgit, including the amount of the funds directed to be so paid, transferred or delivered to him, such funds may be paid, transferred, or delivered to the person who, being widower, widow, child, father, mother, brother or sister of the deceased, would be entitled to take administration to his or her estate, upon a declaration by such person in accordance with Form 197.

(3) When funds in Court are by an order directed to be paid, transferred, or delivered to any persons as legal personal representatives, such funds, or any portion thereof for the time being remaining unpaid, untransferred, or undelivered, may, upon proof of the death of any such representatives, whether on or after the date of such order, be paid, transferred, or delivered to the survivors or survivor of them.

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(4) The funds shall not under this rule be paid, transferred, or delivered out of Court to the legal personal representatives of any person under any probate or letters of administration purporting to be granted at any time subsequent to the expiration of two years from the date of the order directing such payment, transfer, or delivery, or, in case such funds consist of interest or dividends, from the date of the last receipt of such interest or dividends or such order.

Transfer or investment of funds in Court (O. 90, r. 12)

12. (1) When funds in Court are by an order directed to be transferred or carried over, the party having the carriage of the order shall lodge with the Accountant General a copy of the order, and the Accountant General shall act in accordance with such order.

(2) When funds in Court are by an order directed to be invested, the party having the carriage of the order shall lodge with the Accountant General a copy of the order and the Accountant General shall thereupon invest such funds in the manner directed by the order.

(3) The Court may direct that any money in Court, other than money under Orders 14, 23 and 70, may be invested in any of the securities in which trustees are by law permitted to invest trust money in their hands, or it may order such money to be deposited in the Post Office Savings Bank, provided that it exceeds ten ringgit and does not exceed the highest sum which may be deposited therein.

Proof to Accountant General before payment (O. 90, r. 13)

13. When any person is entitled under an order or a direction to receive any payment from the Accountant General, and the Accountant General requires evidence of life, or of the fulfilment of any conditions affecting such payment, such evidence may be furnished by a statutory declaration made by a solicitor acting on behalf of such person, or by the person entitled to such payment.

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Copy of order or certificate to be sent to Auditor General (O. 90, r. 14)

14. An office copy of every order of Court and certificate to be acted upon by the Accountant General, and of every direction to the Accountant General, shall be forwarded by the Registrar to the Auditor General.

Accountant General to give certificate of funds in Court (O. 90, r. 15)

15. (1) The Accountant General, upon a request signed by or on behalf of a person claiming to be interested in any funds in Court standing to the credit of an account specified in such request, shall, unless there is good reason for refusing, issue a certificate of the amount and description of such funds, such certificate shall have reference to the morning of the day of the date thereof, and shall not include the transactions of that day.

(2) The Accountant General shall notify on such certificate the dates of any orders restraining the transfer, sale, delivery out, or payment or other dealing with the funds in Court to the credit of the account mentioned in such certificate, and whether such orders affect the principal or interest, and any charging orders affecting such funds, of which respectively he has received notice and the names of persons to whom notice is to be given, or in whose favour such restraining or charging orders have been made.

(3) The Accountant General may re-date any such certificate, provided that no alteration in the amount or description of funds has been made since the certificate was issued.

(4) When a cause or matter has been inserted in the list referred to in rule 16, that fact shall be notified in the certificate relating thereto.

Publication of list of funds in Court (O. 90, r. 16)

16. In the month of January in every year the Accountant General shall cause to be published in the *Gazette* a list of accounts not dealt with for a period of ten years or more and shall give the title and number of the cause or matter and the title of the

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ledger credit in which funds are outstanding, and the balance of the funds in each account.

Unclaimed funds in Court with Accountant General (O. 90, r. 17)

17. (1) The funds in Court appearing from the books and accounts to have been in the custody with the Accountant General for a period of fifteen years and upwards, without any claim having been made and allowed thereto during that period, shall be transferred and paid to the Government for the general purposes of the State.

(2) If any claim is made to any part of the funds in Court which are transferred and paid to the Government under paragraph (1), and if such claim is established to the satisfaction of the Court, the Government shall pay to the claimant the amount of the principal so transferred and paid as aforesaid, or so much thereof as appears to be due to the claimant.

(3) Nothing in this rule shall authorize the transfer of any funds standing to the separate credit of an infant, or held in an infant's account pending the coming of age of such infant, until such infant comes of age or dies.

Payment to Sheriff

Sheriff to keep an account book (O. 90, r. 18)

18. (1) The Sheriff shall keep an account of all sums of money paid or deposited with him and of all sums of money paid out by him in an account book in Form 197A.

(2) All money paid or deposited with the Sheriff shall be kept in a bank or with the Accountant General.

How money paid to Sheriff (O. 90, r. 19)

19. Money paid or deposited with the Sheriff under these Rules or a judgment or order of a Court shall be paid to the proper officer in the Registry who shall give a receipt for every sum of money received by him.

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Payment in under judgment or order (O. 90, r. 20)

20. Where any payment is made under a judgment or order the person making the payment shall produce a copy of the judgment or order and he shall give notice to the person entitled to the money.

Money not required for making payments on day of receipt (O. 90, r. 21)

21. Any money paid or deposited with the Sheriff that is not required for making payments on that day shall be paid into the bank or to the Accountant General, as the case may be:

Provided that where payment to the bank or to the Accountant General, as the case may be cannot be made on the day of receipt, it shall be made on the morning of the next working day.

Accountant General to grant an imprest (O. 90, r. 22)

22. (1) Where the money is kept by the Accountant General, he shall grant an imprest to the Sheriff and the imprest shall be kept by the Sheriff in the bank.

(2) All cheques in respect of the bank account shall be signed by the Sheriff and another officer appointed by the Registrar.

Cash book for imprest (O. 90, r. 23)

23. (1) The Sheriff operating the imprest shall maintain a Cash Book in which shall be entered all sums received under the imprest (including reimbursements from the Accountant General) and all payments made from the imprest.

(2) A supervisory officer shall be made personally responsible for making (at least once a week) surprise checks of the Cash Book, for comparing all the entries with receipted vouchers and other relevant documents and for ensuring that the balance of cash agrees with the balance shown in the Cash Book, and the officer shall also satisfy himself that cash is not drawn from the bank in excess of normal requirements.

(3) A record of all surprise inspections shall be made in the Cash Book.

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How payments from imprest to be made (O. 90, r. 24)

24. (1) All payments from the imprest shall be made by cheques and an acknowledgement received or a receipt obtained from the person to whom the cheque is paid.

(2) When the balance of the imprest reaches a figure sufficient for seven days' anticipated requirements, the Cash Book shall be balanced and the sums paid from the imprest recovered from the Accountant General.

(3) The receipts shall be attached to a bill showing the total amount of the payments; if the receipts are numerous, the receipts and a machine-list of the amounts only may be attached to the bill.

(4) This bill and attachments shall be sent to the Accountant General at least seven days before the money is actually required.

Proof before payment out (O. 90, r. 25)

25. Before any money is paid out to any person, the Sheriff shall require proof to his satisfaction that the person applying for payment is the person entitled or authorized to receive it.

Where money due to Government under any law (O. 90, r. 26)

26. Before any money is paid out under any order directing the payment out of any money paid or deposited with the Sheriff, the Sheriff shall satisfy himself that any money due to the Government under any written law of which he has notice has been paid or deducted.

When payment to be made by cheque (O. 90, r. 27)

27. (1) All payments by the Sheriff of an amount exceeding fifty ringgit shall be made by cheque payable to the person entitled to receive the payment and marked "payable only within thirty days from date".

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(2) If the payment is to be made to—

(a) any Government department;

(b) any body corporate;

(c) a solicitor; or

(d) a moneylender under the Moneylenders Act 1951,

the cheque shall be crossed to the payee's account and marked "not negotiable".

(3) Where a cheque has not been cashed within thirty days of its date a fresh cheque may be issued to replace it.

ORDER 91

COURT FEES

Court fees (O. 91, r. 1)

1. The fees and percentages in Appendix B shall be taken and paid in all causes and matters in the Court, provided that—

(a) nothing herein shall affect any fees fixed by any written law not by these Rules expressly or impliedly repealed; and

(b) in proceedings by or against a Government or a department of a Government, the Government or the department of the Government, as the case may be, shall not be required to pay any Court fees, but in case any decree, order or judgment shall provide that costs be paid by any party to the proceeding to such Government or such department of the Government, as the case may be, the amounts which would have been payable as fees but which for this proviso have not been paid, shall be

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payable by such party, as, when recovered, shall be paid to the Registry of the Court at which such decree, order or judgment was given.

Manner of payment of fees (O. 91, r. 2)

2. The fees and percentage to be taken and paid under this Order shall be collected in such manner as the Chief Judge may from time to time direct.

ORDER 92

MISCELLANEOUS

Language of documents (O. 92, r. 1)

1. (1) Subject to paragraph (2), any document required for use in pursuance of these Rules shall be in the national language and may be accompanied by a translation thereof in the English language, except that the translation for the purpose of Order 11, rule 6(4) and rule 7(1) shall be prepared in accordance with rule 6(5) of that Order:

Provided that any document in the English language may be used as an exhibit, with or without a translation thereof in the national language.

(2) For Sabah and Sarawak, any document required for use in pursuance of these Rules shall be in the English language and may be accompanied by a translation thereof in the national language except that the translation for the purpose of Order 11, rule 6(4) and rule 7(1) shall be prepared in accordance with rule 6(5) of that Order.

(3) An affidavit prepared in a foreign language shall be filed with a translation of such affidavit by a qualified translator or solicitor by annexing the affidavit and the translation thereof as exhibits to an affidavit by the translator or solicitor verifying the translation.

(4) In cases of urgency, proceedings may be commenced or conducted partly in the English language or wholly in the English language provided that—

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(a) a certificate of urgency explaining the urgency of the matter is filed by the solicitor; and

(b) copies of all such documents in the national language shall be filed within two weeks or within such extended period as the Court may allow:

Provided that:

(a) any document in the national language may be used as an exhibit, with or without a translation thereof in the English language; and

(b) any document in the English language may be used as an exhibit, with or without a translation thereof in the national language.

Seal of the Court (O. 92, r. 2)

2. Every document issued by the Registry for which a form marked with the word "seal" as prescribed in Appendix A shall bear the seal of the Court.

Insufficient or excess filing fees (O. 92, r. 2A)

2A. Where any document is filed in Court with insufficient or excess fees, the Registrar shall accept those documents and shall give notice to the solicitor or party concerned to make good the shortfall within seven days, failing which the Registrar is at liberty to reject the documents. Where any document is filed in Court with excess fees, the excess fees shall be treated as revenue and need not be refunded.

Rejection of irregular documents (O. 92, r. 3)

3. *(There is no rule 3)*

(O. 92, r. 3A)

3A. *(There is no rule 3A)*

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Practice directions (O. 92, r. 3B)

3B. The Chief Judge after consulting the Chief Justice may issue such practice directions as may be necessary for the better carrying out or giving effect to the provisions of these Rules.

Inherent powers of the Court (O. 92, r. 4)

4. For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

ORDER 93

SMALL CLAIMS PROCEDURE

Application (O. 93, r. 1)

1. (1) This Order shall have effect in proceedings in the Magistrates' Court between an individual plaintiff and a defendant.

(2) In this Order, "plaintiff" means an individual person who is not an agent or assignee of any debt of another person.

Limit of claim (O. 93, r. 2)

2. This Order shall apply to claims where the amount in dispute or the value of the subject matter of the claim does not exceed five thousand ringgit.

Form of claim (O. 93, r. 3)

3. (1) Every such claim shall be in Form 198.

(2) The plaintiff shall state in Form 198 the amount and particulars of the claim.

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Claim to be signed (O. 93, r. 4)

4. (1) Form 198 shall be signed or thumbprinted by the plaintiff personally.

(2) *(There is no paragraph (2))*

Filing and service (O. 93, r. 5)

5. (1) Form 198 shall be filed in four copies in the Registry upon payment of the prescribed fee.

(2) The service of Form 198 may be effected by personal service or by prepaid registered post addressed to the last known address of the defendant.

Defence and counterclaim (O. 93, r. 6)

6. (1) If the defendant who has been duly served with Form 198 disputes the claim, he may deliver his defence in Form 199 to be filed in four copies within fourteen days after service of the claim.

(2) Form 199 shall contain particulars as to why the defendant disputes the claim and if the defendant has a counterclaim, he shall state the amount and the particulars of the counterclaim in that form.

(3) Form 199 shall be signed or thumbprinted by the defendant personally.

(4) The service of Form 199 shall be effected in the manner prescribed in rule 5(2).

(5) Where there is a counterclaim**,** the plaintiff may file a defence to such counterclaim in Form 200.

No legal representation (O. 93, r. 7)

7. A party to any suit in this Court shall not be represented by a solicitor, except where the defendant is required by law to be represented by an authorized person.

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Judgment in default (O. 93, r. 8)

8. (1) If the defendant does not file his defence in Form 199 as required in rule 6(1), the Court may give judgment in Form 201 for the plaintiff on the hearing date or may in its discretion adjourn the hearing to enable the defendant to file his defence.

(2) Order 35, rules 1 and 2 shall apply where both parties are absent at the hearing or where either party is absent at the hearing.

(3) Where the defendant is absent, the judgment to be entered shall be in Form 202, and where the plaintiff is absent, the judgment to be entered shall be in Form 203.

Admission of claim (O. 93, r. 9)

9. Where the defendant in his statement of defence admits the claim, the judgment to be entered shall be in Form 204.

Application for setting aside judgment (O. 93, r. 10)

10. (1) Any judgment or order obtained where one party does not appear at the hearing or any judgment obtained pursuant to rule 8(1), may be set aside by the Court on the application of the aggrieved party in Form 205 on such terms as the Court thinks just.

(2) An application under this rule shall be made within twenty-one days after the service of the judgment or order or within such further time as the Court may, in its discretion, allow.

Service of judgment or order (O. 93, r. 11)

11. Every judgment or order made or given under this Order shall be served on the person against whom the judgment or order is made or given by prepaid registered post by the Court.

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Continuation of proceedings where counterclaim exceeds limit (O. 93, r. 12)

12. (1) Notwithstanding anything contained in this Order, where a counterclaim together with any interest thereon at the date of filing exceeds the sum of five thousand ringgit, this Order shall cease to apply and the Court shall proceed to hear the case as if the claim had been begun by a summons under Order 5. Order 14 shall not apply to a case under this rule.

(2) Where the judgment entered by the Court on a counterclaim in paragraph (1) does not exceed five thousand ringgit, rule 15 of this Order shall apply in respect of costs.

Settlement (O. 93, r. 13)

13. (1) At the hearing of any matter before the Court, the Court shall where possible assist the parties to effect the settlement of a case by consent.

(2) Any judgment obtained by consent shall be in Form 206.

(3) If the matter is not settled, the Court may proceed to hear the case and give a decision thereon or may adjourn it to another date for final disposal, and the judgment to be entered after a hearing shall be in Form 207.

Power of Magistrate (O. 93, r. 14)

14. (1) Before deciding on the case, the Court may ask the parties for further information and in particular for a short description of the claim and the defence, as the case may be, if such description has not been adequately supplied earlier.

(2) The Court shall consider the documentary or other evidence, including affidavit evidence, tendered by the parties and in their presence shall hear such oral evidence and argument, including written argument, as the parties may submit.

Costs (O. 93, r. 15)

15. (1) The Court may in its discretion award costs not exceeding one hundred ringgit to any one party.

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(2) Costs for advocacy shall not be allowed in proceedings under this Order.

Enforcement of judgments and orders (O. 93, r. 16)

16. (1) Where a judgment or order has been served under rule 11, and the person against whom the judgment or order is made or given (which is referred to as the "judgment debtor") has not complied with the judgment or order, the party who has obtained the judgment or order may file in the Court a notice to show cause in Form 208, and serve in accordance with rule 5(2) a copy of it on the judgment debtor.

(2) The Court after examining the judgment debtor may—

(a) order a writ of seizure and sale to be issued in Form 84 with such modification as may be necessary as to endorsement;

(b) allow the judgment debtor time to settle the judgment debt, or pay the debt by instalments; or

(c) order the judgment debtor to be committed to prison.

ORDER 94

REPEAL, SAVING AND TRANSITIONAL PROVISIONS

Repeal (O. 94, r. 1)

1. The following Rules are repealed:

(a) the Rules of the High Court 1980 [*P.U. (A) 50/1980*];

(b) the Subordinate Courts Rules 1980 [*P.U. (A) 328/1980*].

Exception (O. 94, r. 2)

2. (1) Order 5, rule 1 shall not apply to the proceedings under the written laws listed in Appendix C, except as provided under these Rules.

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(2) In the event of any inconsistency, the rules under the written laws in Appendix C shall prevail over these Rules.

(3) Any application under any written law, other than those listed in Appendix C, which is by way of a mode other than originating summons or writ, shall be construed to be by way of originating summons in accordance with these Rules.

Savings and transitional (O. 94, r. 3)

3. (1) Notwithstanding rule 1, Order 91 of the High Court Rules 1980 and Order 48, rule 63 of the Subordinate Court Rules 1980 shall not be affected by the repeal of the High Court Rules 1980 and the Subordinate Court Rules 1980 respectively, and remain in operation until Order 91 of these Rules comes into operation.

(2) Any pending action or application that was commenced by way of petition, motion or originating motion before the date of coming into operation of these Rules shall not be affected by these Rules and shall continue as if these Rules had not been enacted.

(3) All references to the Rules of the High Court 1980 and the Subordinate Courts Rules 1980 in any written laws and any documents shall, on the coming into operation of these Rules, be construed as references to the Rules of Court 2012.

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APPENDIX A

LIST OF FORMS

Form No.		Order		Rule
1.	Order for Consolidation… … … … … … … … … … … … … … … …..	4	…	1
2.	Writ… …	6	…	1
3.	Notice of Renewal of Writ … … … … … … … … … … … … … … … …	6	…	7
		46	…	6
4.	*(Deleted)*			
5.	Originating Summons (Where Appearance Not Required)… …	7	…	2
6.	*Ex Parte* Originating Summon … … … … … … … … … … …… … …	7	…	2
7.	Notice of Writ to be Served Out of Jurisdiction… … … … … … …	11	…	3
8.	Affidavit for Leave to Serve Writ Out of Jurisdiction… … … …	11	…	4
8A.	Originating Summons for Possession under Order 89… … …	89	…	2
9.	Order for Service out of Jurisdiction… … … … … … … …… … …	11	…	4
10.	Request for Service of Document Abroad… … … … … … … … …	11	…	6
11.	Memorandum of Appearance … … … … … … … … … … … … … …	12	…	2
12.	Certificate of Non-Appearance… … … … … … … … … … … … …	13	…	7
13.	Affidavit on Application under Order 14, rule 2, by or on behalf of Plaintiff… … … … … … … … … … …… … … … … … … …	14	…	2
14.	Notice to be Endorsed on Copy of Counterclaim… … … … … …	15	…	3
15.	Memorandum of Appearance to Counterclaim… … … … … …	15	…	3
16.	Memorandum of Appearance of Person added as Defendant	15	…	8
17.	Notice of Action… … … … … … … … … … … … … … … … … … …	15	…	13A
18.	Third Party Notice Claiming Contribution or Indemnity or other Relief or Remedy… … … … … … … … … … … … … … … …	16	…	1
19.	Third Party Notice where Question or Issue to be Determined… …	16	…	1
20.	Notice for Leave to Issue a Third Party Notice… … … … … … …	16	…	2
21.	Memorandum of Appearance of Third Party… … … … … … …	16	…	4
22.	Notice for Third Party Directions … … … … … … … … … … … …	16	…	4
23.	Order for Third Party Directions… … … … … … … … … … … …	16	…	4
24.	Notice by Claimant of Property taken in Execution… … … … …	17	…	2
25.	Notice by Sheriff of Property taken in Execution … … … … …	17		2

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26.	Notice by Execution Creditor of Property taken in Execution	17	...	2
27.	Application for an Interpleader Notice: By Sheriff	17	...	3
28.	Application to Interplead by a Person under Liability	17	...	3
29.	Interpleader Notice...	17	...	4
30.	Judgment (or Order) on Interpleader Notice...	17	...	11
31.	Particulars Served pursuant to Request or Order...	18	...	12
32.	Notice of Discontinuance...	21	...	2
33.	Notice of Application for Interim Payment...	22A	...	2
34.	Offer to Settle...	22B	...	1
35.	Notice of Withdrawal of Offer...	22B	...	3
36.	Acceptance of Offer...	22B	...	6
37.	Offer to Contribute...	22B	...	11
38.	List of Documents...	24	...	5
39.	Affidavit Verifying List of Documents...	24	...	5
40.	Notice to Inspect Documents...	24	...	9
41.	Notice to Produce Documents Referred to in Pleadings or Affidavits...	24	...	10
42.	Notice where Documents may be Inspected...	24	...	10
43.	Order for Production of Documents and Inspection	24	...	11
44.	Notice for Interrogatories...	26	...	1
45.	Interrogatories...	26	...	1
46.	Order for Interrogatories	26	...	1
47.	Answer to Interrogatories...	26	...	1
48.	Notice to Admit Facts	27	...	2
49.	Admission of Facts, Pursuant to Notice...	27	...	2
50.	Notice to Admit Documents...	27	...	5
51.	Notice of Non-Admission...	27	...	5
52.	Notice to Produce...	27	...	5
53.	Order for Interim Injunction...	29	...	1
54.	Receiver's Security by Undertaking...	30	...	2
55.	Affidavit Verifying Receiver's Account	30	...	4
56.	Certificate of Results of Sale...	31	...	3

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57.	Notice of Application … … … … … … … … … … … … … … … … … …	32	…	1
58.	Notice of Intention to use Affidavit… … … … … … … … … … … …	32	…	13
59.	Notice to Attend Pre-Trial Case Management… … … … … … …	34	…	3
60.	Notice for Directions… … … … … … … … … … … … … … … … …	34	…	9
61.	Certificate of Officer After Trial… … … … … … … … … … … …	35	…	7
62.	List of Exhibits… … … … … … … … … … … … … … … … … … …	35	…	8
62A.	Notice of Appointment of Assessment of Damages… … … … …	37	…	1
63.	Subpoena to Testify… … … … … … … … … … … … … … … … … …	38	…	14
64.	Subpoena to Produce Documents… … … … … … … … … … … …	38	…	14
65.	Subpoena to Testify and Produce Documents… … … … … … …	38	…	14
66.	*Praecipe* for Subpoena… … … … … … … … … … … … … … … … …	38	…	14
67.	Affidavit for an Order for the Production of a Person in Prison… …	38	…	21
68.	Order to Produce Person in Prison… … … … … … … … … … … …	38	…	21
69.	Order for the Examination before Trial… … … … … … … … … …	39	…	1
70.	Order for Issue of Letter of Request to Judicial Authority Out of Jurisdiction… … … … … … … … … … … … … … … … … … … …	39	…	2
71.	Order for Appointment of Examiner to take Evidence of Witness Out of Jurisdiction	39	…	2
72.	Letter of Request for Examination of Witness Out of Jurisdiction… …	39	…	3
73.	Solicitor's Undertaking as to Expenses… … … … … … … … … …	39	…	3
74.	Forms of Jurat …	41	…	1
75.	Judgments… … … … … …… … … … … … … … … … … … … … … …	42	…	5
76.	Order for Accounts and Inquiries … … … … … … … … … … … …	43	…	2
76A.	Notice of Appointment for Taking of the Account… … … … …	43	…	3
77.	Notice of Judgment or Order… … … … … … … … … … … … … …	44	…	3
78.	Form of Advertisement for Creditors… … … … … … … … … … …	44	…	10
79.	Form of Advertisement for Claimants other than Creditors…	44	…	10
80.	Affidavit Verifying List of Creditor's Claim… … … … … … … …	44	…	12
81.	Affidavit Verifying List of Claims other than Creditor's Claim	44	…	12
82.	Certificate of Registrar… … … … … … … … … … … … … … … …	44	…	21
83.	Notice on Certain Judgments… … … … … … … … … … … … … …	45	…	7

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84.	Writ of Seizure and Sale (Movable Property) … … … … … … …	45	…	12
85.	Writ of Seizure and Sale (Immovable Property)… … … … … …	45	…	12
86.	Writ of Delivery … … … … … … … … … … … … … … … … … … …	45	…	12
87.	Writ of Possession… … … … … … … … … … … … … … … … … …	45	…	12
88.	Notice for Leave to Issue Execution … … … … … … … … … … …	46	…	3
89.	*Praecipe* for Writ of Execution … … … … … … … … … … … …	46	…	4
90.	Consent to Entry of Satisfaction… … … … … … … … … … … …	46	…	9
91.	Notice of Seizure and Inventory… … … … … … … … … … … …	46	…	16
		75		4
92.	Notice of Sale… … … … … … … … … … … … … … … … … … … …	46	…	23
93.	Order Suspending Judgment or Order for Payment by Installments, Execution… … … … … … … … … … … … … … … …	46	…	26A
94.	Sheriff's/Bailiff's Notice Seizing Securities… … … … … … …	47	…	8
95.	Affidavit in Support of Application for Order for Examination of Judgment Debtor… … … … … … … … … … … … … … …	48	…	1
96.	Order for Examination of Judgment Debtor… … … … … … … …	48	…	1
97.	Garnishee Order to Show Cause … … … … … … … … … … … …	49	…	1
98.	Affidavit in Support of Garnishee Order… … … … … … … …	49	…	2
99.	Garnishee Order… … … … … … … … … … … … … … … … … … …	49	…	4
100.	Order for Issue between Judgment Creditor and Garnishee…	49	…	5
101.	Order Absolute Imposing Charge on Securities … … … … … …	50	…	2
102.	Order Imposing Charge on Securities: Order to Show Cause…	50	…	2
103.	Affidavit and Notice under Order 50, rule 10… … … … …… …	50	…	10
104.	Order on Originating Summons Restraining Transfer of Stock, *etc.* …	50	…	14
105.	Notice for Appointment of Receiver… … … … … … … … … …	51	…	3
106.	Orders for Appointment of Receiver, *etc*…. … … … … … … …	51	…	3
107.	Order of Committal… … … … … … … … … … … … … … … … …	52	…	2
108.	Warrant for Committal… … … … … … … … … … … … … … … …	52	…	10
109.	Application for Judicial Review… … … … … … … … … … … …	53	…	2
110.	Notice of Hearing of Application for Judicial Review … … … …	53	…	4
111.	Notice of Appeal (After Trial)… … … … … … … … … … … … …	55	…	3
111A.	Notice of Appeal (other than a Decision made After Trial) …	55	…	5

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112.	Memorandum of Appeal… … … … … … … … … … … … … … … … … …	55	…	4
113.	Notice of Cross Appeal … … … … … … … … … … … … … … … … … …	55	…	8
114.	Notice to Judge in Chambers… … … … … … … … … … … … … … …	56	…	1
115.	Notice of Transfer of Action to High Court… … … … … … … …	57	…	2
116.	Notice of Hearing of Action Transferred from High Court… …	57	…	4
117.	Bill of Costs …	59	…	7
118.	Cause Book …	60	…	2
119.	Originating Applications Book… … … … … … … … … … … … …	60	…	2
120.	Interpleader Notice Summons Book… … … … … … … … … … …	60	…	2
121.	Interlocutory Applications Book… … … … … … … … … … … … …	60	…	2
122.	Judgment Book… … … … … … … … … … … … … … … … … … … …	60	…	2
123.	Writs of Execution Book… … … … … … … … … … … … … … … …	60	…	2
124.	Distress Book… …	60	…	2
125.	Probate Book… …	60	…	2
126.	Caveat Book… …	60	…	2
127.	Service Book… …	60	…	2
128.	Adoption Book …	60	…	2
129.	Direction to Accountant General … … … … … … … … … … … …	60	…	2
130.	Index of Wills… … … … … … … … … … … … … … … … … … … …	60	…	2
131.	Register of Appeals to the Court of Appeal… … … … … … … …	60	…	2
132.	Register of Appeals from Subordinate Courts… … … … … … …	60	…	2
133.	Order for Substituted Service… … … … … … … … … … … … …	62	…	5
134.	Affidavit on Application for Substituted Service… … … … … …	62	…	5
135.	Affidavits of Service… … … … … … … … … … … … … … … … …	62	…	9
136.	Notice of Change of Solicitor… … … … … … … … … … … … …	64	…	1
137.	Notice of Intention of Party to Act in Person in place of Solicitor… …	64	…	3
138.	Notice to Remove Solicitor from Record… … … … … … … … …	64	…	4
139.	Order Removing Solicitor from the Record… … … … … … … …	64	…	4
140.	Notice of Application for Withdrawal of Solicitor … … … … …	64	…	5
141.	Order for Withdrawal of Solicitor… … … … … … … … … … …	64	…	5
142.	Certificate of Service of Foreign Process… … … … … … … …	65	…	2

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143.	Order for Registration of Foreign Judgment… … … … … … … …	67	…	5
144.	Certificate under the Reciprocal Enforcement of Judgment Act 1958 [*Act 99*] …	67	…	13
145.	Certificate under the Reciprocal Enforcement of Judgment Act 1958 [*Act 99*] …	67	…	13
146.	Writ of Summons in Action *In Rem*… … … … … … … … … … … … .	70	…	2
147.	Warrant of Arrest… … … … … … … … … … … … … … … … … … … …	70	…	4
148.	*Praecipe* for Warrant of Arrest … … … … … … … … … … … … …	70	…	4
149.	*Praecipe* for Caveat against Arrest… … … … … … … … … … … …	70	…	5
150.	*Praecipe* for Service of Writ *In Rem* by Sheriff… … … … … … …	70	…	7
151.	Release… …	70	…	12
152.	*Praecipe* for Issue of Release … … … … … … … … … … … … … …	70	…	12
153.	*Praecipe* for Caveat against Release and Payment… … … … …	70	…	13
154.	*Praecipe* for Withdrawal of Caveat… … … … … … … … … … … …	70	…	14
155.	Bail Bond …	70	…	15
156.	*Praecipe* for Commission for Appraisement and Sale… … … …	70	…	22
157.	Commission for Appraisement and Sale… … … … … … … … …	70	…	22
158.	Notice of Filing of Application for Probate or Administration (or Caveat), *et.* …	71	…	4
		71	…	37
159.	Affidavit Pursuant to the Probate and Administration Act 1959… …	71	…	5
160.	Renunciation… …	71	…	31
161.	Administration Oath… … … … … … … … … … … … … … … … … … …	71	…	33
162.	Administration Bond… … … … … … … … … … … … … … … … … …	71	…	34
163.	Grants… …	71	…	35
164.	Caveat… …	71	…	37
165.	Warning to Caveator… … … … … … … … … … … … … … … … … …	71	…	37
166.	Appearance to Warning or Citation… … … … … … … … … … …	71	…	37
		71	…	37
167.	Citations …	71	…	41
168.	Memorandum of Resealing… … … … … … … … … … … … … … …	71	…	49
169.	Form for Notice for Resealing… … … … … … … … … … … … … …	71	…	49
170.	Certificate of Order for Costs against the Government… … …	73	…	12

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171.	Order to Arrest Absconding Judgment Debtor… … … … … …	74	…	3
172.	Order to Arrest Non-Appearing Judgment Debtor… … … … …	74	…	3A
173.	Order of Arrest… … … … … … … … … … … … … … … … … … … …	74	…	6
174.	Request for Judgment Debtor Summons … … … … … … … … …	74	…	11A
175.	Notice of Application for Leave to Issue Judgment Debtor Summons… …	74	…	11C
176.	Affidavit for Leave to Issue a Judgment Debtor Summons … …	74	…	11C
177.	Judgment Debtor Summons… … … … … … … … … … … … … … …	74	…	11D
178.	*Praecipe* for Judgment Notice … … … … … … … … … … … … … …	74	…	12
179.	Judgment Notice… … … … … … … … … … … … … … … … … … …	74	…	13
180.	Order of Commitment… … … … … … … … … … … … …… … …	74	…	15
181.	Certificate of Satisfaction… … … … … … … … … … … … … … …	74		17
182.	Order of Discharge… … … … … … … … … … … … … … … … …	74	…	17
183.	Order Suspending an Order of Commitment or for Discharge of Debtor… …	74	…	22A
184.	Affidavit in Support of Application for Distress… … … … … …	75	…	2
185.	Authority to Distrain… … … … … … … … … … … … … … … … …	75	…	2
186.	Writ of Distress… … … … … … … … … … … … … … … … … … … …	75	…	3
187.	Authority to Follow Goods… … … … … … … … … … … … … … …	75	…	10
188.	Consent of Next Friend or Guardian *ad litem* of Person under Disability… …	76	…	3
189.	Certificate by Solicitor for Person under Disability… … … … …	76	…	3
190.	Order for Particulars (Partnership)… … … … … … … … … … …	77	…	2
191.	Notice of Service on Manager of Partnership… … … … … … …	77	…	3
191A.	Originating Summons under Hire Purchase Act 1967… … … …	85	…	2
192.	Request for Enforcement of Order of Director General of Labour… …	86A	…	2
193.	Register of Orders of the Director General of Labour… … … …	86A	…	4
194.	Title of Proceedings Enforcement of Order of Director General of Labour… … … … … … … … … … … … … … … … … … … …	86A	…	6
195.	Order for Possession under Order 89… … … … … … … … … …	89	…	6
196.	Authority to Company to Register Transfer… … … … …… … …	90	…	4
197.	Statutory Declaration … … … … … … … … … … … … … … … … …	90	…	11
197A.	Account Book… …	90	…	18

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198.	Writ… …	93	…	3
199.	Statement of Defence/Counterclaim… … … … … … … … … … … … … … …	93	…	6
200.	Defence to Counterclaim… … … … … … … … … … … … … … … … … … … …	93	…	6
201.	Judgment for Plaintiff where Defendant did not File Statement of Defence… …… …	93	…	8
202.	Judgment for Plaintiff where Defendant Absent… … … … … … … …	93	…	8
203.	Judgment for Defendant where Plaintiff Absent… … … … … … … …	93	…	8
204.	Judgment where Defendant Admits Claim … … … … … … … … … …	93	…	9
205.	Application for Setting Aside Judgment or Order… … … … … … …	93	…	10
206.	Consent Judgment… …	93	…	13
207.	Judgment after Hearing … … … … … … … … … … … … … … … … … … …	93	…	13
208.	Notice to Judgment Debtor to Show Cause in the Magistrates' Court… …	93	…	16

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APPENDIX A

FORMS
No. 1

ORDER FOR CONSOLIDATION (O. 4, r. 1)

(*Title as in action*)

Upon the application of ..... the plaintiff (or the defendant) in this action and upon reading the affidavit of ..... filed the ..... day of ....., 20..... and upon hearing……..

It is ordered that Writ No ..... be consolidated with Writ No ..... and do proceed as one action and it is further ordered that the title of Writ No ..... be amended by adding to it the titles of ..... (state the numbers of the writ which are being consolidated). (State any other orders or directions given by the Court).

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

(Seal)

.....
Registrar

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No. 2

WRIT (O. 6, r. 1)

IN THE COURT OF MALAYA/SABAH & SARAWAK AT ……
Suit No ..... of 20.....

Between

..... Plaintiff

and

..... Defendant

THE HONOURABLE CHIEF
JUDGE OF MALAYA/SABAH&SARAWAK, IN THE NAME OF THE YANG DI-PERTUAN AGONG

To.....

We command you that within fourteen days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in a cause at the suit of ..... and take notice, that in default of your so doing the plaintiff may proceed therein to judgment and execution.

WITNESS ..... Registrar of the Court in.....the.....day of ....., 20.....

....

Plaintiff's Solicitors *Registrar, Court*

Memorandum to be Subscribed on the Writ

This writ may not be served more than six calendar months after the above date unless renewed by order of court.

The defendant (or defendants) may appear hereto by entering an appearance (or appearances) either personally or by a solicitor at the Registry of the Court.

A defendant appearing personally may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for RM ..... with an addressed envelope to the Registrar, Court at .....

Endorsements to be made on writ before issue

Endorsement of claim

The plaintiff's claim is for ..... (if the plaintiff's claim is for a debt or liquidated demand only, the following endorsement must be added at the foot of that claim :)

And RM ..... (or such sum as may be allowed on taxation for costs, and also, if the plaintiff obtains an order for substituted service, the further sum of RM.....(or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff or his solicitor within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed, but if it appears from the endorsement on the writ that the plaintiff is resident outside the scheduled territories, as defined by the Exchange Control Act 1953, or is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed and costs is paid into court within the said time and notice of such payment in is given to the plaintiff or his solicitor.

(If the plaintiff sues, or the defendant is sued, in a representative capacity, this must be stated in the endorsement of claim).

Endorsement as to solicitor and address

This writ is issued by ..... of ..... solicitor for the said plaintiff whose address is ..... (or where the plaintiff sues in person). This writ is issued by the said plaintiff who resides at

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..... and is (state occupation) and (if the plaintiff does not reside within the jurisdiction) whose address for service is .....).

Endorsement as to service

This Writ was served by ..... by way of personal service (or as may) (state manner of service or in accordance with the terms of an order for substituted service) on the defendant (who is known to me) (or who was pointed out to me by .....) (or who admitted to me that he was .....) at (place) on.....the ..... day of ....., 20.....

Endorsed the.....day of .....,20.....

.....
Process Server

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No. 3

NOTICE OF RENEWAL OF WRIT (O. 6, r. 7) (O. 46, r. 6)

Renewed for ..... months from the ..... day of ....20..... by an order of Court dated the ..... day of .....20.....
Dated the ..... day of ..... 20.....

.....
Registrar

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No. 4

ORIGINATING SUMMON (O. 7, r. 2)
(*Where Appearance Required*)
(Deleted)

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No. 5

ORIGINATING SUMMONS (O. 7, r. 2)
(*Where Appearance Not Required*)
IN THE COURT OF MALAYA/SABAH & SARAWAK AT .....
O.S. No..... of ..... 20.....
(In the matter of .....)

Between

..... Plaintiff

and

..... Defendant

Let ..... of ..... attend before the Judge (or Registrar) in Chambers on..... the ..... day of ....., 20..... , at ..... m, on the hearing of an application by the plaintiff that ……..

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

.....
Registrar

Memorandum to be subscribed on the summons

This summons is taken out by ..... of ..... solicitor for the said plaintiff whose address is ..... (Or where the plaintiff sues in person) this summons is taken out by the said plaintiff who resides at ..... and is (state occupation) and (if the plaintiff does not reside within the jurisdiction) whose address for service is .....
Note--This summons may not be served more than 12 calendar months after the above date unless renewed by order of the Court.
If a defendant does not attend personally or by his counsel or solicitor at the time and place abovementioned such order will be made as the Court may think just and expedient.

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No. 6

EX- PARTE ORIGINATING SUMMONS (O. 7, r. 2)

IN THE COURT OF MALAYA/SABAH & SARAWAK AT .....
O.S. No.....of 20.....

Let all parties concerned attend before the Judge (or Registrar) in Chambers on ..... the.....day of ....., 20.., at .....am/pm., on the hearing of an application by ..... that .....
Dated the ..... day of....., 20.....

.....
Registrar

This summons is taken out by ..... of ..... solicitor for the applicant whose address is .....

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No. 7

NOTICE OF WRIT TO BE SERVED OUT OF JURISDICTION (O. 11, r. 3)

(*Title as in action*)

To ……

Take notice that ..... of ..... has begun an action against you, ... in the Court of Malaya/Sabah&Sarawak at ..... by writ dated the ..... day of .....20....., which writ is endorsed as follows (copy the endorsements) and you are required within ..... days after receipt of this notice, inclusive of the day of receipt, to cause an appearance to be entered for you in the said Court to the said action, and in default of your so doing the said ..... may proceed therein and judgment may be given in your absence.

You may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the Court, or (2) by sending them by post to the Registrar, Court at .....

If writ is endorsed with a statement of claim, add:
If you enter an appearance, then, unless a notice of application for judgment is served on you in the meantime, you must also serve a defence on (the solicitor for) the plaintiff within ……. days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against you without notice.

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

By Order of the Court.

(Seal)

.....
Registrar

This notice was served by me at ..... on the defendant ..... on ..... the .....

Endorsed the ..... day of..... ,20.....

.....
Process server

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No. 8

AFFIDAVIT FOR LEAVE TO SERVE WRIT OUT OF JURISDICTION (O. 11, r. 4)

(*Title as in action*)

I (name, address and description of deponent) do make oath (or affirm) and say as follows:

1. I reside at .....and am a .....
2. I verily believe that I have a good cause of action against the abovenamed intended defendant (state the grounds on which the application is founded and where the action arose).
3. The said intended defendant is at present residing (or carrying on business) at ..... in the State of .....
4. At least ..... days will probably be necessary to effect service on the intended defendant and to enable him to enter an appearance in the Registry of the Court.
5. I apply for leave to serve the same on the said intended defendant ..... at ..... or elsewhere as he may be found in the State of .....

Sworn (or affirmed) as in Form 74.

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No. 8A

ORIGINATING SUMMONS FOR POSSESSION
UNDER ORDER 89 (O. 89, r. 2)

IN THE COURT OF M ALAYA/SABAH & SARAWAK AT .....
O.S. No.....of 20.....

(In the matter of .....)

Between

AB *Plaintiff*

and

CD *Defendant (if any) whose name is known to the plaintiff*

To (CD and) every (other) person in occupation of ..... Let all persons concerned attend before the Judge in Chambers on .....day, the ..... day of ..... 20....., at ..... o'clock, on the hearing of an application by AB for an order that he do recover possession of .....on the ground that he is entitled to possession and that the person(s) in occupation is (are) in occupation without licence or consent.

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

This summons was taken out by ..... solicitor for the said plaintiff whose address is ..... (or where the plaintiff sues in person).

This summons was taken out by the said plaintiff who resides at ..... and is (state occupation) and (if the plaintiff does not reside within the jurisdiction) whose address for service is .....

Note-Any person occupying the premises who is not named as a defendant by this summons may apply to the Court personally or by counsel or solicitor to be joined as a defendant. If a person occupying the premises does not attend personally or by counsel or solicitor at the time and place above-mentioned, such order will be made as the Court may think just and expedient.

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No. 9

ORDER FOR SERVICE OUT OF JURISDICTION (O. 11, r. 4)

(*Title as in action*)

Upon the application of ..... the intended plaintiff and upon reading the affidavit of ..... filed the ..... day of ....., 20.... and upon hearing……

It is ordered that the intended plaintiff have leave to issue a notice of a writ of summons (or originating summons) (or as may be) against the intended defendant and to serve the said notice of writ on him at (address at which intended defendant to be served) or elsewhere in (name of country within which service to be effected).

And it is ordered that the time for entry of an appearance in the action by he intended defendant be ..... days after service on him of the notice of writ.

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

(Seal)

.....

Registrar

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No. 10

REQUEST FOR SERVICE OF DOCUMENT ABROAD (O. 11, r. 6)

(*Title as in action*)

I hereby request that the notice of the writ (or as may be describing the document) in this action be sent through the proper channel to (name of country) for service on the (defendant) ....., at ..... or elsewhere in (name of country) and that it may be served .....

(i) through the government of ..... (where the Government is willing to effect service) .....
(ii) through the judicial authority of .....
(iii) through a Malaysian (or British) Consular authority at .....

(delete which methods not desired)

I hereby undertake to be responsible personally for all expenses incurred by the Minister in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the office of the said Minister and to produce a receipt for the payment to the proper officer in the Registry.

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

.....
Solicitor for the.....

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No. 11

MEMORANDUM OF APPEARANCE (O. 12, r. 2)

(*Title as in action*)

To the Registrar,

Enter appearance for (name of defendant) in this action.

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

.....
Solicitor for the defendant

The place of business of (name of solicitor for the defendant) is .....
His address for service is .....

.....
(or defendant in person)

The address of (name of defendant) is .....

His address for service is .....

The said defendant (requires or does not require) a statement of claim to be filed and delivered.

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No. 12

CERTIFICATE OF NON-APPEARANCE (O. 13, r. 7)

(*Title as in action*)

An affidavit of service of (describe document) on the (name of person served) at .....on ..... the ..... day of ....., 20....., having been filed this ..... day of ....., 20.....

IT IS HEREBY CERTIFIED that no appearance has been entered for the said (name of person served).

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

.....
Registrar

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No. 13

AFFIDAVIT ON APPLICATION UNDER ORDER 14 RULE 2, BY OR ON BEHALF OF PLAINTIFF (O. 14, r. 2)

(*Title as in action*)

I ..... of ..... (the abovenamed plaintiff, or solicitor for the abovenamed plaintiff, or clerk to the plaintiff's solicitor, or clerk to the plaintiff, or as may be) do make oath (or affirm) and say as follows:

l. The defendant ..... is, and was at the commencement of this action, justly and truly indebted to (me, or the abovenamed plaintiff) in the sum of RM..... for the ..... The particulars of the said claim appear by the endorsement on the writ in this action.

2. It is within my own knowledge that the said debt was incurred and is still due and owing as aforesaid.

or

(2) I am informed by (state source of information) and/or I verily believe (state grounds of belief) that the said debt was incurred and is still due and owing as aforesaid).
3. I verily believe that there is no defence to this action.
4. I am duly authorized by the plaintiff to make this affidavit (delete if sworn by plaintiff).

Sworn (or affirmed) as in Form 74.

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No. 14

NOTICE TO BE ENDORSED ON COPY OF COUNTERCLAIM (O. 15, r. 3)

To .....

Take notice that, if you intend to defend this counterclaim, an appearance must be entered to the counterclaim on your behalf within 14 days (or if the counterclaim is to be served out of the jurisdiction insert here the time fixed by the order giving leave to serve the counterclaim out of the jurisdiction) after the service of this defence and counterclaim on you, inclusive of the day of service, otherwise judgment may be given against you without further notice.

Directions for entering appearance

The person served with this counterclaim may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the Court, or (2) by sending them by post to the Registrar, Court at .....

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No. 15

MEMORANDUM OF APPEARANCE TO COUNTERCLAIM (O. 15, r. 3)
(*As in Form 11 but substituting for the title of the action the following*):

Between

..... *Plaintiff*

and

..... *Defendant*

(by original action)

And between

..... *the said Plaintiff*

and

..... *the said Defendant*
(by counterclaim)

(and substituting for the request to enter appearance the following):

Enter an appearance for (name of defendant to counterclaim wishing to appear) to the counterclaim of the abovenamed defendant in this action.

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No. 16

MEMORANDUM OF APPEARANCE OF PERSON ADDED AS DEFENDANT (O. 15, r. 8)

(*As in Form 11 but substituting for the title of the action the following:*)

Between

..... *Plaintiff*

and

..... *Defendant*

And between

..... *Plaintiff*

and

..... *Defendant*

(By original writ and by order)

(and substituting for the request to enter appearance the following:)

Enter an appearance for (name of added defendant) who has been served with an order dated the ..... day of ....., 20..... making him a defendant to the action.

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No. 17

NOTICE OF ACTION (O. 15, r. 13A)

(Title as in action)

To of

TAKE NOTICE THAT:

(1) An action has been begun in the High Court/Subordinate Courts in accordance with the writ /originating summons attached hereto.

(2) You are or may be one of the persons who is interested in the estate/trust property to which the action relates.

(3) You may within 14 days after service of this notice enter an appearance using the electronic filing service and thereby become a party to the action.

(4) If you do not enter an appearance you will be bound by any judgment given in the action as if you were a party to it.

Dated this …….. day of …….. 20…….. .

To ……..

Solicitor for ……..

Directions for entering appearance.

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No. 18

THIRD PARTY NOTICE CLAIMING CONTRIBUTION OR INDEMNITY OR OTHER RELIEF OR REMEDY (O. 16, r. 1)

IN THE COURT OF MALAYA/SABAH & SARAWAK AT.....

Suit No.....of 20.....

Between

..... *Plaintiff*

and

..... *Defendant*

and

..... *Third Party.*

THIRD PARTY NOTICE

(Issued pursuant to the order of (name of Judge) dated the..... day of....., 20.....)

To..... of .....

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant (state the nature of the plaintiff's claim) as appears from the writ (or originating summons) a copy whereof is served herewith (together with a copy of the statement of claim).

The defendant claims against you (state the nature of the claim against the third party as for instance to be indemnified against the plaintiff's claim and the costs of this action or contribution to the extent of (one half) of the plaintiff's claim or the following relief or remedy namely.....on the grounds that (state the grounds of the claim)).

And take notice that if you wish to dispute the plaintiff's claim against the defendant, or the defendant's claim against you, an appearance must be entered on your behalf within 14 days (or if the notice is to be served out of the jurisdiction insert the time for appearance fixed by the order giving leave to, and the defendant's against you and your liability to (indemnify the defendant issue the notice and serve it out of the jurisdiction) after the service of this notice on you, inclusive of the day of service, otherwise you will be deemed to admit the plaintiff's claim against the defendant or to contribute to the extent claimed or to ..... (stating the relief or remedy sought) and will be bound by any judgment or decision given in the action, and the judgment may be enforced against you in accordance with Order 16 of the Rules of Court 2012.

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

.....

Solicitor for the defendant

Directions for entering appearance

The person served with this notice may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the Court or (2) by sending them by post to the Registrar, of the Court at.....

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No. 19

THIRD PARTY NOTICE WHERE QUESTION OR ISSUE TO BE DETERMINED (O. 16, r. 1)

(*Title etc, as in Form 18 down to end of first paragraph*)

The defendant requires that the following question or issue, viz., (state the question or issue required to be determined) should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself.

And take notice that if you wish to be heard on the said question or issue or to dispute the defendant's liability to the plaintiff or your liability to the defendant, an appearance must be entered on your behalf within 14 days (or if the notice is to be served out of the jurisdiction, insert the time for appearance fixed by the order giving leave to issue the notice and serve it out of the jurisdiction) after the service of this notice on you, inclusive of the day of service, otherwise you will be bound by any judgment or decision given in the action in so far as it is relevant to the said question or issue, and the judgment may be enforced against you in accordance with Order 16 of the Rules of Court 2012.

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

.....

Solicitor for the defendant

Directions for entering appearance

(As in Form 18)

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No. 20

NOTICE FOR LEAVE TO ISSUE A THIRD PARTY NOTICE (O. 16, r. 2)

(*Title as in action*)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on ....., the.....day of ....., 20..... at .....a.m/p.m. for leave to issue a third-party notice a copy of which is attached herewith.
Dated the..... day of ....., 20.....

Entered No ..... of 20.....

Clerk.

(Seal)

.....
Registrar

This notice is taken out by the defendant (or solicitor for the defendant) of..... to .....

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No. 21

MEMORANDUM OF APPEARANCE OF THIRD PARTY (O. 16, r. 4)

(As in Form 11 but substituting for the title of the action, the title on the third party notice and substituting for the request to enter appearance the following:)

Enter an appearance for (name of third party) to the third party notice issued in this action on ....., 20..... by the defendant and served on the said .....on ....., 20.....

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No. 22

NOTICE FOR THIRD PARTY DIRECTIONS (O. 16, r. 4)

(*Title as in Form 18*)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on the .....day of ....., 20..... at ..... a.m/p.m. on the hearing of an application on the part of ..... for an order for third party directions, as follows:

that the defendant serve a statement of his claim on the said third party within .....days from this date, who shall plead thereto within .....days.

(State any other directions that may be required).

And that the said third party be at liberty to appear at the trial of this action, and take such part as the Judge shall direct, and be bound by the result of the trial.

And that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto.

And that the costs of this application be costs in the cause and in the third party proceedings.

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

Entered No..... of 20.....

Clerk.

(Seal)

.....

Registrar

This notice is taken out by the defendant (or solicitor for the defendant or as may be) of .....
To .....

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No. 23

ORDER FOR THIRD PARTY DIRECTIONS (O. 16, r. 4)

(*Title as in Form 18*)

Upon the application of .....and upon hearing ..... for the plaintiff and ..... for the defendant and ..... for the third party.....
It is ordered that the defendant serve a statement of his claim on the said third party within days from this date, who will plead .....thereto within ……days.
(State any other directions that had been ordered).
And that the said third party be at liberty to appear at the trial of this action, and take such part as the Judge shall direct, and be bound by the result of the trial. And that the question of the liability of the said third party to indemnify the defendant be tried at the trial of this action, but subsequent thereto.

And that the costs of this application be.....

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

(Seal)

.....
Registrar

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No. 24

NOTICE BY CLAIMANT OF PROPERTY TAKEN IN EXECUTION (O. 17, r. 2)

(*Title as in action*)

And

.....
Claimant

Take notice that I ..... of.....claim the following property that has been taken in execution in this action at (state address) on the..... day of....., 20.....

(State the money, goods or other movable property claimed and the grounds for the claim).

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

.....
Claimant

My address for service is .....
to the Sheriff and the execution creditor (or solicitor for execution creditor)

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No. 25

NOTICE BY SHERIFF OF PROPERTY TAKEN IN EXECUTION (O. 17, r. 2)

(*Title as in Form 24*)

Take notice that ..... of..... has claimed the following property (specify the property claimed) ..... taken in execution by me under the writ of seizure and sale issued in this action.

If within 4 days after receiving this notice, you give notice to me that you admit the claim of the said ..... to the said property or request me to withdraw from possession in Form 26 you will not be liable for any costs incurred after the receipt by me of your notice.

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

.....
Sheriff

To the execution creditor (or solicitor for execution creditor).

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No. 26

NOTICE BY EXECUTION CREDITOR OF PROPERTY TAKEN IN EXECUTION (O. 17, r. 2)

(*Title as in Form 24*)

Take notice that I admit (or dispute) the claim of ..... to the property seized by you (or I request you to withdraw from possession) under the writ of seizure and sale issued in this action.

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

.....
Execution Creditor
(or solicitor for execution creditor)

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No. 27

APPLICATION FOR AN INTERPLEADER NOTICE: BY SHERIFF (O. 17, r. 3)

(*Title as in Form 24*)

1. On the.....day of ....., 20..... gave me notice that he claimed the following property (specify the property claimed) taken by me in execution under (the writ of seizure and sale) issued in this action.
2. On the ..... day of ....., 20.... I notified the execution creditor of the said claim. He does not admit the claim and has not requested me to withdraw from possession of the property claimed.

3. I value the property claimed at approximately RM..... I claim no interest in the subject matter in dispute other than for commission fees and expenses of execution.
I do not in any manner collude with any of the parties herein.
I apply for an interpleader to be issued.

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

.....
Sheriff

Interpleader to issue returnable the day of ...., 20..... at ..... a.m/p.m..

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

.....
Registrar

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No. 28

APPLICATION TO INTERPLEAD BY A PERSON UNDER LIABILITY (O. 17, r. 3)
(*In a pending action application as in Form 57, in any other case by an originating summons*)

Affidavit in support

I, ... of ..... (if in an action, the abovenamed defendant) do make oath (or affirm) and say as follows:
1. (If in an action.) This action is brought to recover (state what) claimed by the plaintiff but I have received a claim adverse to that of the plaintiff from ..... of .... (or, if no action), I have received adverse claims from ..... of..... and ..... of ..... to (state what) which is of the approximate value of RM .....

I expect to be sued on these claims by the said claimant.
2. I claim no interest in the subject matter in dispute (other than the sum of RM..... for costs or charges) (or as the case may be). I do not in any manner collude with either (or any) of the said claimants.

3. I am ready and willing to bring into Court or to pay or dispose of the subject matter in dispute in such manner as the Court may direct.
Sworn (or affirmed) as in Form 74

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No. 29

INTERPLEADER NOTICE (O. 17, r. 4)

(*Title as in Form 28*)

(a) *To Execution Creditor*

Whereas the above claimant has made a claim to certain property taken in execution under process issued out of this Court at your instance:

You are hereby summoned to appear before the Court, on..... the.....day of....., 20..... at ..... a.m/p.m. when the said claim will be adjudicated upon and such order made thereon as the Court shall think just.

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

(Seal)

.....

Registrar

Entered No .....of 20.....

Clerk

To

The Execution Creditor (or Solicitor for Execution Creditor).

(b) *To Claimant*

You are hereby summoned to appear before the Court on ..... the.....day of.....20.....at ..... a.m/p.m, to support a claim made by you to..... certain property taken in execution under process issued out of this Court at the instance of the execution creditor and in default of your then establishing such claim the said property will be dealt with under the said process as property of the execution debtor.

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

(Seal)

.....

Registrar

Entered No.....of 20.....

Clerk

To

The Claimant (or Solicitor for Claimant).

(c) *To a Plaintiff or a claimant in a pending action*

Whereas the defendant in this action has filed an affidavit (a copy of which is hereto annexed) stating that he has received a claim from ....of ..... to..... (part of) the subject matter of this action:

You are hereby summoned to appear before the Court on..... the ..... day of ....., 20.....at ..... a.m/p.m when the Court will adjudicate upon the rights and claims of yourself, the defendant and the..... (In summons to claimant not a plaintiff in the action, add : A copy of the writ and statement of claim in this claim in this action is hereto annexed).

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

(Seal)

.....

Registrar

Entered No..... of 20.....

Clerk

To

(State the name and address of the person to be summoned).

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No. 30

JUDGMENT (OR ORDER) ON INTERPLEADER NOTICE (O. 17, r. 11)

(*Title as in Form 24*)

(Recital)

Upon this Interpleader Notice (or Originating Summons) coming up for hearing before the Honourable Judge..... the.....day of ....., 20..... and upon hearing the evidence adduced and what was alleged by the parties (or their counsel) (Insert the appropriate Operative Part).

(Operative Parts)

(a) *Under execution*

It is adjudged touching the claim of ..... to (specify the property) (or to the proceeds of sale (or value) of (specify the property) taken in execution under process issued out of this Court at the instance of ..... execution creditor, that the said (specify the property) (or proceeds of sale) (or value) (or part of the said property) (or proceeds of sale (or value)) namely (specify same) is (or are) not the property of the claimant.

And it is ordered that the said ..... do pay to the said ..... the sum of RM ..... for costs (and the sum of RM.....for extra expenses of execution and keeping possession occasioned by the claim). Insert directions as to disposal of any money in Court.

(b) *In a pending action*

It is this day adjudged touching the claims of the plaintiff and the claimant to ..... (part of) the subject matter of this action that the claim of the plaintiff (or claimant) is valid and that the claimant (or plaintiff) has no claim thereto.

(And it is further adjudged that the plaintiff (or claimant) do recover against the defendant the sum of RM.....for debt and RM..... for costs amounting together to the sum of RM.....).

(And it is ordered-here insert any order for delivery of the property).

And it is further adjudged that the plaintiff (or claimant) do recover the sum of RM.....from the claimant (or plaintiff) for costs ..... (add if any costs awarded to the defendant against the plaintiff or claimant):

And it is further adjudged that the defendant do recover the sum of RM.....for costs from the plaintiff (or claimant).

(If the claimant fails to appear and an order is made barring his claim proceed as follows:

And the claimant ..... not appearing, it is declared that the said ..... and all persons claiming under him be forever barred as against the plaintiff and all persons claiming under him.

(c) *In any other case*

It is this day adjudged (here set out the judgment determining the claim as between the applicant and any claimant who appears or, if all the claimants appear, the judgment determining the rights and claims of all parties and any order as to payment, or delivery of the property and costs).

(If any claimant fails to appear and an order is made barring his claim proceed as follows):

And the claimant ..... not appearing, it is declared that the said ..... and all persons claiming under him be forever barred as against ..... the applicant and all persons claiming under him.

(Testimonium)

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

(Seal)

.....

Registrar

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No. 31

PARTICULARS SERVED PURSUANT TO REQUEST OR ORDER (O. 18, r. 12)
(*Title as in action*)

Further and better particulars of the statement of claim (or defence or as may be).
Served pursuant to request (or order) dated the ..... day of ..... , 20.....

(Here set out in numbered paragraphs the particulars requested (or ordered) and the answers to them).

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

.....
Solicitor for the.....

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No. 32

NOTICE OF DISCONTINUANCE (O. 21, r. 2)
(*Title as in action*)

Take notice that the plaintiff wholly (or specify the part) discontinues this action (or the defendant wholly (or specify the part) withdraws the defence or discontinues his counterclaim) against the defendant (plaintiff).

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

.....
Solicitor for the.....

To the Registrar and the other party to the action.

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No. 33

NOTICE OF APPLICATION FOR INTERIM PAYMENT (O. 22A, r. 2)

(*Title as in action*)

Take notice that the above plaintiff/defendant intends to apply to the ..... Court at....., the..... day of..... 20..... at ..... a.m/p.m. for an order that the defendant/plaintiff make interim payment(s) to the plaintiff/defendant.

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

Entered No.....of 20.....

This notice is taken out by .....of.....solicitor for the plaintiff/defendant.

To the plaintiff/defendant (or solicitor for).

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No. 34

OFFER TO SETTLE (O. 22B, r. 1)

(Title as in action)

The (identify party) offers to settle this proceeding (or the following claims in this proceeding) on the following terms: (set out terms in consecutively numbered paragraphs).

Dated this……day of……20…… .

(Name, address, telephone and fax number of solicitor or party making offer)

To: (Name and address of solicitor or party to whom offer is made)

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No. 35

NOTICE OF WITHDRAWAL OF OFFER (O. 22B, r. 3)

(Title as in action)

The (identify party) withdraws the offer to settle dated the day of ……20……..
.

Dated this……day of……20…….
(Name, address, telephone and fax number of solicitor or party giving notice)
To: (Name and address of solicitor or party to whom notice is given)

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No. 36

ACCEPTANCE OF OFFER (O. 22B, r. 6)

(*Title as in action*)

The (identify party) accepts your offer to settle dated the ……..day of…….. 20……..
(on the following terms).

Dated this……day of……20……..

(Name, address, telephone and fax number of solicitor or party accepting offer)
To: (Name and address of solicitor or party whose offer is accepted)

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No. 37

OFFER TO CONTRIBUTE (O. 22B, r. 11)

(*Title as in action*)

The defendant (name of defendant making offer) offers to contribute to a settlement of the plaintiff's claim on the following terms: (set out terms in consecutively numbered paragraphs).
Dated this……day of……20…… .
(Name, address, telephone and fax number of solicitor or party making offer)
To: (Name and address of solicitor or party to whom offer is made)

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No. 38

LIST OF DOCUMENTS (O. 24, r. 5)

(*Title as in action*)

The following is a list of the documents relating to the matters in question in this action which are or have been in the possession, custody or power of the abovenamed plaintiff (or defendant) ..... and which is served in compliance with Order 24, rule 2 (or the order herein dated the..... day of....., 20.....).

1. The plaintiff (or defendant) has in his possession, custody or power the documents relating to the matters in question in this action enumerated in Schedule 1 hereto.

2. The plaintiff (or defendant) objects to produce the documents enumerated in part 2 of the said Schedule 1 on the ground that (stating the ground of objection).

3. The plaintiff (or defendant) has had, but has not now, in his possession, custody or power the documents relating to the matters in question in this action enumerated in Schedule 2 hereto.

4. Of the documents in the said Schedule 2, those numbered .....in the Schedule were last in the plaintiff's (or defendant's) possession, custody or power on (stating when) and the remainder on (stating when).

(State what has become of the said documents and in whose possession they now are).

5. Neither the plaintiff (or defendant), nor his solicitor nor any other person on his behalf, has now, or ever had, in his possession, custody or power any document of any description whatever relating to any matter in question in this action, other than the documents enumerated in Schedules 1 and 2 hereto.

Schedule 1

PART 1

(Enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or power of the party in question which he does not object to produce, with a short description of each document or bundle sufficient to identify it.)

PART 2

(Enumerate as aforesaid the documents in the possession, custody or power of the party in question which he objects to produce.)

Schedule 2

(Enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question.)

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

Notice to inspect

Take notice that the documents in the above list, other than those listed in part 2 of Schedule 1 (and Schedule 2), may be inspected at (the office of the solicitor of the abovenamed (plaintiff) (defendant) (insert address) or as may be) on the ..... day of .....,20..... between the hours of ..... and .....

.....

Solicitor for the.....

To the defendant (or plaintiff) and his solicitor.

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No. 39

AFFIDAVIT VERIFYING LIST OF DOCUMENTS (O. 24, r. 5)

(*Title as in action*)

I, the abovenamed plaintiff (or defendant) ..... do make oath (or affirm) and say as follows:

1. The Statements made by me in paragraphs 1, 3 and 4 of the list of documents now produced and shown to me marked are true.
2. The statements of fact made by me in paragraph 2 of the said list are true.
3. The statements made by me in paragraph 5 of the said list are true to the best of my knowledge, information and belief.

This affidavit is filed on behalf of the plaintiff (or defendant).

Sworn (or affirmed) as in Form 74.

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No. 40

NOTICE TO INSPECT DOCUMENTS (O. 24, r. 9)
(*Title as in action*)

Take notice that you can inspect the document mentioned in your notice of the ..... day of…….. ....., 20..... (except the deed numbered ..... in that notice) at my office on ..... day next the instant between the hours of ..... a.m/p.m.

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

.....
Solicitor for the .....

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No. 41

NOTICE TO PRODUCE DOCUMENTS REFERRED TO IN PLEADINGS OR AFFIDAVITS (O. 24, r. 10)

(*Title as in action*)

Take notice that the plaintiff (or defendant) requires you to produce for his inspection, the following documents referred to in your pleading (or affidavit) namely:
Describe documents required.
Dated the ..... day of ....., 20.....

.....
Solicitor for the.....

To the solicitor for .....

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No. 42

NOTICE WHERE DOCUMENTS MAY BE INSPECTED (O. 24, r. 10)

(*Title as in action*)

Take notice that the documents mentioned in your notice of the ..... day of ..... (except the deed numbered in that notice) may be inspected at ..... (insert place of inspection) on ..... the..... day of ..... between the hours of .....and ..... a.m./p.m.

(Or, that the plaintiff (or defendant) objects to giving inspection of the documents mentioned in your notice of ..... the ..... day of ....., 20....., on the ground that (state the ground).

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

.....

Solicitor for the.....

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No. 43

ORDER FOR PRODUCTION OF DOCUMENTS AND INSPECTION (O. 24, r. 11)

(*Title as in action)*

Upon the application of ..... and upon reading the affidavit of ..... filed the ..... day of ....., 20....., and upon hearing.....

It is ordered that the ..... do, on reasonable notice, produce at (insert place of. inspection), situate at ..... the following documents, namely ..... and that the ..... be at liberty to inspect and peruse the documents so produced, and to make notes of their contents, and be entitled to be supplied with copies thereof on payment of the proper charges. And it is ordered that in the meantime all further proceedings be stayed, and that the costs of this application be.....

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

(Seal)

.....
Registrar

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No. 44

NOTICE FOR INTERROGATORIES (O. 26, r. 1)

(*Title as in action*)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on.....the.....day of....., 20.....; at..... a.m./p.m. on the hearing of an application by ..... for an order that the ..... be at liberty to serve on the ..... interrogatories in writing and that the said .....do within……days answer the questions in writing by affidavit.

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

(Seal)

.....

Registrar

Entered No.....of 20.....

Clerk

This notice is taken out by..... solicitor for .....
To .....

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No. 45

INTERROGATORIES (O. 26, r. 1)
(Title as in action)

Interrogatories
..... on behalf of the abovenamed (plaintiff) or (defendant AB) for the examination of the abovenamed (defendants AB and CD) (defendants the X. Co Ltd) or (plaintiff) pursuant to the order herein dated the .....day of ....., 20.....

(Here set out the interrogatories in the form of concise questions, each interrogatory to be set out in a separate paragraph and numbered consecutively).

l. Did you?

2. Did you not?

3. (a) Were you?

(b) If may were you not?

(The defendant AB is required to answer all the interrogatories numbered .....).
(The defendant CD is required to answer interrogatories numbered .....)
(EP, a director (or as may be) of the defendants, the X. Co. Ltd., is required to answer the interrogatories numbered.....).
Served the.....day of....., 20....., by ..... of.....solicitor for the (plaintiff) (defendant) .....

To the abovenamed (defendant AB and CD) (plaintiff) and (their) (his) solicitor.

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No. 46

ORDER FOR INTERROGATORIES (O. 26, r. 1)

(Title as in action)

Upon the application of ..... and upon reading the affidavit of ..... filed the ..... day of ....., 20..... and upon hearing .....

It is ordered that the ..... be at liberty to serve on the ..... interrogatories in writing as initialed by the Judge and that the said ..... do answer the interrogatories within ..... days and that the costs of this application be .....

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

(Seal)

.....

Registrar

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No. 47

ANSWER TO INTERROGATORIES (O. 26, r. 1)

(Title as in action)

The Answer

..... of the (defendants) or (abovenamed defendant AB) or (plaintiff) to the interrogatories for (their) or (his) examination by the abovenamed (plaintiff) or (defendants) pursuant to the order herein dated the..... day of....., 20.....

In answer to the said interrogatories (we, the said AB and CD severally) or (I, the abovenamed AB or plaintiff), do make oath (or affirm) and say as follows:

1. To the 1st interrogatory, namely (state in full the interrogatory), that (stating the answer).
2. To the 2nd interrogatory, namely (state in full the interrogatory), that (stating the answer).
3. To the 3rd interrogatory, namely (state in full the interrogatory), that I object to answer it on the ground that (stating the ground of objection).

Sworn (or affirmed) as in Form 74.

This affidavit is filed on behalf of the (defendants) (plaintiff).

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No. 48

NOTICE TO ADMIT FACTS (O. 27, r. 2)

(Title as in action)

Take notice that the plaintiff (or defendant) in this action requires the defendant (or plaintiff) to admit, for the purposes of this action only, the several facts respectively hereunder specified; and the defendant (or plaintiff) is hereby required, within 14 days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

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

.....

Solicitor for the.....

To the defendant (or plaintiff).....and his solicitor.

The facts, the admission of which is required, are :(set out admissions required, e.g.)

1. That AB died on the....., 20.....
2. That he died intestate.
3. That CD was his only lawful son.
4. That EF died on the....., 20.....
5. That EF never was married.

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No. 49

ADMISSION OF FACTS, PURSUANT TO NOTICE (O. 27, r. 2)

(Title as in action)

The defendant (or plaintiff) in this action, for the purposes of this action only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitation, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this action:

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant (or plaintiff) on any other occasion, or by anyone other than the plaintiff (or defendant, or party requiring the admission).

.....

Solicitor for the.....

To the plaintiff (or defendant) ..... and his solicitor

(example)

Facts admitted	Qualifications or limitations if any, subject to which they are admitted
1. That AB died on the ..... , 20..... 2. That he died intestate 3. That CD was his lawful son 4. That EF died on the....., 20..... 5. That EF never was married	1. - 2. - 3. But not that he was his only lawful son 4. But not that he died on the ....., 20..... 5. -

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No. 50

NOTICE TO ADMIT DOCUMENTS (O. 27, r. 5)

(Title as in action)

Take notice that the plaintiff (or defendant) in this action proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (or plaintiff), his solicitor or agent at ..... on the ..... day of ....., 20 ..... between the hours of ..... and .....; and the defendant (or plaintiff) is hereby required, within 7 days to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served sent or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this action.

And further take notice that if you do not within the aforementioned 7 days give notice that you do not admit the said documents (or any of them) and that you require the same to be proved at the trial you shall be deemed to have admitted the said document (or documents) unless the Court shall otherwise order.

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

.....

Solicitor for the.....

(Here describe the documents, the manner of doing which may be as follows:)

ORIGINALS

Description of Documents	Dates
1. ..... 2. ..... 3. ..... 4. ..... 5.	....

COPIES

Description of Document	Dates	Original or Duplicate server, sent, or delivered, when, how, and by whom
1. ..... 2. ..... 3.	....	....

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No. 51

NOTICE OF NON-ADMISSION OF DOCUMENTS (O. 27, r. 5)

(Title as in action)

Take notice that I do not admit Numbers 1, 2 and 5 of the documents (as the case may be) in the Notice to Admit Documents saving all just exceptions to the same as evidence.

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

.....

Solicitor for the.....

To the plaintiff (or defendant) and his solicitor.

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No. 52

NOTICE TO PRODUCE (O. 27, r. 5)
(Title as in action)

Take notice that you are hereby required to produce and show to the Court on the trial of this ..... all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this and particularly……
Dated the.....day of....., 20.....

.....
Solicitor for the.....

To the plaintiff (or defendant) and his solicitor.

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No. 53

ORDER FOR INTERIM INJUNCTION (O. 29, r. 1)

(Title as in action)

Upon the application of ..... and upon reading the affidavit ..... filed the.....day of....., 20....., and upon hearing ....., and the plaintiff by his said ..... undertaking to abide by any order the Court or a Judge may make as to damages in case the Court or a Judge should hereafter be of opinion that the defendant..... shall have sustained any by reason of this order which the plaintiff ought to pay. It is ordered and directed that the defendant(s) (a) ..... by himself (themselves) his (their) agents or servants or otherwise be restrained, and an Injunction is hereby granted restraining him (them) from .....

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

(Seal)

.....

Registrar

(a) Where the injunction is against a limited company or a corporate body, the Form should read: "that the defendants (insert name of company or corporate body) by their agents or servants or otherwise be restrained, etc. "

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No. 54

RECEIVER'S SECURITY BY UNDERTAKING (O. 30, r. 2)

(Title as in action)

I, ... of ..... the receiver (and manager) appointed by order dated ..... (or proposed to be appointed) in this action hereby undertake with the Court to duly account for all moneys and property received by me as such receiver (or manager) or for which I may be held liable and to pay the balances from time to time found due from me and to deliver any property received by me as such receiver (or manager) at such times and in such manner in all respects as the Court or a Judge shall direct.

And we ..... hereby jointly and severally (in the case of a Guarantee or other Company strike out "jointly and severally") undertake with the Court to be answerable for any default by the said..... ..... as such receiver (or manager) and upon such default to pay to any person or persons or otherwise as the Court or a Judge shall direct any sum or sums not exceeding in the whole RM ..... that may from time to time be certified by the Registrar to be due from the said receiver and we submit to the jurisdiction of the Court in this action to determine any claim made under this undertaking.

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

(Signatures of Receiver and his surety or sureties. In the case of a surety being a guarantee or other company, it must be sealed or otherwise duly executed).

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No. 55

AFFIDAVIT VERIFYING RECEIVER'S ACCOUNT (O. 30, r. 4)

(Title as in action)

I, ..., of....., the receiver appointed in this cause, do make oath (or affirm) and say as follows:

1. The document now shown to me marked A is, as it purports to be, a full and true account of ..... for the period therein specified.

2. ..... and ....., my sureties named in the guarantee (or undertaking) dated ....., 20....., are both alive and neither of them has become bankrupt or insolvent.

(or)

2. The ..... Co. Ltd., my surety named in the guarantee (or undertaking) dated ..... 20 ....., is still carrying on business and no originating summons or other proceeding for its winding-up is pending).

Sworn (or affirmed) as in Form 74.

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No. 56

CERTIFICATE OF RESULTS OF SALE (O. 31, r. 3)

(Title as in action)

I, ..., of ....., auctioneer, the person appointed to sell the estate comprised in the particulars hereinafter referred to, hereby certify as follows:

1. I did at the time and place, in the lots, and subject to the conditions specified in the said particulars and conditions of sale hereto annexed and marked A, put up for sale by auction the estates described in the said particulars.

The result of the sale is truly set forth in the bidding paper hereto annexed and marked B.

2. I have received the sums set forth in the fourth column of the Schedule hereto as deposits from the respective purchasers whose names are set forth in the second column of the said Schedule opposite the said sums in respect of their purchase-money leaving the sums set forth in the fifth column of the said schedule due in respect thereof.

SCHEDULE

(above referred to)

No. of Lot	Name of Purchaser	Amount of remaining Purchase-money	Amount of Deposit received	Amount remaining due

.....

Auctioner

Date.....

(*Note* - This form can be adapted to meet the requirements of O. 31, r. 3(1)*(b)*, when Certificate has to be given by a Solicitor).

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No. 57

NOTICE OF APPLICATION (O. 32, r. 1)
(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on ....., the ..... day of ....., 20..... at ..... a.m/p.m. on the hearing of an application on the part of (state nature of the application).

The grounds of the application are (state the grounds)
Dated……the.....day of……20.....
Entered No.....of 20.....

Clerk

(Seal)

.....
Registrar

This notice is taken out by the plaintiff (or as may be) of (state address).

To the defendant (or as may be).

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No. 58

NOTICE OF INTENTION TO USE AFFIDAVIT (O. 32, r. 13)

(Title as in action)

TAKE NOTICE that the abovenamed Plaintiff/Defendant intends to use the affidavits of ……..in support of the Plaintiff/Defendant's Notice of Application dated ……

Dated the……day of……, 20……

……
Solicitors for the Plaintiff/Defendant

To the Plaintiff/Defendant (or as may be the case)

This notice is taken out by the plaintiff/defendant (or as may be) of (state address).

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No. 59

NOTICE TO ATTEND PRE-TRIAL CASE MANAGEMENT (O. 34, r. 3)

(Title as in action)

Let all parties concerned attend before the Court in Chambers on ..... , the ..... day of ..... , 20 ..... , at .....a. m/p.m. for pre-trial case management.

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

(Seal)

.....

Registrar

This notice is taken out by the plaintiff (or as may be) of (state address).

To the defendant (or as may be).

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No. 60

NOTICE FOR DIRECTIONS (O. 34, r. 9)

Note: Applicants are to indicate only those prayers for which directions are necessary.

(Title as in action)

Take notice that the abovenamed ……..intends to apply at the first case management herein for directions in this action (insert directions required)

1. This action be consolidated with action(s) in Suit No. of……20……., and Suit No. ……..of 20…….
2. This action be referred to the Court and that the costs of this application be costs in the cause.
3. The action be (or by consent) transferred to the …… and that the costs of this application be in the discretion of the ……
4. The plaintiff give security for the defendant's costs to the satisfaction of the Court in the sum of RM..... on the ground…… and that in the meantime all further proceedings be stayed.
5. Unless the plaintiff within…….... days gives security for the defendant's costs in the sum of RM..... to the satisfaction of the Court, the action be struck off, and that the costs of this application be in the discretion of the……..(and that if the security be so paid the directions be as follows:)
6. The plaintiff have leave to amend the writ by…… and that the service of the writ and the defendant's appearance do stand, and that the costs incurred and thrown away by the amendment be the defendant's in any event.
7. The plaintiff have leave to amend the statement of claim as shown in the document served herewith and to re-serve the amended statement of claim in……days, with leave to the defendant to serve an amended defence (if so advised) in……..days thereafter, (and with leave to the plaintiff to re-serve an amended reply (if so advised) in……days thereafter) and that the costs incurred and thrown away by the amendments be the defendant's in any event.
8. The defendant have leave to amend the defence as shown in (the document served with) the defendant's notice under this Notice for Directions and to re-serve the amended defence in ……..days (and with leave to the plaintiff to re-serve an amended reply (if so advised) in…….days thereafter) and that the costs of and the costs thrown away as a result of the amendments be the plaintiff's in any event.
9. The plaintiff serve on the defendant within…….. days the further and better particulars of the statement of claim specified in (the document served with) the defendant's notice under this Notice for Directions.
10. The defendant serve on the plaintiff within …….. days the further and better particulars of the defence specified in the document served herewith.
11. The plaintiff serve on the defendant within …….. days the further and better particulars of the reply specified in (the document served with) the defendant's notice under this Notice for Directions.
12. The plaintiff within……..days serve on the defendant a list of documents (and file an affidavit verifying such list) (limited to the documents relating to the—
    (special damage claimed)
    (plaintiff's industrial injury, industrial disablement or sickness benefit rights)
    (period from….. to…..)
    (issues raised in paras…... of the statement of claim and paras…... of the defence)
    (issues of……...)).
13. The defendant within……days serve the plaintiff with a list of documents (and file an affidavit verifying such list) (limited to documents relating to the —
    (period from….. to…..)
    (issues raised in paras…….of the statement of claim and paras……..of the defence)
    (issues of……)).
14. There be inspection of documents within ……... days of the service of the lists (filing of the affidavits).
15. The plaintiff have leave to serve on the defendant the interrogatories shown in the document served herewith, and that the defendant answer the interrogatories on affidavit within……... days.

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16. The defendant have leave to serve on the plaintiff the interrogatories shown in the document served with the defendant's notice under this Notice for Directions, and that the plaintiff answer the interrogatories on affidavit within…….. days.
17. The plaintiff (or defendant) (retain and preserve pending the trial of the action) (upon days notice to give inspection of) (the subject-matter of the action, to the defendant (or plaintiff) and to his legal advisers (and experts)).
18. The statements in…….. be admissible in evidence at the trial without calling as a witness the maker of the statements (and, if a copy of that document certified by…… to be a true copy is produced, without production of the original document).
19. An affidavit of……(in the form of the draft affidavit (served herewith) (with the defendant's notice under this Notice for Directions)) (to be served within……. days) be admissible in evidence at the trial.
20. Evidence of the following fact(s), namely,…….. be received at the trial by statement on oath of information and belief (by the production of the following documents or entries in books or copy documents or copy entries in books, namely, ……..).
21. It be recorded that the parties ((plaintiff) (defendant) refuses to) admit for the purposes of this action that ……..(the truth of the statements in the document served (herewith) (with the defendant's notice under this Notice for Directions)).
22. The evidence in chief of all witnesses shall be limited to one witness statement for each witness to be exchanged within …….. months and objection to the contents of the statement shall be taken within one month after the exchange of the witness statement.
23. The evidence in chief or the substance thereof of all expert witnesses shall be in the form of a witness statement and shall be exchanged/disclosed within……months.
24. ……., a witness on behalf of the plaintiff (or defendant) may, upon…….. day's notice, be examined before the Court (or a special examiner to be agreed upon by the parties or appointed by the Court) and that the said witness need not attend at the trial.
25. There shall be a discussion between the experts not later than……days before the exchange of witness statements for the purpose of requiring the experts to identify the issues in the proceedings and where possible reach agreement on an issue, and the issues which the experts are to discuss shall be limited to the following:
26. Within……..days of the discussion, the expert witnesses are to prepare and furnish to the parties a joint written statement indicating the agreed issues, the issues on which they disagree and a summary of the reasons for disagreement.
27. That (name) of (organisation) be appointed as assessor(s) in this action.
28. A plan of the *locus in quo* other than a sketch plan be receivable in evidence at the trial.
29. Photographs and a plan of the *locus in quo* be agreed, if possible.
30. By consent, (the right of appeal be excluded) (any appeal be limited to the Court of Appeal) (any appeal be limited to questions of law only).
31. Trial. (Estimated length and number of witnesses) To be set down within ……days (and to be tried immediately after the action in Suit No…..of 20….).
*32. The witnesses whom the Plaintiff intends if necessary to call shall be limited to the following:
Witnesses of fact:
Expert witnesses:
*33. The witnesses whom the Defendant intends if necessary to call shall be limited to the following:
Witnesses of fact:
Expert witnesses:
34. The costs of this application be costs in the cause.

Dated this…… day of ……20.....
Entered No.....of 20.....
Clerk.

(Seal)

.....
Registrar

To the .....and to his solicitors.
This notice is taken out by ……..of ……., solicitors for the ……..

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*_Note:_ All witnesses must be named here or in the order of court to be extracted on this Notice for Directions and witnesses not so named shall not be allowed to testify at the trial without leave of court.

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No. 61

CERTIFICATE OF OFFICER AFTER TRIAL (O. 35, r. 7)
(Title as in action)

I certify that this action was heard before the Honourable Judge .....on the.....day of....., 20..... (and on the.....day of....., 20.....) and occupied the time of the Court as follows:

On the.....day of.....,20.....,from..... to.....
The total time occupied was.....hours.....minutes.
The Judge directed that (state precisely the terms of the judgment or order or directions given).

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

.....
Clerk of the Court

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No. 62

LIST OF EXHIBITS (O. 35, r. 8)
(Title as in action)

Heard on.....day of....., 20....., before the Honourable, Judge.....

Number of Exhibit	Description of Exhibit	Party who put in Exhibit	Witness who proved Exhibit	Notes

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

.....
Clerk of the Court

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No. 62A

NOTICE OF APPOINTMENT OF ASSESSMENT OF DAMAGES (O. 37, r. 1)

(Title as in action)

Take notice that you are required to attend before the Deputy Registrar/Senior Assistant Registrar of the .....Court at …….. on……..the ……..day of ……., 20…… at……..a.m./p.m. for the hearing of the assessment of damages.
Dated the ……day of…….. 20…..

(Seal)

.....
Registrar

To the plaintiff or the defendant

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No. 63

SUBPOENA TO TESTIFY (O. 38, r. 14)
(Title as in action)

THE HONOURABLE CHIEF JUDGE OF..... ....., IN THE NAME OF THE YANG DI-PERTUAN AGONG

To.....

We command you to attend before.....at..... on.....the.....day of....., 20....., at..... a.m./p.m. and so from day to day until the end of the above proceedings, to give evidence on behalf of the.....in the said proceedings

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

Entered No.....of 20.....

Clerk

(Seal)

.....
Registrar

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No. 64

SUBPOENA TO PRODUCE DOCUMENTS (O. 38, r. 14)

(Title as in action)

(As in Form 63) We command you to attend either in person or by an agent at.....on.....the.....day of....., 20.....at..... a.m./p.m. and so from day to day until the end of the above proceedings to produce the following documents:

on behalf of the.....in the said proceedings

Dated the.....day of....., 20.....
Entered No.....of 20.....

Clerk

(Seal)

.....
Registrar

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No. 65

SUBPOENA TO TESTIFY AND PRODUCE DOCUMENTS (O. 38, r. 14)

(Title as in action)

(As in Form 63) We command you to attend before..... at.....on.....the.....day of..... 20....., at..... a.m./p.m. and so from day to day until the end of the above proceedings to give evidence and produce the following documents:
on behalf of the .....in the said proceedings.
Dated the.....day of....., 20.....
Entered No.....of 20.....

Clerk

(Seal)

.....
Registrar

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No. 66

***PRAECIPE* FOR SUBPOENA (O. 38, r. 14)**

(Title as in action)

Seal subpoena....., on behalf of the ..... directed to ..... returnable on.....day of....., 20.....
Witness's name in full.....
his (her) residence or place of business.....
his (her) occupation.....
If documents or books are required to be produced here specify them. If witness is not required to give evidence but only to produce documents, so state .....
.....

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

.....
Solicitor for the.....

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No. 67

AFFIDAVIT FOR AN ORDER FOR THE PRODUCTION OF A PERSON IN PRISON (O. 38, r. 21)

(Title as in action)

I.....of..... do make oath (or affirm) and say:

1. That the above action is fixed for hearing on..... the.....day of....., 20.....and that..... .....now a prisoner confined in the..... prison, will be a material witness for me at the hearing (or is a party to the action).

2. That I am advised and verily believe that I cannot safely proceed to the hearing of his action without the evidence of the said..... ..... (or my evidence).

3. I hereby apply for an order under section 30 of the Prisons Act 1995 that the said.....may be brought before the Court.

4. I hereby undertake to pay the costs of conveyance of the said .... in safe custody to and from the Court and of maintenance of him and the officers in charge of him while attending the Court.

Sworn (or affirmed) as in Form 74.

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No. 68

ORDER TO PRODUCE PERSON IN PRISON (O. 38, r. 21)

(Title as in action)

To the Officer in charge of the.....

You are hereby required, upon tender made to you of a reasonable sum for the conveyance and maintenance of a proper officer and of .... now a prisoner in the ..... in going to, remaining at and returning from the Court at ..... , to bring the said .....on the ..... day of .....20.....at... a.m./p.m. to give testimony on behalf of..... and after the said ..... shall have given his testimony before the Court or the Court shall have dispensed with his further attendance, you are required to cause him to be conveyed under safe and sure conduct back to the said .....

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

(Seal)

.....

Registrar

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No. 69

ORDER FOR THE EXAMINATION BEFORE TRIAL (O. 39, r. 1)

(Title as in action)

Upon the application of ..... and upon reading the affidavit of ..... filed the.....day of..... , and upon hearing....., and that the Court is desirous of obtaining the testimony of (name of person).

It is ordered that..... do attend before the Judge (or Registrar) in Chambers on ..... , the day of....., 20 .... at ……..a.m./p.m. or such other day and time as the Judge/Magistrate (or Registrar) may appoint and do there submit to be examined upon oath or affirmation touching the testimony so required as aforesaid and do then and there produce (description of documents, if any, required to be produced).

And it is further ordered that the Judge/Magistrate (or Registrar) do take down in writing the evidence of the said witness according to the practice of the Court pertaining to the examination and cross-examination of witnesses (or as may be otherwise directed) and do cause the witness to sign his deposition in his, the Judge/Magistrate's (or the Registrar's) presence; and do sign the deposition taken in pursuance of this order and when so completed, do transmit the same to the Court.

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

(Seal)

.....

Registrar

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No. 70

ORDER FOR ISSUE OF LETTER OF REQUEST TO JUDICIAL AUTHORITY OUT OF JURISDICTION (O. 39, r. 2)

(Title as in action)

Upon the application (as in Form 69).
It is ordered that a letter of request do issue directed to the proper judicial authority for the examination of the following witnesses, namely:
..... of .....
..... of .....

And it is ordered that the deposition taken pursuant thereto when received be filed in the Registry of the Court at..... and that office copies thereof may be read and given in evidence on the trial of this action, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor of the party using the same as to his belief.

And it is ordered that (the trial of this action be stayed until the said depositions have been filed and that) the costs of and incidental to the application for this order and the said letter of request and examination be (costs in the cause).

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

(Seal)

.....
Registrar

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No. 71

ORDER FOR APPOINTMENT OF EXAMINER TO TAKE EVIDENCE OF WITNESS OUT OF JURISDICTION (O. 39, r. 2)

(Title as in action)

Upon the application of ..... and upon reading the affidavit of ..... filed the ..... day of ....., 20..... and upon hearing……

It is ordered that the Malaysian (or British) Consul or his deputy at ..... (or ..... Esq.) be appointed as special examiner for the purpose of taking the examination, cross-examination and re-examination *viva voce* on oath or affirmation, of ..... witnesses on the part of ..... at ..... in (name of country). The examiner shall be at liberty to invite the attendance of the witnesses and the production of documents, but shall not exercise any compulsory powers. Otherwise such execution shall be taken in accordance with the Malaysian procedure. The ..... solicitors to give to the ..... solicitors ..... days' notice in writing of the date on which they propose to send out this order to..... for execution, and that ..... days after the service of such notice the solicitors for the plaintiff and defendant respectively do exchange the names of their agents at ..... to whom notice relating to the examination of the said witnesses may be sent. And that .....days (exclusive of Sunday) before the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party, unless such notice be dispensed with. And that the depositions when taken, together with any documents referred to therein, or certified copies of such documents or of extracts therefrom be sent by the examiner, under seal, to the Registrar of the Court ..... (insert address) on or before the ..... day of ..... next, or such further or other day as may be ordered there to be filed in the Registry. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action, be stayed until the filing of such depositions. And that the costs of and incidental to the application for this order and such examination be costs in the cause.

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

(Seal)

.....
Registrar

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No. 72

LETTER OF REQUEST FOR EXAMINATION OF WITNESS OUT OF JURISDICTION (O. 39, r. 3)

To the Competent Judicial Authority of..... in the ..... of .....
Whereas an action is now pending in the Court of Malaya/Sabah & Sarawak at in which .... is plaintiff and .....is defendant and in which the plaintiff claims.....

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined as witnesses upon oath touching such matters, namely.....of ....., and .....of ..... and it appears that such witnesses are resident within your jurisdiction.

Now I,..... the Registrar of the Court of Malaya/Sabah & Sarawak hereby request that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before you, or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such witnesses to be examined *viva voce* (or upon the interrogatories which accompany this letter of request) touching the said matters in question in the presence of the agents of the plaintiff and defendant or such of them as shall, on due-notice given, attend the examination.
And I further request that you will permit the agents of both the plaintiff and defendant or such of them as shall be present to examine (upon interrogatories and *viva voce* upon the subject-matter thereof or arising out of the answers thereto) such witnesses as may, after due notice in writing, be produced on their behalf and the other party to cross-examine the said witnesses (upon cross-interrogatories and *viva voce*) and the party producing the witness for examination to re-examine him *viva voce*.
And I further request that you will be pleased to cause the evidence of the said witnesses (or the answers of the said witnesses and all additional *viva voce* questions, whether on examination, cross-examination or re-examination) to be reduced into writing and all books, letters, papers and documents produced on such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal or in such other way as is in accordance with your procedure and to return it together with (the interrogatories and cross-interrogatories and) a note of the charges and expenses payable in respect of the execution of this request through the Malaysian (or British) Consul from whom the same was received (or the Minister for Foreign Affairs) for transmission to the Court of Malaya/Sabah & Sarawak at ……..
And I further request that you will cause me, or the agents of the parties if appointed, to be informed of the date and place where the examination is to take place.
Dated the..... day of....., 20.....

(Seal)

.....
Registrar

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No. 73

SOLICITOR'S UNDERTAKING AS TO EXPENSES (O. 39, r. 3)

(Title as in action)

I (We) hereby undertake to be responsible for all expenses incurred by the Minister for Foreign Affairs in respect of the letter of request issued herein on the ....., and on receiving due notification of the amount of such expenses undertake to pay the same as directed by the Registrar of the Court, at.....
The following have been appointed as agents for the parties in connection with the execution of the above letter of request.
Plaintiff's Agent:

.....
of

Defendant's Agent:

.....
of

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

.....
Solicitor for the.....

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No. 74

FORMS OF JURAT (O. 41, r. 1)

(Title as in action)

(a) To an affidavit by one deponent..... Sworn (or affirmed) on the..... day of.....,20....., at…... (Through the interpretation of.....).

Before me

.....
Commissioner for Oaths

(b) To an affidavit by two or more deponents..... Sworn (or affirmed) by the deponents ..... and ..... (or by both (or all) of the abovenamed deponents) on the..... day of.....,20.....at …...(Through the interpretation of .....).

Before me

.....
Commissioner for Oaths

(c) To an affidavit by an illiterate or blind person..... Sworn (or affirmed) on the.....day of.....,20....., at .....
I, having truly, distinctly and audibly read over the contents of the above affidavit (add if exhibits are referred to in the affidavit "and explained the nature and effect of the exhibits therein referred to") to the said deponent who seemed perfectly to understand the same and who made his mark thereto in my presence (Through the interpretation of.....).

Before me

.....
Commissioner for Oaths

(d) To an affidavit by a person who does not understand English. Sworn (or affirmed) on the.....day of....., 20..... at .....through the interpretation of..... (if the interpreter is not a Court Interpreter add the following:

"the said.....having been first sworn that he had truly, distinctly, and audibly translated the contents of his affidavit to the deponent.....and that he would truly and faithfully interpret the oath (or affirmation) about to be administered unto him the said .....;).

Before me

.....
Commissioner for Oaths

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No. 75

JUDGMENTS (O. 42, r. 5)

(Title as in action)

(a) Default judgment in action for liquidated demand (O. 13, r. 1; O. 19, r. 2; O. 42, r. 5)
No appearance having been entered (or no defence having been served) by the defendant herein. It is this day adjudged that defendant do pay the plaintiff RM..... and RM.....costs (or costs to be taxed). (The above costs have been taxed and allowed at RM..... as appears by the Registrar's certificate dated the..... day of 20.....)

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

(Seal)

.....
Registrar

(b) Default judgment in action for unliquidated damages (O. 13, r. 2; O. 19, r. 3; O. 42, r. 5)
No appearance having been entered (or no defence having been served) by the defendant herein. It is this day adjudged that the defendant do pay the plaintiff damages to be assessed.

The amount found due to the plaintiff under this judgment having been certified at RM.....as appears by the Registrar's certificate filed the ..... day of ....., 20.....

It is adjudged that the defendant do pay the plaintiff RM.....and costs to be taxed.
The above costs, etc. (as in (a) above).
(*Note*-This form is a combined form of interlocutory and final judgment. The plaintiff may at his option enter interlocutory judgment by omitting the words below the line in the form and enter a separate final judgment in (f) below).
(c) Default judgment in action relating to detention of movable property (O. 13, r. 3; O. 19, r. 4; O. 42,r. 5)
No appearance having been entered (or no defence having been served) by the defendant herein.

It is this day adjudged that the defendant do deliver to the plaintiff the movable property described in the writ (or statement of claim) as (description of movable property) or pay the plaintiff the value of the said property to be assessed (and also damages for their detention to be assessed).

or

It is this day adjudged that the defendant do pay the plaintiff the value of the movable property described in the writ (or statement of claim) to be assessed (and also damages for their detention to be assessed).
The value of the said movable property having been assessed at RM..... (and damages at RM.....) as appears by the Registrar's certificate filed the.....day of.....,20.....

It is adjudged that the defendant to pay the plaintiff RM..... and costs to be taxed.
The above costs, etc. (as in (a) above).
(*Note*-See the note to (b) above).

(d) Default judgment in action for possession of immovable property (O. 13, r. 4; O. 19, r. 5; O. 42, r. 5)
No appearance having been entered (or to defence having been served) by the defendant herein. It is this day adjudged that the defendant do give the plaintiff possession of the immovable property described in the writ (or statement of claim) as ..... and pay the plaintiff RM .....costs (or costs to be taxed).
The above costs etc. (as in (a) above).

(e) Judgment in default in action for possession of immovable property, damages and cost (O. 13, r. 4)
No appearance having been entered (or no defence having been served) by the defendant herein. It is this day adjudged that the defendant do give the plaintiff possession of the immovable property described in the writ (or statement of claim) as.....

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And it is further adjudged that the defendant to pay the plaintiff (mesne profits) (damages) to be assessed.

The amount found due to the plaintiff under this judgment having been certified at the sum of RM.....as appears by the Registrar's finding filed the..... day of..... , 20.....

It is adjudged that the defendant do pay the plaintiff RM..... and costs to be taxed.
The above costs, etc. (as in *(a)* above).
(Note-See the note to *(b)* above).

(f) Final judgment after assessment of damages, etc. (O. 42, r. 5)
The.....day of..... , 20.....
The plaintiff having on the .....day of..... , 20..... obtained interlocutory judgment herein against the defendant for damages (or as may be) to be assessed, and the amount found due to the plaintiff having been certified at RM.....as appears by the Registrar's certificate filed the..... day of..... , 20.....

It is this day adjudged that the defendant do pay the plaintiff RM..... and costs, to be taxed.
The above costs, etc. (as in (a) above).

(g) Judgment under Order 14 (O. 14, r. 3; O. 42, r. 5)
The.....day of..... , 20.....
The defendant having entered appearance herein and the Court having under Order 14, rule 3, ordered that judgment as hereinafter provided be entered for the plaintiff against the defendant.

It is this day adjudged that the defendant do pay the plaintiff RM..... and RM..... costs (or costs to be taxed).

or

pay the plaintiff damages to be assessed and costs to be taxed.

or

deliver to the plaintiff the movable property described in the writ (or statement of claim) as.....(or pay the plaintiff the value of the said movable property to be assessed) (and also damages for their detention to be assessed) and costs to be taxed.

or

give the plaintiff possession of the immovable property described in the writ (or statement of claim) as..... and costs to be taxed.
The above costs, etc. (as in (a) above).
(h) Judgment for the Dependant under Order 14 (O. 14, r. 5; O. 42, r. 5)
The.....day of..... , 20.....
The Court having under Order 14 rule 5 ordered that judgment be entered for the defendant against the plaintiff on the counterclaim for RM..... and costs of the counterclaim,

It is this day adjudged that the plaintiff do pay the defendant RM..... and costs of the counterclaim to be taxed.
The above costs, etc. (as in (a) above).

(i) Judgment after trial before Judge (O. 42, r. 5)
The.....day of..... , 20.....
This action having been tried before the Honourable Mr Justice..... on the..... day of....., 20.....
It is adjudged that the defendant do pay the plaintiff RM..... and his costs of action to be taxed (or that this action be dismissed and that the plaintiff do pay the defendant his costs to be taxed) (or as may be according to the Judge's order).
(It is further adjudged that execution be stayed for days) (and .....if within that time the.....gives notice of appeal, execution be further stayed until the determination of the appeal or as may be according to the Judge's direction).
The above costs, etc. (as in (a) above).

(j) Judgment upon Motion for Judgment (O. 42, r. 5)

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The.....day of....., 20 ..... (date of order of Court).
This action having on the.....day of..... , 20..... come on before the Court on motion for judgment on behalf of the (party moving the Court) and the Court after hearing counsel for the (plaintiff and defendant, or as may be) having ordered that (recite direction for judgment).

It is this day adjudged that.....do pay the RM..... and costs to be taxed.
The above costs, etc. (as in (a) above).

(k) Judgment of Dismissal (O. 13, r. 1(1); O. 42, r. 5)

Dated and entered the..... day of..... , 20.....
This action having on the.....day of..... , 20.... been called on for hearing before the Honourable Mr Justice..... and the plaintiff having failed to appear, and the defendant having thereupon become entitled under Order 35, rule 1(2), to judgment dismissing the action and the said having ordered that ..... judgment be entered accordingly.

Therefore it is adjudged that this action do stand dismissed out of this Court with costs.

And it is further adjudged that the plaintiff do pay the defendant his costs to be taxed.
The above costs, etc. (as in (a) above).

(l) Judgment in pursuance of Order (O. 42, r. 5)
Pursuant to the Order of ..... dated....., 20..... whereby it was ordered ..... and default having been made,
It is this day adjudged that the defendant do pay the plaintiff RM..... and costs, to be taxed.
The above costs, etc. (as in (a) above).

(m) Judgment after trial before Registrar (O. 42, r. 5)
Dated and entered the.....day of..... , 20.....

This action by an order dated the ..... day of....., 20..... having been ordered to be tried before ....., Registrar of the Court and the said Registrar having tried the said action and having by his certificate dated the..... day of.....20..... directed that judgment as hereinafter provided be entered for the plaintiff (or defendant).
It is adjudged that as in (i) above according to the Registrar's certificate.

(n) Judgment after decision of preliminary issue (O. 33, r. 5; O. 42, r. 5)
Dated and entered the..... day of..... ,20..... The issue (or question) arising in this cause (or matter) by the order dated the .....day of....., 20..... ordered to be tried before the Honourable Justice ..... having on the.....day of..... , 20.....been tried before the said..... and the said..... having found ..... and having ordered that judgment as hereinafter provided be entered for the..... (or having dismissed the cause or matter). It is adjudged that (the defendant do pay the plaintiff RM..... and his costs of action to be taxed) (the plaintiff do pay the defendant his costs of defence to be taxed) (or as may be according to the order made).

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

(Seal)

.....
Registrar

(o) Judgment for liquidated sum against personal representative (O. 42, r. 5)
Dated and entered the.....day of....., 20.....
(Recital as in *(a)* or *(f)* to *(n)* according to the circumstances in which judgment was obtained).

It is adjudged that the defendant as executor (or administrator) of the abovenamed.....deceased do pay the plaintiff RM.....and costs, to be taxed, the said sum and costs to be levied of the real and personal estate within the meaning of the Probate and Administration Act 1959 of the deceased at the

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time of his death come to the hands of the defendant as such executor (or administrator) to be administered, if he has or shall hereafter have so much thereof in his hands to be administered, and if he has not so much thereof, in his hands to be administered, then, as to the costs aforesaid, to be levied of the movable property of the defendant authorized by law to be seized in execution (or as may be according to the order made).

The above costs, etc. (as in *(a)* above).

(p) Judgment for defendant's costs on discontinuance (O. 59, r. 10)
The.....day of..... , 20.....
The plaintiff having by a notice in writing dated the ..... day of ..... , 20..... , discontinued this action (or withdrawn his claim in this action for.....) and the defendant's costs of the action (or of the claim withdrawn) having been taxed and allowed at RM.....as appears by the Registrar's certificate dated the..... day of....., 20..... , and the plaintiff not having paid the sum within 4 days after taxation.
It is this day adjudged that the plaintiff do pay the defendant RM..... ..... the said taxed costs.

Dated the..... day of..... , 20.....
(Seal)

.....
Registrar

(q) Judgment for costs after acceptance of money paid into Court (O. 59, r. 10 (2)(3))
The.....day of....., 20.....
The defendant having paid into Court in this action the sum of RM..... in satisfaction of the plaintiff's cause(s) of action (or in satisfaction of the plaintiff's cause of action for.....), and the plaintiff having by his notice dated the.....day of..... 20....., accepted that sum in satisfaction of his cause(s) of action or in satisfaction of his cause of action for.....and abandoned his other cause(s) of action), and the plaintiff's costs herein having been taxed and allowed at RM..... as appears by the Registrar's certificate dated the.....day of....., 20.....and the defendant not having paid the sum within 48 hours after taxation.
It is this day adjudged that the defendant do pay the plaintiff RM..... the said taxed costs.

Dated the.....day of....., 20.....
(Seal)

.....
Registrar

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No. 76

ORDER FOR ACCOUNTS AND INQUIRIES (O. 43, r. 2)

(Title as in action)

Upon the application of.....the plaintiff (or the defendant) in this action and upon reading the affidavit of..... filed the.....day of..... , 20..... , and upon hearing.....

It is ordered that the following accounts and inquiry be taken and made; that is to say, ...

1. An account of the movable property not specifically bequeathed of..... ....., deceased, the testator in the pleadings named, come to the hands of, etc.
2. An account of the testator's debts, (or where deceased died more than six years before judgment, (an inquiry whether there is any debt of the deceased remaining unpaid)).
3. An account of the testator's funeral expenses.
4. An account of the legacies and annuities (if any), given by the testator's will.
5. An inquiry what parts (if any) of the testator's said movable property are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administering, and then in payment of the legacies and annuities (if any) given by his will.

(if ordered)

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what immovable property the testator was seized of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's immovable property received by, etc.

8. An inquiry what incumbrances (if any) affect the testator's immovable property, or any and what parts thereof.

(If sale ordered)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incrumbrances.
10. An inquiry, what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's immovable property be sold with the approbation of the Judge, etc., etc.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

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

(Seal)

.....

Registrar

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No. 76A

NOTICE OF APPOINTMENT FOR TAKING OF THE ACCOUNT (O. 43, r. 3)

(Title as in action)

Take notice that you are required to attend before the Deputy Registrar/Senior Assistant Registrar of the .....Court at …….. on……..the ……day of ……., 20……at…….a.m/p.m for the taking of the account.
Dated the ……day of…….. 20……..

(Seal)

.....
Registrar

To the plaintiff and the defendant

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No. 77

NOTICE OF JUDGMENT OR ORDER (O. 44, r. 3)

(Title as in action)

Take notice that a judgment (or order) if this Court was given (or made) on the ..... day of ....., 20 ..... by which it was (state substance of judgment or order).

And also take notice that from the time of the service of this notice you (or the infant..... or the patient as may be) will be bound by the said judgment (or order) to the same extent as you (or he) would have been if you (or he) had originally been made a party.

And also take notice that without entering an appearance you (or the said infant or patient) may within one month after the service of this notice apply to the Court to discharge, vary or add to the said judgment (or order) and that after entering an appearance at the Registry of the High Court at…… , you (or the said infant or patient) may attend the proceedings under the said judgment (or order).

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

(Seal)

.....

Registrar

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No. 78

FORM OF ADVERTISEMENT FOR CREDITORS (O. 44, r. 10)

AB DECEASED, By judgment (or order) of the High Court dated ...., 20..... , and made in an action in the matter of the estate of AB deceased, S against P..... 20...., B....., the creditors of AB late of....., of....., who died on ....., 20..... are to send by post prepaid to ....., so as to reach that address on or before..... , 20..... their full names, addresses and description, the full particulars of their claims, a statement of their accounts and the nature of the securities (if any) held by them, or in default thereof they will be excluded from the benefit of the said judgment (or order) unless the Court on application otherwise orders.

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

(Signature and address of the solicitor of the party prosecuting the judgment or order stating on whose behalf he is acting).

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No. 79

FORM OF ADVERTISEMENT FOR CLAIMANTS OTHER THAN CREDITORS (O. 44, r. 10)

AB DECEASED, By judgment (or order) of the High Court dated....., 20 ....., and made in an action In the matter of the estate of AB deceased (late of..... of.....who died on .....,20.....).

S against U....., 20...., B..... the following inquiry was (or inquires were) directed, viz.:

(Set out inquiry or inquiries)

Notice is hereby given that all persons claiming to be entitled under the said inquiry (or inquiries) are to send by post prepaid to..... of.....so as to reach that address on or before ....., 20....., their full names, addresses and descriptions, and full particulars of their claims or in default thereof they will be excluded from the benefit of the said judgment (or order) unless the Court on application otherwise orders.

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

(Add name and address of the solicitor of the party prosecuting the judgment or order and state on whose behalf he is acting).

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No. 80

AFFIDAVIT VERIFYING LIST OF CREDITOR'S CLAIMS (O. 44, r. 12)

(Title as in action)

We, CD of .....and EF of .....the abovenamed Plaintiffs (or Defendants or as may be) the executors (or administrators) of the abovenamed AB, deceased, and GH of.....(the person to whom claims are required by the advertisement to be sent), severally do make oath (or affirm) and say as follows:
I, the said GH for myself say as follows:

1. I have in the paper writing now produced and shown to me and marked A set forth a list of all the claims the particulars of which have been sent to me by persons claiming to be creditors of the said AB, deceased, pursuant to the advertisement issued in that behalf, dated the .....day of..... , 20.....
And we, the said CD and EF for ourselves say as follows:

2. We have in the paper writing now produced and shown to us and marked B set forth a list of all the claims by persons claiming to be creditors of the said AB, deceased, which have been received by us or either of us other than claims comprised in the said paper writing marked A.

3. We have in the paper writing now produced and shown to us and marked C set forth a list of all the sums of money which were or may have been due and owing by the said AB, at the time of his death, and are or may be still due and owing, and which have come to our knowledge or to the knowledge of either of us but in respect of which no claim has been received by us or either of us has been sent in pursuant to the advertisement in that behalf.
And we the said CD, EF and GH for ourselves say as follows:

4. We have examined the particulars of the several claims and sums of money comprised in the said paper writings marked A, B and C and we have compared the same with the books, accounts and documents of the said AB (or as may be and state any other inquires or investigations made) to order to ascertain, as far as we are able, to which of such claims and sums of money the estate of the said AB is justly liable.
5. From such examination (and state any other reasons) we are of opinion and verily believe that the estate of the said AB is justly liable to the amounts set forth, in the sixth columns of the first parts respectively of the said paper writings marked A and B, and in the fifth column of the first part of the said paper writing marked C, and to the best of our knowledge and belief such several amounts are justly due from the estate of the said AB and proper to be allowed to the respective persons named in the said paper writings.
6. We are of opinion that the estate of the said AB is not justly liable to the amounts set forth in the second parts respectively of the said paper writing(s) marked A, B and C, and that the same ought not to be allowed without proof by the respective claimants (or we are not able to state whether the estate of the said AB is justly liable to the amounts set forth in the second parts respectively of the said paper writings marked A, B and C, or whether such amounts or any parts thereof respectively are proper to be allowed without further evidence).
7. Except as hereinbefore mentioned, there are not, to the best of our knowledge information and belief, any claims of creditors against the estate of the said AB, or any sums of money due and owing by the said AB at the time of his death and still due and owing.
Sworn (or affirmed) as in Form 74.

A

List of claims the particulars of which have been sent in to GH by persons claiming to be creditors of AB deceased, pursuant to the advertisement issued in that behalf, dated the.....day of.....,20.....

This paper writing marked A was produced and shown, etc.

PART I

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CLAIMS PROPER TO BE ALLOWED WITHOUT FURTHER EVIDENCE

Serial Number	Names of Claimants in alphabetical order	Addresses and descriptions	Particulars of claims	Amount claimed	Amount proper to be claimed
				RM	RM

PART II
CLAIMS WHICH OUGHT TO BE PROVED BY CLAIMANTS

Serial Number (in continuation of numbers in first part)	Names of Claimants (in alphabetical order)	Addresses and descriptions	Particulars of claims	Amount claimed
				RM

B

List of claims by persons claiming to be claiming to be creditors of AB deceased other than claim sent in pursuant to the advertisement issued in that behalf, dated ..... day of....., 20.....

This paper writing marked B was produced and shown, etc.

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PART I

CLAIMS PROPER TO BE ALLOWED WITHOUT FURTHER EVIDENCE

Serial Number (in continuation) of numbers in List A	Name of Claimants (in alphabetical order)	Addresses and descriptions	Particulars of claims	Amount claimed	Amount proper to be claimed
					RM

PART II

CLAIMS WHICH OUGHT TO BE PROVED

Serial Number (in continuation of numbers in first part)	Names of Claimants (in alphabetical order)	Addresses and descriptions	Particulars of claims	Amount claimed
				RM

C

List of sums of money which may be due but in respect of which no claim has been received.

This paper writing marked C was produced and shown, etc.

PART I

SUMS ADMITTED TO BE DUE

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Serial Number (in continuation of numbers in List B)	Names of Creditors (in alphabetical order)	Addresses and descriptions	Particulars of debt	Amount of debt
				RM

PART II

SUMS WHICH MAY BE DUE BUT IN RESPECT OF WHICH THE LIABILITY OUGHT TO BE PROVED

Serial Number (in continuation of numbers in first part)	Names of Persons to whom sums may be due (in alphabetical order	Addresses and descriptions	Particulars of sums which may be due	Amount in respect of which proof is required

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No. 81

AFFIDAVIT VERIFYING LIST OF CLAIMS OTHER THAN CREDITOR'S CLAIMS (O. 44, r. 12)

(Title as in action)

We, CD of ..... and EF of..... the abovenamed Plaintiffs (or Defendants, or as may be), the executors (or administrators) of the abovenamed AB, deceased (or trustees of the Settlement, etc.), and GH of.....(the person to whom claims are required by the advertisement to be sent), severally do make oath (or affirm) and say as follows:
I, the said GH for myself say as follows:
1. I have in the paper writing now produced and shown to me and marked D set forth a list of all the claims the particulars of which have been sent to me by persons claiming under the inquiry (or inquiries, numbered..... and .....) directed by the judgment (or order) in this action, dated the..... day of..... 20....., pursuant to the advertisement issued in that behalf, dated the..... day of....., 20..... And we, the said CD and EF for ourselves say as follows:

2. We have in the paper writing now produced and shown to us and marked E set forth a list of all the claims by persons claiming to be interested in the subject-matter of the said inquiry (or inquiries) which have come to our knowledge or to the knowledge of either of us other than claims contained in the said paper writing marked D. And we, the said CD, EF, and GH, for ourselves say as follows:

3. Except as hereinbefore mentioned there are not to the best of our knowledge information and belief any claims under the said inquiry (or inquiries).

Sworn (or affirmed) as in Form 74.

D

List of claims the particulars of which have been sent in to GH by persons claiming under the inquiry (or inquiries ..... and .....) and directed by the judgment (or order) in this action, dated, etc., pursuant to the advertisement issued in that behalf dated the ..... day of..... 20.....

THIS PAPER WRITING MARKED D WAS PRODUCED AND SHOWN, ETC.

Serial Number	Names of Claimants (in alphabetical order)	Addresses and descriptions	Particulars of claim

E

List of claims by persons claiming to be interested in the subject of the inquiry (or inquiries.....and.....) directed by the judgment (or order) in this action, dated, etc., other than claims sent in pursuant to the advertisement, dated the..... day of....., 20 .....

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THIS PAPER WRITING MARKED E WAS PRODUCED AND SHOWN, ETC.

Serial Number (in continuation of numbers in List D	Names of claimants(in alphabetical order	Addresses and descriptions	Particulars of claim

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No. 82

CERTIFICATE OF REGISTRAR (O. 44, r. 21)

(Title as in action)

I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment (or order) in this cause dated the.....day of..... is as follows:

1. The defendants.....the executors of ..... the testator, have received movable property to the amount of RM .....and they have paid, or are entitled to be allowed on account thereof, sums to the amount of RM ..... , leaving a balance due from (or, to) them of RM..... on that account.
The particulars of the above receipts and payments appear in the account marked verified by the affidavit of ..... filed on the ..... day of ..... , and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums (state the same here or in a schedule), and except that I have disallowed the items of disbursement in the said account numbered ..... , and .....
2. The debts of the testator which have been allowed, are set forth in the ..... Schedule hereto, and with the interest thereon and costs mentioned in the schedule are due to the persons therein named, and amount altogether to RM.....
3. The funeral expenses of the testator amounted to the sum of RM..... ....., which I have allowed the said executors in the said account of movable property.
4. The legacies given by the testator are set forth in the schedule hereto, and with the interest therein mentioned remained due to the persons therein named, and amount altogether to RM.....

5. The outstanding movable property of the testator consists of the particulars set forth in the ..... Schedule hereto.
6. The immovable property to which the testator was entitled consists of the particulars set forth in the..... Schedule hereto.
7. The defendants have received rents and profits of the testator's immovable property, etc. (in a form similar to that provided with respect to the movable property).
8. The incumbrances affecting the said testator's immovable property are specified in the ..... Schedule hereto.
9. The immovable properties of the testator directed to be sold have been sold and the purchase-moneys amounting altogether to RM..... have been paid into Court.

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

(Seal)

.....
Registrar

NB-The above numbers are to correspond with the numbers in the order after each statement; the evidence produced is to be stated as follows:
The evidence produced on this account (or inquiry) consists of the probate of the testator's will, the affidavit of AB filed....., and paragraph numbered .....of the affidavit of CD, filed.

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No. 83

NOTICE ON CERTAIN JUDGMENTS (O. 45, r. 7)

The endorsement should be in the following words or words to the following effect:

(a) In the case of a judgment or order requiring a person or body corporate to do an act within a specified time-

"If you, the within-named..... (or.....) neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same."

(b) In the case of a judgment or order requiring a person to abstain from doing an act –

If you, the within-named..... disobey this judgment (or order), you will be liable to process of execution for the purpose of compelling you to obey the same.

(c) In the case of a judgment or order requiring a body corporate to do or to abstain from doing the act, but it is sought to take enforcement proceedings against a director or other officer of that order.

"If.....neglect to obey this judgment (or order) by the time therein limited (or in the case of an order to abstain from doing an act, if .... disobey this judgment (or order), you (a director or officer of the said .....) will be liable to process of execution for the purpose of compelling the said to obey the same."

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No. 84

WRIT OF SEIZURE AND SALE (MOVABLE PROPERTY) (O. 45, r. 12)

(Title as in action)

THE HONOURABLE
CHIEF JUDGE OF MALAYA/SABAH & SARAWAK, IN THE NAME OF THE YANG
DI-PERTUAN AGONG

To the Sheriff,
We command you that you cause to be levied and made out of the property liable to be seized under a writ of seizure and sale which shall be identified by or on behalf of (name of execution creditor) as belonging to (name of execution debtor) now or late of (address of execution debtor) by seizure and if it be necessary by sale thereof RM.....which the said (name of execution creditor) lately in Our Court recovered against the said (name of execution debtor) by a judgment (or order or as may be) bearing the..... .....day of ....., 20 ..... And in what manner you shall have executed this Our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Dated the.....day of....., 20 .....
Entered No.....of 20.....

Clerk.

(Seal)

.....
Registrar

Memorandum to be subscribed on the Writ

This writ may not be served more than twelve months after the above date unless renewed by order of Court.

Endorsements to be made on Writ before issue

	RM	**Sen**
THIS WRIT is issued .....of.....		
Solicitor for the execution creditor.....		
who resides at.....		
The execution debtor resides at.....		

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Amount of judgment and
costs
Subsequent costs (if any)
Paid to account of judgment

Remaining due
Costs of this writ
Interest on RM .....at..... % p.a.
from
..... to .....

Property seized on.....

Amount of levy paid
on.....

Property sold on ...by.....for...

Expenses of Execution
Lotting and advertising
Auctioneers commission
Court commission
Other Court fees
Watchmen's wages

Other legal expenses (specify
them)
Paid into Court
Paid to credit of landlord
under
Paid to credit of Writ of
Distress
Paid to credit of execution
creditor
Paid to credit of execution
debtor

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

.....
Sheriff

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No. 85

WRIT OF SEIZURE AND SALE (IMMOVABLE PROPERTY) (O. 45, r. 12)

(Title as in action)

Upon the application of……..and upon reading the affidavit of ……..filed the day of ……20 …….. , and upon hearing……..

It is ordered that the interest of …….. in the immovable property specified in the Schedule herein be attached and taken in execution to satisfy the judgment of the abovenamed…….. dated …….. .

Dated this …….. day of ……., 20…… .

(Seal)

.....

Registrar

Note: This order shall, unless registered under any written law relating to such immovable property, remain in force for 6 months from the date hereof.

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No. 86

WRIT OF DELIVERY (O. 45, r. 12)

(Title as in action)

THE HONOURABLE
CHIEF JUDGE OF MALAYA/ SABAH & SARAWAK, IN THE NAME Of THE
YANG Dl-PERTUAN AGONG

To the Sheriff,
We command you that, without delay, you do seize and deliver, to the abovenamed (name of execution creditor) the following movable property, that is to say (describe the property delivery of which has been adjudged or ordered) (and RM ..... damages and RM ..... costs) which the said (name of execution creditor) lately in our Court recovered against the said (name of execution debtor) by a judgment (or order or as may be) bearing the ..... day of ....., 20.....
(And we further command you that if the said movable property cannot be found within Malaya/Sabah & Sarawak you cause to be levied and made out of the property liable to be seized under a writ of seizure and sale belonging to the said (name of execution debtor) and if necessary by sale thereof RM..... being the assessed value of the said property).
And in what manner you have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.
Dated the.....day of..... , 20.....
Entered No ..... of 20.....
Clerk

(Seal)

.....
Registrar

Memorandum on Writ (as in Form 85).

Endorsements on Writ (as in Form 85 or as required).

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No. 87

WRIT OF POSSESSION (O. 45, r. 12)

(Title as in action)
THE HONOURABLE CHIEF JUDGE
OF MALAYA/ SABAH & SARAWAK, IN THE NAME OF THE YANG DI-PERTUAN AGONG

To the Sheriff,
Whereas lately, by a judgment of our said Court bearing the..... day of ..... , 20 ..... , it was adjudged (or ordered) that the defendant (name of defendant) do give the plaintiff (name of plaintiff) possession of (describe the immovable property delivery of which has been adjudged or ordered) and do pay him RM ..... and RM.....costs.
We command that you enter the said immovable property and cause (name of plaintiff) to have possession of it.
And we further command that you cause to be levied and made out of the property liable to be seized under a writ of seizure and sale belonging to the said (name of defendant) and if necessary by sale thereof RM..... And in what manner you have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.
Dated the .....day of..... , 20 .....
Entered No..... of 20.....

Clerk.

(Seal)

.....
Registrar

Memorandum of Writ (as in Form 85).
Endorsements on Writ (as in Form 85 or as required).

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No. 88

NOTICE FOR LEAVE TO ISSUE EXECUTION (O. 46, r. 3)

(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on .....the.....day of .....20..... , at ..... a.m./p.m. on the hearing of an application on the part of ..... that ..... may be at liberty to issue ..... execution (or writ of seizure and sale, or as may be) against the defendant (or as may be) on the judgment herein dated the..... day of ..... 20..... (notwithstanding that 6 years have elapsed since such judgment, or as may be) and that the defendant (or as may be)) do pay the cost of and occasioned by this application.

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

Entered No ..... of..... , 20 .....

Clerk.

(Seal)

.....

Registrar

This notice is taken out by the plaintiff (or as may be) of (state address) to the defendant (or as may be).

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No. 89

PRAECIPE FOR WRIT OF EXECUTION (O. 46, r. 4)

(Title as in action)

(a) Praecipe for writ of seizure and sale
To the Registrar,
Please issue writ of seizure and sale against (name of execution debtor) of (address of the execution debtor) to levy the sum of RM..... (and RM ..... for interest thereon at the rate of 8 per cent per annum from the ..... day of....., 20 ..... till the ..... day of ..... , 20 .....) due under the judgment (or order) herein dated the ..... day of ....., 20 ..... which remains unsatisfied to the extent of RM .....

	RM	**Sen**
Amount adjudged		
Costs		
Interest as per calculation attached		
Subsequent costs		
Paid to account		
Balance still due		

The sealed copy of the judgment is attached.

Date of order granting leave to execute .....

Name and address of execution creditor .....

His solicitors .....

Address for service .....

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

.....
Execution Creditor (or by or)
on behalf of solicitors for

(b) Praecipe for writ of delivery
To the Registrar,
Please issue writ of delivery against (name of execution debtor) of (address of execution debtor) for delivery of (describe the movable property) under the judgment dated the .....day of.....20..... which has not been delivered to me by the execution debtor in accordance with the said judgment.
(And if the said movable property cannot be found, to levy RM..... the value thereof as assessed by the Court in the said judgment (or in an order dated the.....day of..... 20.....)).
(And further "to levy....." (as in (a) above)).

(c) Praecipe for writ of possession
To the Registrar,
Please issue a writ of possession against (name of defendant) of (address of defendant) to deliver possession of (describe the property) ..... under the judgment herein dated the .....day of ...., 20 .....
(And further "to levy....." (as in (a) above)).

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No. 90

CONSENT TO ENTRY OF SATISFACTION (O. 46, r. 9)

(Title as in action)

I,..... of ..... being the plaintiff (or as may be) named in, and the sole person entitled to the benefit of the judgment herein, hereby consent to a memorandum of satisfaction of the said judgment being entered in the Cause Book.

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

.....
Plaintiff (or as may be)

.....
Advocate and Solicitor or Commissioner for Oaths

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No. 91

NOTICE OF SEIZURE AND INVENTORY (O. 46, r. 16) (O. 75, r. 4)

(Title as in action)

Take notice that I have this day seized the movable property found on or upon the premises No ..... pursuant to a Writ of Seizure and Sale/Writ of Distress No ..... of 20 ..... for the sum of RM ..... and that I value the property seized at RM ..... approximately.

Unless you pay the amount abovementioned together with costs of this execution within 7 days from the date hereof or obtain an order of the Court to the contrary the same will be sold by public auction on the..... day of..... , 20.....

Amount due under write	RM.....
(Rent due for.....months from the..... day of....., 20..... to the..... day of....., 20..... at RM..... a month)	RM.....
Costs of writ	RM.....
Court commission	RM.....
Lotting and advertising	RM.....
Auctioneer's commission	RM.....
Other Court fees	RM.....
Watchmen wages at RM..... a day	RM.....
Other legal expenses	RM.....

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

.....

Sheriff

(For Inventory *see* overleaf)

To
and all others whom it may concern.

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No. 92

NOTICE OF SALE (O. 46, r. 23)

(Title as in action)

Notice is hereby given that the property seized at.....on the..... day of....., 20.... , under writ of Distress/Seizure and Sale No ....., of 20...., will be sold by public auction on the ..... day of ....., 20....., at a.m./p.m. unless the amount to be levied and the fees and expenses of execution be sooner paid.

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

.....
Sheriff

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No. 93

ORDER SUSPENDING JUDGMENT OR ORDER FOR PAYMENT BY INSTALMENTS, EXECUTION (O. 46, r. 26A)

(General Title)

Upon the application of ..... and upon reading the affidavit of ..... filed the ..... day of ....., 20... and upon hearing.....

It is ordered that the said judgment (or order) be suspended (or that the execution issued in this action be suspended) for (state time) upon the following terms (state terms):

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

(Seal)

.....
Registrar

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No. 94

SHERIFF'S/BAILIFF'S NOTICE SEIZING SECURITIES (O. 47, r. 8)

(Title as in action)

Whereas by a writ of seizure and sale dated the…….. day of ……20……. , a copy of which is attached, I was directed to cause to be levied and made out of the property liable to be seized under the writ of seizure and sale belonging to ……..the sum of RM …….
Now I do give you notice that I hereby seize the securities specified in the Schedule hereto to which the judgment debtor is beneficially entitled to satisfy the judgment of the abovenamed ……..dated……..
Dated this…… day of…… 20……..

……
Sheriff/Bailiff

SCHEDULE

_____

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No. 95

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ORDER FOR EXAMINATION OF JUDGMENT DEBTOR (O. 48, r. 1)

(Title as in action)

I,..... of..... do make oath (or affirm) and say as follows:

1. I am a..... in the employ of..... Solicitors for the plaintiff and am duly authorised to make this affidavit on behalf of..... .....
2. On the..... day of....., 20....., judgment was entered for the plaintiff for RM..... and RM..... costs (or as may be). The said judgment remains wholly unsatisfied (or unsatisfied as to the total sum of RM....., or as may be).
3. In order to enable the plaintiff to decide upon the methods to employ to enforce the said judgment, it is desired to examine the judgment debtor (or ....., an officer of the judgment debtor company) on the question whether any and if so what debts are owing to him (or the judgment debtor company) and or means of satisfying the judgment debt.
4. In these circumstances, I respectively ask for an order that the said judgment debtor (or.....) to attend before the Registrar to be examined on the said questions, and to produce upon such examination all books or documents in his possession relevant to the said questions at the time and place appointed for his examination.

Sworn (or affirmed) as in Form 74.

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No. 96

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR (O. 48, r. 1)

(Title as in action)

Upon the application of ..... and upon reading the affidavit of ..... filed the ..... day of ....., 20 ..... and upon hearing……..

It is ordered that the abovenamed judgment debtor..... attend and be orally examined as to whether any and what debts are owing to him, and whether the said judgment debtor has any and what other property or means of satisfying the judgment signed herein, on the ..... day of ....., 20....., before the Registrar, and that the said judgment debtor produce any books or documents in his possession or power relating to the same before the Registrar at the time of the examination and that the costs of this application and of the examination thereunder be in the discretion of the Registrar making the order.

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

(Seal)

.....
Registrar

Note-This order requires personal service, and the copy served must bear a copy of the appointment of the cite for the examination, and be endorsed as prescribed by O. 45, r. 7(4), when it may be enforced by committal.

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No. 97

GARNISHEE ORDER TO SHOW CAUSE (O. 49, r. 1)

IN THE COURT OF MALAYA/ SABAH & SARAWAK AT .....

Suit No.....of 20.....

Between

.....*Judgment creditor*,

and

.....*Judgment debtor*.

and

..... *Garnishee*.

Upon the application of.....and upon reading the affidavit of sworn to (or affirmed) and filed the.....day of....., 20..... and upon hearing ……

It is ordered by the Judge (or Registrar) that all debts due or accruing due from the above-mentioned garnishee to the above-mentioned judgment debtor (in the sum of RM.....) be attached to answer a judgment recovered against the said judgment debtor by the abovenamed judgment creditor in the Court on the..... day of ....., 20... for the sum (or to answer an order made in the Court on the..... day of..... ....., 20..... ordering payment by the said judgment debtor to the abovenamed judgment creditor of the sum) of RM ..... (debt and RM ..... costs) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of RM ..... remains due and unpaid.

And it is ordered that the said garnishee attend before the Judge (or Registrar) in Chambers, on ..... the day of ....., 20..... at.....a.m./p.m on an application by the said judgment creditor that the said garnishee do pay to the said judgment creditor the debt due from the said garnishee to the said judgment debtor, or so much thereof as may be sufficient to satisfy the said judgment (or order), together with the costs of the garnishee proceedings.

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

(Seal)

……
Registrar

To the abovenamed garnishee and judgment debtor.

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No. 98

AFFIDAVIT IN SUPPORT OF GARNISHEE ORDER (O. 49, r. 2)

IN THE COURT OF MALAYA/ SABAH & SARAWAK AT.....

Suit No.....of 20.....

Between

.....*Judgment creditor*

and

.....*Judgment debtor*

I,....., of.....,the abovenamed judgment creditor (or, state the name, the residence and the occupation or description of the deponent), do make oath (or affirm) and say as follows:

1. By a judgment (or order) of the Court given in this action, and dated.... day of ....., 20....., it was adjudged (or ordered) that the abovenamed judgment debtor should pay me, (or the abovenamed judgment creditor) the sum of RM..... , and cost RM.....

2. The said judgment (or order) still remains unsatisfied to the extent of RM..... and interest amounting to RM.....

3. To the best of my information or belief (state the name, address and description of the garnishee) is indebted to the judgment debtor in the sum of RM..... or thereabouts, and is within the jurisdiction of this Court. The grounds of my information and belief are (state the sources of the deponent's information or grounds of belief).

4. I am duly authorised by the abovenamed judgment creditor to make this affidavit on his behalf.

Sworn (or affirmed) as in Form 74.

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No. 99

GARNISHEE ORDERS (O. 49, r. 4)

(Title as in Form 97)

(a) Garnishee order absolute where garnishee owes more than judgment debt.
Upon reading the affidavit of ..... filed the ..... day of....., 20..... , and the order to show cause made herein dated the ..... day of.....,20..... and upon hearing the solicitors for the judgment creditor and the garnishee, whereby it was ordered that all debts due or accruing due from the abovenamed garnishee to the abovenamed judgment debtor should be attached to answer a judgment recovered against the Court on the..... day of ....., 20.....for the sum (or to answer an order made in the Court dated the ..... day of ....., 20..... ordering payment by the said judgment debtor to the abovenamed judgment creditor of the sum) of RM.....(debt and RM..... costs) (together with the costs of the garnishee proceedings) on which judgment (or order) the sum of RM..... remained due and unpaid.
It is ordered that the said garnishee do forthwith pay to the said judgment creditor (or into Court if the judgment creditor is resident outside the scheduled territories as defined by the Exchange Control Act 1953, or would receive payment of the said sum on behalf of a person so resident, unless the Controller's permission under the said Act has been given unconditionally or upon conditions which have complied with) RM ..... being so much of the debt due from the said garnishee to the said judgment debtor as is sufficient to satisfy the said judgment debt and costs, together with RM ..... the costs of the garnishee proceedings, and that the said garnishee be at liberty to retain RM ..... for his costs of this application out of the balance of the debt due from him to the judgment debtor.

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

(Seal)

.....
Registrar

(b) Garnishee order absolute where garnishee owes less than judgment debt.
Upon reading (as above).
It is ordered that the said garnishee (after deducting therefrom RM..... for his costs of this application) do forthwith pay to the said judgment creditor (or into Court if the judgment creditor is resident outside the scheduled territories as defined by the Exchange Control Act 1953, or would receive payment of the said sum on behalf of a person so resident, unless the Controller's permission under the said Act has been given unconditionally or upon conditions which have been complied with) RM ..... the debt due from the said garnishee to the said judgment debtor. And that the sum of RM.....the costs of the judgment creditor of this application be added to the judgment debt and be retained out of the money recovered by the said judgment creditor under this order and in priority to the amount of the judgment debt.
Dated the ..... day of ....., 20.....

(Seal)

.....
Registrar

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No. 100

ORDER FOR ISSUE BETWEEN JUDGMENT CREDITOR AND GARNISHEE (O. 49, r. 5)

(Title as in Form 97)

Upon reading the affidavit of..... filed the .....day of .....,20... , and the order nisi herein, dated the.....day of.....,20.....and upon hearing counsel for the judgment creditor, the garnishee and the judgment debtor.

It is ordered that the judgment creditor and the garnishee proceed to the trial of an issue wherein the said judgment creditor shall be plaintiff and the said garnishee shall be defendant, and that the question to be tried shall be whether there was any debt due or accruing due in any and what amount from the Judgment debtor to the said garnishee at the time the said order nisi was served. And it is further ordered that the question of costs and all further questions be reserved to the Judge (or Registrar) trying the same issue.

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

(Seal)

.....

Registrar

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No. 101

ORDER ABSOLUTE IMPOSING CHARGE ON SECURITIES (O. 50, r. 2)

(Title as in action)

Upon the application of ..... and upon reading the affidavit of ..... filed the ..... day of....., 20..., and the order to show cause made herein on the.....day of ....., 20... and upon hearing .....

It is ordered that the interest of the defendant in the sum of RM ..... stock (or shares in the Co. Ltd., or as may be) now standing in the name of the said defendant (or as may be) stand charged with the payment of RM....., the amount due from the said defendant to the plaintiff on the judgment (or order) of the Court dated the .....day of ....., 20... (and interest thereon at the rate of RM.....per cent per annum from the said date until payment) together with RM ..... the costs of this application, the said costs to be added to the judgment debt.

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

(Seal)

.....

Registrar

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No. 102

ORDER IMPOSING CHARGE ON SECURITIES:
ORDER TO SHOW CAUSE (O. 50, r. 2)

(Title as in action)

Upon the application of..... and upon reading the affidavit of ..... filed the..... day of....., 20..... and upon hearing ..... whereby it appears that by a judgment (or order made in the Court on the ..... day of ....., 20..... the defendant was ordered to pay to the plaintiff the sum of RM..... and RM ..... costs (or as may be), on which judgment (or order) the sum of RM ..... remains due and unpaid and that there is standing in the books of the Accountant-General in (the said defendant's name in his own right or as may be) the sum of RM....., (describing the stock, etc., on which the charge is sought) (or there are ..... ordinary or as may be shares in the Co. Ltd., a public company registered in Peninsular Malaysia/Sabah & Sarawak, now standing in the said defendant's name in his own right or as may be).

It is ordered by the Judge (or Registrar) that unless sufficient cause to the contrary be shown before the Judge (or Registrar) on ..... the ..... day of ....., 20.....at ..... m, the defendant's interest in the said stock (or shares) so standing as aforesaid shall and it is ordered that in the meantime it does, stand charged with the payment of RM ..... due on the said judgment (or order) together with the costs of this application.

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

(Seal)

.....
Registrar

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No. 103

AFFIDAVIT AND NOTICE UNDER ORDER 50, RULE 10 (O. 50, r. 10)

(Title as in action)

and

In the matter of (state the settlement or under document under which the deponent's interest arises giving the date and other particulars sufficient to identify the document)
and

In the matter of Order 50, rule 10 of the Rules of Court 2012.
I, ..., (or ..... the solicitor of .....), of ..... do make oath (or affirm) and say that according to the best of my knowledge, information and belief I am (or the said ..... is) beneficially entitled under the above-mentioned settlement (or as may be) to an interest in the securities specified in the notice hereto annexed.
Sworn (or affirmed) as in Form 74.

This affidavit is filed on behalf of ..... whose address is ..... Notice to be annexed to affidavit.
To the Accountant-General,
Malaysia.

(or as may be).
Take notice that the securities comprised in and subject to the trusts of the settlement (or as may be) referred to in the affidavit to which this notice is annexed consist of the following, namely (specify the stock, shares, etc., stating the names in which it stands). This notice is intended to stop the transfer of the said securities and not the payment of any dividend thereof or interest thereon (or and also the payment of any dividend thereof or interest thereon).

.....
Deponent
(or solicitor of deponent if affidavit sworn by him)

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No. 104

ORDER ON ORIGINATING SUMMONS RESTRAINING TRANSFER OF STOCK, *ETC*. (O. 50, r. 14)

(Title as in action)
and

In the matter of the trusts of.....
and

In the matter of Order 50 rule 14, of the Rules of Court 2012.

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

Upon the hearing of the originating summons for an injunction the day made into this Court by counsel for the applicant.
And the applicant by his counsel undertaking to abide by an order the Court may hereafter make should it decide that the respondents (the Accountant-General or as may be) have sustained damage by reason of this Order and are entitled to damages which the applicant ought to pay:

It is ordered that the Accountant-General (or the ..... Co. Ltd. or as may be) be restrained until the ..... day of ....., 20..... or further order from permitting the transfer of (describe stock) standing in the name of (state name of holder of stock) in their books, or any part thereof, and from paying any dividend or interest due or to become due thereon.

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

(Seal)

.....
Registrar

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No. 105

NOTICE FOR APPOINTMENT OF RECEIVER (O. 51, r. 3)

(Title as in action)

Let the defendant ..... attend before the Judge (or Registrar) in Chambers on ..... the..... day of....., 20.....at .... a.m/p.m. on the hearing of an application on the part of the plaintiff for an order that a receiver be appointed (or that ..... be appointed receiver) in this action to receive the rents, profits and moneys receivable in respect of the interest of the defendant ..... in the following property, namely (describe the property) in or towards satisfaction of the moneys and interest due to the plaintiff under the judgment (or order) in this action dated the ..... day of....., 20....and for an order as to the costs of this application.

Dated the ..... day of....., 20.....
Entered No..... 20.....
Clerk

(Seal)

.....
Registrar

This notice is taken out by ..... of .....
To the abovenamed ..... (and his solicitor).

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No. 106

ORDERS FOR APPOINTMENT OF RECEIVER, ETC. (O. 51, r. 3)

(a) Order directing notice for appointment of receiver and granting injunction meanwhile

Upon the application of ..... and upon reading the affidavit of ..... filed the..... day of....., 20 .....and upon hearing .....

It is ordered that the defendant do attend before the Judge (or Registrar) on the ..... day of....., 20.....at.... .a.m./p. on the hearing of an application on the part of the plaintiff for the appointment of..... as receiver in this action, on the usual terms, to receive the rents, profits and moneys receivable in respect of the said defendant's interest in the following property, namely (describe the property) in or towards satisfaction of the sum of RM.....debt RM.....costs and interest on the said sums at the rate of RM..... per cent, per annum from the.....day of ...., 20..... due under the judgment (or order) in this action dated the..... day of....., 20.....

And the plaintiff (by the solicitor) hereby undertaking to abide by any order the Court may hereafter make should it decide that the said defendant has sustained damage by reason of this order and is entitled to damages which the plaintiff ought to pay, it is ordered that the said defendant by himself, his agents or servants, or otherwise be restrained, and an injunction is hereby granted restraining him until after the hearing of the above application, from assigning, charging or otherwise dealing with the said property.

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

(Seal)

.....

Registrar

(b) Order appointing receiver by way of equitable execution

Upon the application of .....and upon reading the affidavit of ..... filed the.....day of....., 20.....And upon hearing .....

(If security ordered). It is ordered that ..... of ..... on first giving security to the satisfaction of the Registrar, be and is hereby appointed to receive the rents, profits and moneys receivable in respect of the abovenamed defendant's interest in the following property, namely (describe property).

(If no security ordered and receiver is not the plaintiff). The plaintiff being answerable for the acts and defaults of the receiver, it is ordered the .....of ..... be and is hereby appointed to receive (continue as above) but he shall not receive more than the amount of the judgment debt and allowed costs of obtaining this order without leave of the Court or first giving (at the plaintiff's cost unless otherwise ordered) the usual security to the satisfaction of the Registrar.

(If no security ordered and receiver is the plaintiff: as above omitting "The plaintiff being answerable for the acts and defaults of the receiver" and the words after "the Court".)

(In all cases continue as follows:)

That this appointment shall be without prejudice to the rights of any prior incumbrancers upon the said property who think proper to take possession of or receive the same by virtue of their respective securities or, if any prior incumbrancer is in possession, then without prejudice to such possession.

And that the tenants of premises comprised in the said property to attorn and pay their rents in arrear and growing rents to the receiver.

And that the receiver have liberty, if he shall think proper (but not otherwise), out of the rents, profits and moneys to be received by him to keep down the interest upon the prior incumbrances, according to their priorities. and he allowed such payments, if any, in passing his accounts.

And that the receiver shall on the..... day of ..... (3 months after the date of order), and at such further and other times as may be ordered by the Registrar leave and pass his accounts, and shall on the ..... day of....., (4 months after date of order), and at such further and other times as may be

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hereafter ordered by the Registrar pay the balance or balances appearing due on the accounts so left or such part thereof as shall be certified as proper to be so paid, such sums to be paid in or towards satisfaction of what shall for the time being be due in respect of the judgment signed on the day of for the sum of RM..... debt and RM.....costs, making together the sum of RM.....

And that the costs of the receiver (including his remuneration), the costs of obtaining his appointment, of completing his security (if any), of passing his accounts and of obtaining his discharge shall not exceed ten per cent of the amount due under the said judgment or the amount recovered by the receiver, whichever is the less, provided that not less than one hundred ringgit be allowed unless otherwise ordered. Such costs shall be taxed unless assessed by the Registrar and shall be primarily payable out of the sums received by the receiver, but if there shall be no sums received or the amount shall be insufficient, then upon the certificate of the Registrar being given stating the amount of the deficiency, such certificate to be given after passing the final account, the amount of the deficiency so certified shall be paid by the defendant to the plaintiff.

It is also ordered that the balance (if any) remaining in the hands of the receiver, after making the several payments aforesaid, shall unless otherwise directed by the Registrar forthwith be paid by the receiver into Court to the credit of this action, subject to further order.

And that any of the parties be at liberty to apply to the Registrar in Chambers as there may be occasion.

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

(Seal)

.....

Registrar

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No. 107

ORDER OF COMMITTAL (O. 52, r. 2)

(Title as in action)

Upon application this day made unto this Court by counsel for the plaintiff and upon reading the affidavit of ..... filed the ..... day of....., 20..... of service on the defendant ..... of a copy of the order of the Court dated the ..... day of ....., 20 ..... and of notice of this application:
And it appearing to the satisfaction of the Court that the defendant ..... has been guilty of contempt of court in (state the contempt):
It is ordered that for his said contempt the defendant do stand committed to prison to be there imprisoned (until further order).
(It is further ordered that this order shall not be executed if the defendant ..... complies with the following terms, namely, ...).

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

(Seal)

.....
Registrar

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No. 108

WARRANT FOR COMMITTAL (O. 52, r. 10)

(Title as in action)

Whereas by an Order of this Court pronounced this day it was ordered that the abovenamed ..... do stand committed to ..... Prison for his contempt in the said Order mentioned.
These are therefore to command you the Sheriff and every Police Officer to apprehend the said ..... and him safely convey to ..... Prison there to be detained and kept in safe custody.
Dated the .....day of ..... , 20....

(Seal)

.....
Registrar

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No. 109

APPLICATION FOR JUDICIAL REVIEW (O. 53, r. 2)

IN THE HIGH COURT IN ..... AT .....
APPLICATION FOR JUDICIAL REVIEW NO: .....

In the matter of .....

Between
AB ..... *Applicant*

and

CD ..... *Respondent*

Take Notice that the Court will be moved on ..... , the ..... day of ..... , 20..... , by the Applicant abovenamed for the following relief:

(Here state the relief claimed)

The grounds in support of this application are those appearing in the Statement filed herewith.

The affidavit of ..... , Affirmed on the ..... day of ..... , 20 ..... , and filed herein shall be read in support of this application.

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

(Seal)

.....
Registrar

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No. 110

NOTICE OF HEARING OF APPLICATION FOR JUDICIAL REVIEW (O. 53, r. 4)

IN THE HIGH COURT IN ..... AT .....
APPLICATION FOR JUDICIAL REVIEW NO: .....

In the matter of .....

Between

AB ..... *Applicant*

and

CD ..... *Respondent*

Take Notice that leave to apply for judicial review having been granted on the ..... day of ..... , 20 ..... , the substantive application for the relief sought herein shall be heard in open court on ..... , the ..... day of ..... , 20 ..... , at 9 a.m. or so soon thereafter as counsel may be heard.

And further take notice that a copy of the statement and all affidavits in support are herewith served upon you.

To: (1) The respondent abovenamed.

(2) All other parties upon whom service has been directed.

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

……
Registrar

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No. 111

NOTICE OF APPEAL (AFTER TRIAL) (O. 55, r. 3)

(Heading)

Take Notice that .....(1) being dissatisfied with the decision of the Sessions/Magistrates' Court after trial at ..... given on the ..... day of ....., 20..., appeals to the High Court against either/or the whole of the said decision such part of the said decision as decides that

(set out details)

Dated the ..... day of ..... 20…....

……
Appellant/Solicitor for the Appellant

To
The Registrar, Sessions Court at .....
The Magistrate at .....
and to
..... ……
..... (2)

NOTES:
(1) Insert name of appellant.
(2) Insert name and address of respondent or respondents.

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No. 111A

NOTICE OF APPEAL (OTHER THAN A DECISION MADE AFTER TRIAL) (O. 55, r. 5)

(Heading)

Take Notice that .....(1) being dissatisfied with the decision of the Sessions/Magistrates' Court other than a decision made after trial at ..... given on the ..... day of ....., 20..., appeals to the High Court against either/or the whole of the said decision such part of the said decision as decides that

(set out details)

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

.....
Appellant/Solicitor for the Appellant

To
The Registrar, Sessions Court at .....
The Magistrate at .....
and to
.....
.....(2)
NOTES:
(1) Insert name of appellant.
(2) Insert name and address of respondent or respondents.

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No. 112

MEMORANDUM OF APPEAL (O. 55, r. 4)

IN THE COURT OF MALAYA/SABAH & SARAWAK AT.....

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

Between

AB.,.....*Appellant*

and

CD.,.....*Respondent*

(In the matter of ..... No..... of 20.....

Between

.....

and

.....) [1]

AB, the appellant abovenamed, appeals to the Court against the whole/part of the decision of the Sessions Court / Magistrates' Court at ..... given on the ..... day of .....20.....on the following grounds:
(Set out in numbered paragraphs)
Dated the .....day of .....20.....

.....
Appellant/Solicitor for the Appellant

To the Registrar and the respondent.

Note - [1] Insert number of proceedings in Court below and the names of the parties thereto.

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No. 113

NOTICE OF CROSS APPEAL (O. 55, r. 8)

IN THE COURT OF MALAYA/ SABAH & SARAWAK AT .....
Civil Appeal No ..... of 20.....

Between

AB, ...*Appellant*

and

CD.,.....*Respondent*

(In the matter of .....No.....of 20 .....

Between

.....

and

.....) [(1)]

_____

Note:[(1)] Insert number of proceedings in Court below and the names of the parties thereto.

Take notice that, on the hearing of the above appeal .....the respondent abovenamed, will contend that the decision of the Sessions Court /Magistrates' Court at ..... given on the.....day of ……..……......., 20..... ought to be varied to the extend and on the grounds hereinafter set out:

(Set out in numbered paragraph)

(a) the nature of relief claims; and

(b) the grounds relied on.

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

.....
Respondent/ Solicitor for the Respondent

To the Registrar and the Appellant.

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No. 114

NOTICE OF APPEAL TO JUDGE IN CHAMBERS (O. 56, r. 1)

(Title as in action)

Take notice, that the abovenamed plaintiff (or defendant) intends to appeal against the decision of the Registrar given on the .....day of....., 20..... ordering (or refusing to order) (state in full the order appealed against).

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

.....
Solicitor for the .....

And further take notice, that you are required to attend before the Judge in Chambers on.....,the.....day of....., 20.... at..... a.m./p.m., on the hearing of an application by the said plaintiff (or defendant), that (state the order sought to be obtained).

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

(Seal)

.....
Registrar

To.....

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No. 115

NOTICE OF TRANSFER OF ACTION TO COURT (O. 57, r. 2)

(General Title)

Take notice that this action has been transferred to the Court…….. pursuant to an order of that Court.

Dated the……day of……,20……

……
Registrar

To the Registrar, Court…….

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No. 116

NOTICE OF HEARING OF ACTION TRANSFERRED FROM HIGH COURT (O. 57, r. 4)

(General Title)

Take notice that the High Court Suit No. .....of 20.....has been transferred to this Court and numbered as Summons No..... of 20.....and that you are required to attend the..... Court at.....on..... the.....day of....., 20.....,at..... a.m/p.m. for such directions as to the further conduct of the proceedings.

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

.....
Registrar

To:

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No. 117

BILL OF COSTS (O. 59, r. 7)

No	Particulars	Amount (RM)
1.	Getting Up (A) (1) Taking instructions from client for the hearing (2) Considering the facts and law (3) Attending and corresponding with client (4) Interviewing and corresponding with witnesses and potential witnesses and taking proofs of their evidence (5) Perusing pleadings, affidavits and other relevant documents (6) General care and conduct of the proceedings Total of Items	
2.	Out of Pocket Expenses (B) Filing Fees Attestation Transport Accommodation for Counsel and witnesses Witnesses allowances Expert fees and disbursements Transcribing Court proceedings Translation services Printing and/or Binding Photocopy Miscellaneous (Particularize)	
	TOTAL COSTS CLAIMED (RM)	
	TOTAL COSTS ALLOWED BY COURT (RM)	
	ALLOCATUR DETERMINED BY THE REGISTRAR	

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No. 118

CAUSE BOOK (O. 60, r. 2)

Serial No. of Writ	Date of issue	Name of Plaintiff (his Solicitor, if any, and Address for Service)	Name of Defendant (his solicitor, if any, and Address for Service)	Claim Amount Nature	Set off or counter claim Amount Nature	Judgment State the date, and when entered, amount, other particulars and in whose for	Execution State the date, form and No. of Execution and other particulars	Date of entry of Satisfaction	Remarks
				RM sen	RM sen				

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No. 119

ORIGINATING APPLICATION BOOK (O. 60, r. 2)

Serial No.	Date of Issue	Name of plaintiff (His solicitor, if any, and address for service)	Name of defendant (His solicitor, if any, and address for service)	Nature of Order applied for	Date of Order	Order	Remarks

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No. 120

INTERPLEADER NOTICE SUMMONS BOOK (O. 60, r. 2)

Serial No.	Date of Issue	At whose instance issued	His address or if applied for by Sheriff No. and Particulars of writ or order	Name of each claimant (including an execution creditor) his solicitor, if any, and address for service	Date of Order	Order	Remarks

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No. 121

INTERLOCUTORY APPLICATION BOOK (O. 60, r. 2)

No.	Date of Application	No. and Title of Proceeding	Name of Applicant	Nature of Application	Date of Order	Order	Remarks

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No. 122

JUDGMENT BOOK (O. 60, r. 2)

(At foot of Judgment add)

Entered the.....day of....., 20..... in Volume.....Page.

.....
Registrar

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No. 123

WRITS OF EXECUTION BOOK (O. 60, r. 2)

1 Serial No.	2 Date of issue	3 Nature of Writ	4 Number of Proceedings	5 Name of Plaintiff and Address	6 Name of Defendant and Address	7 Amount	8 Property or Premises to be	9 Date Received by Sheriff
						RM sen		

10 Date of Executi on	11 Where Executed	12 Number of any application for Discharge	13 Order on Application	14 Date of sale or release	15 Gross amount realised	16 Date Writ returned	17 Remarks

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No. 124

DISTRESS BOOK (O. 60, r. 2)

1 Serial No.	2 Date of issue	3 Originating Application No.	4 Number and Address of applicant	5 Name and Address of Plaintiff	6 Name and Address of Defendant	7 Monthly rent	8 Period From To	9 Rent Due	10 Date received by Sheriff

11 Date of Execution	12 Where Executed	13 Number of Application for Discharge or Suspension	14 Order on Application	15 Date of Sale or Released	16 Gross Amount Realised	17 Date Writ returned	18 Remarks

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No. 125

PROBATE BOOK (O. 60, r. 2)

Serial No.	Date filed	Whether originating summons or citation under section 4	Name and residence of deceased	Date of Death	Applicant, his residence solicitor, if any, and capacity in which he applies for grant	Date of hearing

Caveats filed	Value of estate	Grant	Date of Grant	Names of Grantees	Date of issue	Remarks

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No. 126

CAVEAT BOOK (O. 60, r. 2)

Date filed	Where filed	No. of Originating Summons	Name of Deceased	Name of Originating Summons and his solicitor (if any)	Name of Caveator, his solicitor, if any, and address for service	Nature of Caveat	When notices issued	No. and date of citation	Remarks

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No. 127

SERVICE BOOK (O. 60, r. 2)

Date	Time handed to Process Server	No. and Nature of Process	Where to be served	Date of hearing	Served or unserved	Initial of Process Server	Time returned to clerk	Initial of clerk	Remarks

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No. 128

ADOPTION BOOK (O. 60, r. 2)

Serial No	Date of Originating Summons	Names of applicants (their solicitors, if any)	Date of Order	Order	Remarks

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No. 129

DIRECTION TO ACCOUNTANT-GENERAL (O. 60, r. 2)

(Title as in action)

(a) For Payments In

Ledger Account (if the same as the cause state "as above").
The Accountant-General is hereby directed to receive (the sum of RM.....) (paid in on behalf of the defendant ..... in satisfaction of the claim of the plaintiff ..... or the funds and securities specified in the schedule hereto or as may be).
Dated the..... day of....., 20.....

.....
Registrar

Note - Where funds are lodged in Court not being moneys paid in under the provisions of Order 14 or as security for costs or in satisfaction of a judgment or order, but are to be lodged under an order comprising funds of various natures and directing lodgement by one or more persons, a single direction may be issued, and the particulars stated in a schedule to the direction, e.g.:

SCHEDULE

Particulars of fund to be lodged	Persons to make the lodgment	Amount	
		Money	Securities
		RM	RM

(b) For Payments Out

Ledger Account (if the same as the cause state "as above")
The Accountant-General is hereby directed to pay to (insert the name of person to be paid and whether as plaintiff or defendant or as solicitor to plaintiff or defendant) the sum of Ringgit……..(in words at length) RM……. lodged in Court in the above cause or matter on behalf of the defendant ..... in satisfaction of the claim of the plaintiff ..... (or as may be).

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

.....
Registrar

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(c) Certificate of Ascertained Sums

Ledger Account (if the same as the cause state "as above")
I hereby certify that under Order dated the.....day of..... 20..... the sums stated in the schedule subjoined hereto amounting in the whole to RM..... have been ascertained to be the sums payable under the said Order to the persons respectively named in respect of (state in what character paid).

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

.....
Registrar

SCHEDULE

Name	Address (if ascertained)	Amount to be paid

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No. 130

INDEX OF WILLS (O. 60, r. 2)

Name of Testator	Date Of Will	No. of Originating Summons	Volume and page of Register	Remarks

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No. 131

REGISTER OF APPEALS TO THE COURT OF APPEAL (O. 60, r. 2)

No. of appeal	Court Suit no.	Date of Decision	Name of Judge	Date of filing Notice of Appeal	Date of filing Record of Appeal	Appellant	Respondent	Particulars of Appeal against decision	Decision

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No. 132

REGISTER OF APPEALS FROM SUBORDINATE COURTS (O. 60, r. 2)

No. of appeal	Subordinate Court Writ No.	Date of Decision	Name of Judge	Date of filing Notice of Appeal	Date of filing Record of Appeal	Appellant	Respondent	Particulars of Appeal against decision	Decision

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No. 133

ORDER FOR SUBSTITUTED SERVICE (O. 62, r. 5)

(Title as in action)

Upon the application of ..... the plaintiff in this action and upon reading the affidavit of..... filed the..... day of ....., 20..... and upon hearing……..

It is ordered that service of a copy of this order, and a copy of the writ in this action by sending the same by a prepaid registered post letter addressed to the defendant..... at .....(or such other substituted service as may be ordered) shall be good and sufficient service of the writ.

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

(Seal)

.....
Registrar

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No. 134

AFFIDAVIT ON APPLICATION FOR SUBSTITUTED SERVICE (O. 62, r. 5)

(Title as in action)

I ..... of .....(the abovenamed plaintiff, or solicitor for the abovenamed plaintiff, or clerk to the plaintiff's solicitor, or clerk to the plaintiff, or as may be) do make oath (or affirm) and say as follows:

1. Having been directed by ..... to serve the abovenamed defendant.....with a copy of the writ in this action which appeared to me to have been regularly issued out of and under the seal of the Court by the abovenamed plaintiff against the abovenamed defendant, and dated the..... day of....., 20....., which said writ and copy were subscribed and endorsed in the manner and form prescribed by the Rules of Court 2012 and a true copy of which said writ is now produced and shown to me, marked ....., I did on .....day of....., 20..... , attend for the purpose of serving a copy of the said writ at (describe efforts to effect service).

I have made all reasonable efforts and used all due means in my power to serve the said writ, but I have not been able to do so.

(Here give a short summary of the efforts made)

Sworn (or affirm) as in Form 74

Note - The affidavit should also specify the method of substituted service asked for, and state that if such service is ordered it will probably be effectual in bringing the writ (or as may be) to the knowledge of the defendant. If the defendant is evading service the affidavit should so state.

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No. 135

AFFIDAVITS OF SERVICE (O. 62, r. 9)

(Title as in action)

(a) Affidavit of Personal Service of writ or other process on a person

I ..... of ..... do make oath (or affirm) and say as follows:

1. I did on ..... the ..... day of..... 20....., at (state where) personally serve (the abovenamed defendant) (or one of the abovenamed defendants) (or a partner in the abovenamed defendant firm of .....& Co.) (or the person (the insertion of the name is not essential) having at the time of such service the control or management of the said partnership business) (or as may be) with a true copy of the writ (or as may be) in this action which appeared to me to have been regularly issued out of the Registry of the Court against (the abovenamed defendant) (or the abovenamed defendants) (or as may be) at the suit of (the abovenamed plaintiff) (or plaintiffs) (or as may be) and which was dated the .....day of ....., 20.....

2. The defendant (or as may be) (is known to me) (or was pointed out to me by .....) (or admitted to me that he was .....)
3. At the time of the said service the said writ (or as may be) and the copy thereof were subscribed (and endorsed) in the manner and form prescribed by the Rules of Court 2012.
4. I did on the ..... day of ..... endorse on the said writ the day of the month and the week of the said service on the said defendant.
Sworn (or affirmed) as in Form 74.

(b) Affidavit of Personal Service of writ or other process on a body corporate
I ..... of ..... do make oath (or affirm) and say as follows:
1. I did on .....the ..... day of ..... 20..... (date of posting), serve ..... the abovenamed defendant (or as may be) with a true copy of the writ (or as may be) in this action, which appeared to me to have been regularly issued out of the Registry of the Court against the abovenamed defendant (or as may be) at the suit of the abovenamed plaintiff (or as may be), and which was dated the ..... day of ..... 20..... by leaving the same at (place of service) (or sending the same on the day of ....., 20....., by prepaid registered post addressed to the the registered office of the said defendant (or as may be) (and as in paragraph (3) etc. of (a) above)).
Note- This form may be used with necessary alterations for a foreign company registered in Malaysia under the Companies Act 1965 but the affidavit must state that the company is a foreign company registered pursuant to the said Act and that service is being effected on the person authorised by registration in Malaysia to accept service on behalf of the defendant under the said Act.

(c) Affidavit of Substituted Service by Post of writ or other process
I ..... of ..... do make oath (or affirm) and say as follows:
1. I did on ..... the ..... day of ..... 20....., serve the abovenamed defendant (or as may be) with a true copy of the writ (or as may be) in this action and a true copy of the order for substituted service, by posting at the Post Office at ..... in a prepaid letter or envelope (or two prepaid letters or envelopes each) containing a true copy of the said writ (or as may be) and of the said order, and addressed (respectively) to the defendant (or as may be) at..... (and at .....) pursuant to the said order.
2. That the said writ (or as may be) appeared to me to have been regularly issued out of the Registry of the Court against the abovenamed defendant (or as may be) at the suit of the abovenamed plaintiff (or as may be) and was dated the ..... day of ....., 20..... (and as in paragraph (4) *etc*. of *(a)* above).

(d) Affidavit of Service of Notice of Writ by Advertisement

I ..... of ..... do make oath (or affirm) and say as follows:
1. I did on ..... the ..... day of ..... 20....., serve the abovenamed defendant with notice of the writ in this action and of the order for service by advertisement dated the..... day of ...., 20....., by causing to be inserted once in (names of paper or papers as ordered) an advertisement in the words following namely:
(Title, Reference Number, etc.)

The abovenamed defendant,

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(As in *(e)* below)

2. The advertisement aforesaid appeared in the (name of paper) on the ..... day of ....., 20....., (and in the (name of paper) on the..... day of.....).

Sworn (or affirmed) as in Form 74.

(e) Form of Advertisement

To ..... of (or late of) .....
Take notice that an action has been commenced against you in the Court in Suit No ..... of 20..... by..... of ....., in which the plaintiff's claim is for (state very shortly the nature of claim and the amount (if any) claimed in the endorsement on the writ).
And that it has been ordered that service of the writ in the said action on you be effected by this advertisement. If you desire to defend the said action you must within ..... days from the publication of this advertisement, inclusive of the day of such publication, enter an appearance at the Registry of the Court. In default of such appearance judgment may be entered against you.

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

.....
Solicitor for the .....

(f) Affidavit of Personal Service of Judgment or Order
I ..... of ..... do make oath (or affirm) and say as follows:
1. I did on ..... the ..... day of ....., 20....., at..... personally serve the abovenamed defendant (or plaintiff) with a true copy of the order (or judgment) dated ..... in this action, now produced and shown to me marked ..... (or recite operative part of order or judgment).
2. The copy of the said order (or judgment) so served as aforesaid had endorsed thereon when so served the words following, that is to say "If you the within named neglect to obey this order (or judgment) by the time-therein limited you will be liable to process of execution for the purpose of compelling you to obey the same order (or judgment)".
Sworn (or affirmed) as in Form 74.

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No. 136

NOTICE OF CHANGE OF SOLICITOR (O. 64, r. 1)

(Title as in action)

To the Registrar.

Take notice that (name of new solicitor), of ....., has (or have) been appointed to act as the solicitor of the abovenamed (plaintiff or defendant) (if for one or more of several defendants naming the defendant or defendants)) in this action, in the place of (name of original solicitor).

The address for service of the abovenamed (new solicitor) is .....

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

.....

Solicitor

To the abovenamed defendant (or plaintiff) or his (or their) solicitor and to (naming the former solicitor of the plaintiff (or defendant)).

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No. 137

NOTICE OF INTENTION OF PARTY TO ACT IN PERSON IN PLACE OF SOLICITOR (O. 64, r. 3)

(Title as in action)

To the Registrar,

Take notice that I, ... the abovenamed plaintiff (or defendant) intend to act in person in this action in the place of ..... and that my address for service is .....

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

.....
Party

To the abovenamed defendant (or plaintiff) and to (naming the former solicitor of the plaintiff (ordefendant)).

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No. 138

NOTICE TO REMOVE SOLICITOR FROM RECORD (O. 64, r. 4)

(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on ..... the ..... day of ....., 20..... at ..... a.m/p.m. on the hearing of an application on the part of (name of party applying) the abovenamed plaintiff (or defendant) for an order declaring that (name of solicitor who has ceased to act) of (address) .... has ceased to be the solicitor acting for you the abovenamed plaintiff (or defendant) in this action (or matter).
The costs of this application to be .....
Dated the..... day of ....., 20.....
Entered No..... of 20.....

Clerk

(Seal)

.....
Registrar

This notice is taken out by ..... of solicitor for the ..... in person. To (name of party whose solicitor has ceased to act).

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No. 139

ORDER REMOVING SOLICITOR FROM THE RECORD (O. 64, r. 4)

(Title as in action)

Mr/Mrs ..... the solicitor for ..... in this action (or matter) having (died, become bankrupt or any other reason for removal) and the said (name of party formerly represented by solicitor) having failed to give notice of change of solicitor or notice of intention to act in person and notice of the ..... application having been duly served upon the said (name of party formerly represented by solicitor).

Upon the application of ..... and upon reading the affidavit of ..... filed the ..... day of ....., 20..... and upon reading.

It is ordered that the said ..... ceases to be the solicitor acting for the said (name of party formerly represented by solicitor) in this action (for matter).

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

(Seal)

.....
Registrar

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No. 140

NOTICE OF APPLICATION FOR WITHDRAWAL OF SOLICITOR (O. 64, r. 5)

(Title as in action)

Let all parties concerned attend before the Judge (or Registrar) in Chambers on ..... the ..... day of ....., 20..... at ..... a.m/p.m. on the hearing of an application on the part of (name of solicitor withdrawing), the solicitor for the said (name of party represented by solicitor) the abovenamed plaintiff (or defendant) for an order declaring that the said (name of solicitor withdrawing) has ceased to be the solicitor acting for the said plaintiff (or defendant) in the above action (or matter) and that the costs of this application be .....
Dated the ..... day of ....., 20.....
Entered No ..... of 20 .....
Clerk

(Seal)

.....
Registrar

This notice is taken out by ..... of ..... solicitor for the .....

To.....

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No. 141

ORDER FOR WITHDRAWAL OF SOLICITOR (O. 64, r. 5)

(Title as in action)

Mr/Mrs ..... the solicitor for ..... a plaintiff (or a defendant) in this action (or matter) having duly served notice of the application on the said .....
Upon the application of ..... and upon reading the affidavit of ..... filed the ..... day of ....., 20..... and upon hearing……
It is ordered that upon compliance with the requirements of Order 64, rule 5 (1) of the Rules of Court 2012, the said ..... ceases to be the solicitor acting for the said ..... in this action (or matter).
Dated the ..... day of ....., 20.....

(Seal)

.....
Registrar

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No. 142

CERTIFICATE OF SERVICE OF FOREIGN PROCESS (O. 65, r. 2)

I, ..., Registrar of the Court of Malaya/Sabah & Sarawak hereby certify that the documents annexed hereto are as follows:

(1) The process received with a Request for Service; and

(2) A copy of the evidence of service upon the person named in the process.

And I certify that such service so proved, and the proof thereof, are such as are required by the law and practice of the Court regulating the service of legal process in Malaya/Sabah & Sarawak, and the proof thereof.

And I certify that the cost of effecting such service, as duly certified by me amounts to the sum of RM .....

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

(Seal)

.....

Registrar

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No. 143

ORDER FOR REGISTRATION OF FOREIGN JUDGMENT (O. 67, r. 5)

IN THE COURT OF MALAYA/SABAH & SARAWAK AT.....

O.S. No. ..... of 20.....

Between

..... *Judgment Creditor*

and

..... *Judgment Debtor.*

In the matter of the (state the relevant Act).

And the matter of a judgment of the (describe the Court) obtained in (described the proceedings) and dated the ..... day of ....., 20.....

Upon the application of ..... the judgment creditor in this action and upon reading the affidavit of..... filed the ..... day of ....., 20.....(and upon the judgment creditor giving security in the sum of RM ..... by payment into Court, or bond to the satisfaction of the Registrar).

It is ordered that the judgment dated the.....day of ..... 20....., of the (describe the foreign Court) whereby it was adjudged that the abovenamed (name of judgment creditor) of ..... do recover against the abovenamed (name of judgment debtor) of .....(amount due under the judgment) which is equivalent in Ringgit to RM..... for debt and RM..... for costs (or as may be) be registered as a judgment of the High Court pursuant to the Act.

It is further ordered that the abovenamed (name of judgment debtor) be at liberty to apply to set aside the said registration within ..... days after service upon him (within the jurisdiction)(or name of foreign country if to be served abroad) of notice of such registration pursuant to rule 7 of Order 67 if he has grounds for so doing, and execution upon the said judgment will not issue until after the expiration of that period or any extension of the period granted by the Court; or if an application be made to set aside the registration until such application has been disposed of.

It is ordered that the costs of this application to be.....

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

(Seal)

.....
Registrar

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No. 144

CERTIFICATE UNDER THE RECIPROCAL ENFORCEMENT OF JUDGMENT ACT 1958 [*ACT 99*] (O. 67, r. 13)

(Title as in action)

I, ... Registrar of the High Court of Malaya/Sabah & Sarawak hereby certify that the judgment obtained by ..... plaintiff (or defendant) against ..... defendant (or plaintiff) in this action on the ..... day of ....., 20.... for payment of the sum of RM ..... and RM..... costs carries interest at the rate of ..... per centum per annum calculated on the said sums of RM..... and RM..... from the date of the said judgment until payment.

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

(Seal)

……

Registrar

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No. 145

CERTIFICATE UNDER THE RECIPROCAL ENFORCEMENT OF JUDGMENT ACT 1958 (O. 67, r. 13)

(Title as in action)

I, ... Registrar of the High Court of Malaya/Sabah & Sarawak hereby certify that the writ (or as may be). a copy of which is hereunto annexed, was issued out of the Registry of the High Court on the ..... day of..... 20 .... by ..... the abovenamed plaintiff against ..... the abovenamed defendant, for payment of the sum of RM..... in respect of (state shortly nature of claim or ground of action).

That the said writ was duly served on the ..... day of ..... 20....., upon the said defendant (state mode of service) (that the said defendant duly appeared to the said writ on the ..... day of ...., 20.....).

That the said plaintiff obtained judgment against the said defendant for payment of the sum of RM..... in respect of (state shortly nature of claim or terms of judgment), together with the sum of RM..... for costs, which judgment was obtained (state grounds on which judgment was based).

That (no) objection has been made to the jurisdiction of the Court (on the grounds that .....).

That the following pleadings in the action consisted of:

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

(Seal)

.....
Registrar

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No. 146

WRIT IN ACTION *IN REM* (O. 70, r. 2)

THE HIGH COURT OF MALAYA/SABAH & SARAWAK AT.....

Admiralty *in rem* No ..... of 20.....

Admiralty action *in rem* against:
(The ship ..... or as may be describing the res)

Between

(The owners of the ship ..... or as may be)

..... *Plaintiffs*

and

(The owners of the ship.....or as may be)

..... *Defendants*

THE HONOURABLE
CHIEF JUDGE OF MALAYA/SABAH & SARAWAK, IN THE NAME OF THE YANG DI-PERTUAN AGONG

To: The (owners of and other) persons interested in the ship ..... of the port of ..... (or cargo, etc., as may be).
We command you that within fourteen days after the service of this writ, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of .....; and take notice that in default of your so doing the plaintiffs may proceed therein, and judgment may be given in your absence, and if the res described in this writ is then under arrest of the Court it may be sold by order of the Court.
WITNESS ..... Registrar of the High Court at..... the .....day of ....., 20.....
.....
Plaintiff's Solicitors

.....
Registrar
High Court,.....

Memorandum to be subscribed on the Writ

This writ may not be served more than six calendar months after the above date unless renewed by order of Court.
The defendants may appear hereto by entering appearances either personally or by solicitor at the Registry of the High Court at ..... The defendants appearing personally may, if they desire, enter their appearances by post, and the appropriate forms may be obtained by sending a Postal Order for RM..... with an addressed envelope to the Registrar, High Court .....

Endorsement to be made on writ before issue
Endorsement of claim

The plaintiffs' claim is for.....

(If the plaintiffs sue, or the defendants are sued, in a representative capacity, this must be stated in the endorsement of claim).

Endorsement as to solicitor and address

This writ is issued by ..... of ..... solicitor for the said plaintiffs whose address is ..... (or where the plaintiffs sue in person). This writ was issued by the said plaintiffs who resides at

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..... and is (state occupation) and (if the plaintiffs do not reside within the jurisdiction) whose address for service is .....).

Endorsement as to service

This writ was served by ..... (state the manner of service in which the service was effected within the named ship, cargo or freight as the case may be) at ..... (place) on ..... the ..... day of ....., 20..... at ..... a.m./p.m.

Endorsed the ..... day of ....., 20.....

.....
Process Server

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No. 147

WARRANT OF ARREST (O. 70, r. 4)

(Title as in Form 146)

THE HONOURABLE
CHIEF JUDGE OF MALAYA/SABAH & SARAWAK, IN THE NAME OF THE YANG DI-PERTUAN AGONG

To the Sheriff,
We hereby command you to arrest the ship..... of the port of ..... or (the cargo now or lately laden therein, together with the freight due for the transportation thereof) or (and the freight due for the transportation of the cargo now or lately laden therein) and to keep the same under safe arrest until you shall receive further orders from us.
Dated the ..... day of ....., 20.....

(Seal)

.....
Registrar

The plaintiffs' claim is for (copy the endorsement from the writ).

Taken out by .....solicitors for the.....
Sheriff's endorsement as to service.

Notice of arrest by the Sheriff

To: The Owners, Master, agents, servants, crew and all persons interested in the property under arrest:

(a) The abovenamed ship, cargo or freight (as the case may be) being in the custody of the Sheriff of the High Court and all persons are hereby cautioned not to attempt to remove the same or interfere therewith, without the written authority of the Sheriff or his substitute;

(b) If you wish to obtain the release of property from arrest, you may do so by giving satisfactory security for the amount of the claim or the value of the property arrested, whichever is the lesser. In the event of a dispute as to the security, you may make an application to the Court for the resolution of the dispute.

Standard Directions to the Sheriff

The Sheriff, with the consent of the arresting party or its solicitors, may at any time:-

(a) take all appropriate steps to retain custody of and preserve the ship, its machinery and equipment or property;

(b) move the ship up to 5 nautical miles within the limits of the port where she is lying under arrest, either for her safety or to comply with the requirements of the Marine Department or Port Authority;

(c) supply the minimum victuals, domestic fuel and fresh water necessary for a maximum of 5 days to avoid immediate hardship to the crew, pending an application to the Court for directions.

Sheriff's endorsement as to service.

On ..... the day of ..... 20...., the within named ship, cargo or freight (as the case may be), lying at ..... (place) was arrested (by affixing the Warrant for a short time on the mast of the ship or vessel) (state on which part of the outside of the ship's superstructure, as the case may be) (or if the cargo is landed or transhipped by placing the Warrant for a short time on the cargo) and on taking off the process, by leaving a copy thereof fixed in its place.
endorsed the ..... day of ....., 20.....

.....
Process Server

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No. 148

***PRAECIPE* FOR WARRANT OF ARREST (O. 70, r. 4)**

(*Title as in Form 146*)

We ..... of ..... solicitors for the plaintiffs request a warrant to arrest (description of property giving name, if a ship).

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

.....
Solicitors for the plaintiffs

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No. 149

PRAECIPE FOR CAVEAT AGAINST ARREST (O. 70, r. 5)

(Description of properly giving name, if a ship)

We ..... of ..... solicitors for..... of ..... request a caveat against the arrest of (description of property giving name, if a ship) and hereby undertake to enter an appearance in any action that may be begun in the High Court against the said .....and, within three days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding RM..... or to pay that sum into Court. We consent that the writ and any other document in the action may be left for us at .....
Dated the ..... day of ....., 20.....

.....
Solicitors for the.....

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No. 150

PRAECIPE FOR SERVICE OF WRIT *IN REM* BY SHERIFF (O. 70, r. 7)

(Title as in Form 146)

We..... of ..... solicitors for the plaintiffs request that the writ left herewith be duly served on.....

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

.....
Solicitors for the plaintiffs

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No. 151

RELEASE (O. 70, r. 12)

(Title as in Form 146)

THE HONOURABLE
CHIEF JUDGE OF MALAYA/SABAH & SARAWAK IN THE NAME OF THE
YANG DI-PERTUAN AGONG

To the Sheriff,
Whereas in this action we did command you to arrest the ..... and to keep the same under safe arrest until you should receive further orders from us. Now we do hereby command you to release the said ..... from the arrest effected by virtue of our warrant in this action.
Dated the ..... day of ....., 20.....
Taken out by ..... solicitors for the .....

Sheriff's endorsement

On.....the ..... day of.....20..... the ..... was released from arrest pursuant to this Instrument.

.....
Sheriff

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No. 152

PRAECIPE FOR ISSUE OF RELEASE (O. 70, r. 12)

(Title as In Form 146)

We ..... of ....solicitors for the plaintiffs (or defendants) in this action against (description of property giving name, if a ship), now under arrest by virtue of a warrant issued out of the High Court Registry, request the issue of a release with respect to the said .....

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

.....
Solicitors for the.....

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No. 153

PRAECIPE FOR CAVEAT AGAINST RELEASE AND PAYMENT (O. 70, r. 13)

(Title as in Form 146)

We ..... of ..... solicitors for ..... of ..... request a caveat against the issue of a release with respect to (description of property giving name, if a ship) now under arrest and, should the said property be sold by order of the Court, a caveat against payment out of Court of the proceeds of sale.
Dated the ..... day of ....., 20.....

.....
Solicitors for the.....

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No. 154

PRAECIPE FOR WITHDRAWAL OF CAVEAT (O. 70, r. 14)

(Title as in Form 146)

We ..... of ..... solicitors for .....of ..... request that the caveat (state nature of caveat) entered on the ..... day of....., 20..... on behalf of..... be withdrawn.
Dated the .....day of ....., 20.....

.....
Solicitors for the.....

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No. 155

BAIL BOND (O. 70, r. 15)
(*Title as in Form 146*)

Whereas this Admiralty action *in rem* against the abovementioned property is pending in the High Court and the parties to the said action are the above- mentioned plaintiffs and defendants:
Now, therefore, we ..... of .....and ..... hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the abovementioned defendants (or plaintiffs, in the case of a counterclaim) do not pay what may be adjudged against them in this action, with costs, or do not pay any sum due to be paid by them in consequence of any admission of liability therein or under any agreement by which this action is settled before judgment and which is filed in the said Court, execution may issue against us, our executors or administrators, movable property, for the amount unpaid or an amount of ringgit whichever is the less.

.....
Solicitors for the.....

This bail bond was signed by the said ..... and....., the sureties, the ..... day of ....., 20.....

Before me,

.....
Commissioner for Oaths.

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No. 156

PRAECIPE FOR COMMISSION FOR APPRAISEMENT AND SALE (O. 70, r. 22)

(Title as in Form 146)

We ..... of ..... solicitors for the plaintiffs (or defendants) request a commission for the appraisement and sale of (description of property giving name, if a ship) which was ordered by the Court on the ..... day of ....., 20....
Dated the ..... day of ....., 20.....

.....
Solicitors for the.....

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No. 157

COMMISSION FOR APPRAISEMENT AND SALE (O. 70, r. 22)

(Title as in Form 146)

THE HONOURABLE
CHIEF JUDGE OF MALAYA/SABAH & SARAWAK, IN THE NAME OF THE
YANG DI-PERTUAN AGONG

To the Sheriff,
Whereas in this action the Court has ordered (description of property giving name, if a ship) to be appraised and sold.
We hereby authorise and command you to choose one or more experienced persons and to swear him or them to appraise the said ..... according to the true value thereof, and such value having been certified in writing by him or them to cause the said ..... to be sold by (private treaty or public auction) for the highest price that can be obtained for it, but not for less than the appraised value unless the Court on your application allows it to be sold for less.
And we further command you, immediately upon the sale being completed, to pay the proceeds thereof into Court and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.
Witness ..... Registrar of the in .....the ..... day of ....., 20.....

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

(Seal)

.....
Registrar

Taken out by ..... (solicitors for) the .....

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No. 158

NOTICE OF FILING OF APPLICATION FOR PROBATE/ ADMINISTRATION (OR CAVEAT), *ETC* (O. 71, r. 4); (O. 71, r. 37)

(Title as in Form 6)

Registrar,
Principal Registry, Kuala Lumpur/Kuching.
An application for Probate (or Letters of Administration) (or Caveat) has been filed by .....the ..... day of....., 20.....

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

.....
Registrar,
High Court

Registrar,
Subordinate Courts.

Letters of Administration has been granted the ..... day of....., 20.....
Dated the ..... day of ....., 20.....

.....
Registrar,
High Court

The Registrar,
High Court.

Noted.

.....
Registrar,
Subordinate Courts

No. 159

AFFIDAVIT PURSUANT TO THE PROBATE AND ADMINISTRATION ACT 1959 (O. 71, r. 5)

(Title as in Form 6)

(a) For Probate

1. ..... ("the said deceased") who resided at ..... died on the ... day of ..... 20 ... at ..... had at the time of his death properties within the jurisdiction of this Court. A certified true copy of the Death Certificate of the said deceased is hereby produced and shown to me and marked as exhibit "……" and annexed hereto.

2. The whole of the estate and effects of the deceased movable and immovable within the jurisdiction exclusive of what the deceased was possessed of or entitled to as a trustee for any other person or persons and not beneficially, but without deducting anything on account of the debts due or owing from him, does exceed in value ten thousand ringgit to the best of the Applicant's knowledge, information and belief. A copy of the list of assets and liabilities of the said deceased is hereby produced and shown to me and marked as exhibit "……" and annexed hereto.

3. The Applicant believes the paper writing hereto exhibited and a certified true copy of which is annexed hereto marked "……" to be a copy of the true and original last Will and Testament (with Codicil thereto) of the said ..... deceased.

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4. The Applicant is the sole executor (or one of the executors) named in the said Will (..... of ..... the other executor therein named died on the ... day of ..... or on the day of ..... by instrument duly signed renounced probate and execution of the said Will).

5. A copy of the list of Beneficiaries named in the said Will of the said deceased is now produced and shown to me and marked as exhibit "……" and annexed hereto.

6. The applicant prays that probate of the said Will (and Codicil) of the said…… may be granted to him (leave being reserved to ..... to come in and prove the same or as may be).

The address for service of the Applicant is .....

I, ... the Applicant do make oath (or affirm) and say that the contents of the foregoing Originating Summons are to the best of my knowledge and belief in all respects true.

Sworn (or affirmed) as in Form 74.

(b) For Administration

1. ..... who resided at ..... died on the ... day of ..... 20... had at the time of his death property within the jurisdiction of this Court. A certified true copy of the Death Certificate of the said deceased is hereby produced and shown to me and marked as exhibit "……".

2. The whole of the estate and effects of the deceased, movable and immovable, within the jurisdiction exclusive of what the deceased was possessed of or entitled to as a Trustee for any other person or persons, and not beneficially but without deducting anything on account of the debts due or owing from the deceased, does exceed in value ten thousand ringgit to the best of the Applicant's knowledge, information and belief. A copy of the list of assets and liabilities of the said deceased is hereby produced and shown to me and marked as exhibit "……." and annexed hereto.

3. The said ..... deceased, who was a (1) ..... citizen and a (2) ..... died intestate (3) ..... leaving him surviving (4) ..... . A copy of the list of Beneficiaries named in the said Will of the said deceased is now produced and shown to me and marked as exhibit "……" and annexed hereto.

4. The Applicant is the (5) .....

5. ..... of ..... and ..... of ..... has (or have) a prior right to the Applicant being (6) ..... and ..... of ..... has (or have) an equal right to the Originating Summons being (6) ..... but he on the ... day of ....., 20... by writing signed by ..... renounced such right.

6. There is ..... minority (or life) interest in the estate of the said (7) .....

7. (The Applicant desires that ..... of (8) ..... be appointed co-administrator with him of the estate of the said deceased. The consent in writing of the said ..... so to be appointed is hereto annexed).

8. The Applicant prays that Letters of Administration of the Estate and Effects of the said ..... may be granted to him as (9).....

The address for service of the Applicant is ..... …

I, ... the Applicant do make oath (or affirm) and say that the contents of the foregoing Originating Summons are to the best of my knowledge and belief in all respects true.

Sworn (or affirmed) as in Form 74.

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(c) Administration with Will

In place of paragraph 4 in Form 159 *(a)* proceed:

The Testator did not in his said Will name any executor (or ……(name)……. the executor named in the said Will died on the ... day of ..... or has renounced probate and executor thereof), and the Applicant is the (state relationship if any) of the said deceased, and the residuary legatees or one of the residuary legatees named in the said Will ..... or the Testator (died a widower or bachelor (if so) and) did not in his said Will name any executor or residuary legatees and the Applicant is the (as in Order 71 rule 5 (5)).

(d) For Administration-De Bonis Non

As in (b) above inserting the following paragraph after paragraph 3:

On the ... day of ....., 20…... Letters of Administration of the estate of the said deceased were granted to ..... the said ..... as the lawful ..... of the said deceased: but he died on the ..... day of ....., 20……..leaving (part of) the estate unadministered.
(and inserting "*de bonis non*" after "administration" in the prayer).

(e) Administration by a trust company

The Application of ..... a Trust Company registered under the Trust Companies Act 1949 or Trust Companies Ordinance (Sabah Cap. 146) as the case may be and having its registered office at .....

Proceed as in (b) above down to paragraph 3 thereof inclusive; then proceed:

4. The applicant company has by writing filed herewith been authorised by ..... the (5) ..... to apply for Letters of Administration of the estate of the said .....

5. ..... of ..... has a prior and (or) ..... of ..... has an equal right to the said ..... to letters of administration being (state relationship) but he on the ... day of ....., 20... by writing signed by him renounced such right.

6. There is a (or no) minority and a (or) life interest in the estate of the said ..... namely (set out the minority and life interest, stating the name, age and interest of each minor entitled).

7. The applicant company by a resolution of their board of directors, a copy whereof under the Seal of the applicant company is filed herewith, have authorised ..... an officer of the applicant company to make, swear and sign the originating summons on their behalf.

8. The applicant company prays that Letters of Administration of Estate and Effects of the said ..... may be granted to it.

The address for service of the applicant company is .....

I, ... an officer of the applicant company duly authorised by the applicant company for this purpose do make oath/(or affirm) and say that the contents of the foregoing Originating Summons are to the best of my knowledge and belief in all respects true.

Sworn (or affirmed) as in Form 74.

Note-In a Originating Summons for probate where there is one executor or executrix only named in the will, he or she should be described as the sole executor or the sole executrix and in a originating summons for Letters of Administration all persons entitled to any part of the estate should be disclosed.

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At-
(1) State country e.g. Malaysia, Singapore.
(2) Religion e.g. Christian, Buddhist, Hindu, Muslim (if a Muslim state Madzhab to which he belonged).
(3) A widower, widow, spinster or bachelor.
(4) His only or one of the lawful widows (or her lawful husband) and state the next-of-kin (in case of children state name, sex, and age or date of birth).
(5) Descriptions to be used where the person applying for Letters of Administration is:
(a) a widow "the lawful widow", or, if the deceased was of a religion allowing polygamy, as "the only lawful widow" or "one of the lawful widows", as the case may be;
(b) a husband as "the lawful husband";
(c) a father "the lawful father and next-of-kin";
(d) a mother "the lawful mother and next-of-kin", or "the lawful mother and the only next-of-kin";
(e) a child "the lawful and only child and only next-of-kin" or "one of the lawful children and next-of-kin";
(f) a brother "the lawful brother";
(g) a sister "the lawful sister";
the brother or sister shall further be described as "one of the next-of-kin" or the "only next-of-kin";
(h) a nephew "the lawful nephew" and "one of the" or "only next-of-kin";
(i) a niece "the lawful niece" and "one of the" or "only next-of-kin"; if a brother or sister is living and the nephew or niece being the child of a brother or sister of the intestate who died in his life-time applies for administration he or she shall be described as "one of the persons entitled in distribution to the estate and effects of the deceased";
(j) grandparent, grandchild, cousin, etc., shall be described as "lawful" and "one of the next-of-kin" or "only next-of-kin".
(6) State relationship.
(7) Set out the minority or life interest stating the name, age and interest of each minor entitled.
(8) State relationship, if any, to deceased.
(9) Set out the capacity of the applicant as in (5) above or as may be.

(f) For Resealing

1. ..... late of ..... deceased died on the ..... day of ....., 20...and had at the time of his death his ordinary or principal domicile in ..... (or without any known domicile or without any fixed domicile or as may be). A certified true copy of the Death Certificate of the said deceased is hereby produced and shown to me and marked as exhibit "……" and annexed hereto.

2. The said ..... deceased died intestate and Letters of Administration of his estate and effects of which a true copy is hereunto annexed were duly granted to your Applicant (or to ..... of .....) by the (name of Court).
(Or 2. The said deceased duly executed his last Will and Testament dated the ..... day of ....., 20..., and Probate thereof, of which a true copy is hereunto annexed, was duly granted to your Applicant the executor thereof (or to ..... of ..... the executor thereof) by the (name of Court).)
(Or 2. The said deceased duly executed his last Will and Testament dated the ... day of ....., 20..., and Letters of Administration with such Will and Testament annexed thereto, of which Letters of Administration and Will a true copy is hereunto annexed, were duly granted to your Applicant (or to ..... of .....) by the (name of Court).)

3. The said deceased resided or carried (or did not reside or carry on) business in Peninsular Malaysia/ Sabah & Sarawak at any time within twelve months next before his death.

4. So far as your Applicant is aware there are (or no) debts due from the estate of the said deceased to creditors residing in Peninsular/Sabah & Sarawak.

5. The said deceased died possessed of certain property in Peninsular Malaysia/ Sabah & Sarawak, namely: A copy of the list of assets and liabilities of the said deceased is hereby produced and shown to me and marked as exhibit "……" and annexed hereto.

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6. Your Applicant has been duly authorised by the said ..... by power of attorney dated the ... day of ....., 20..., which has been deposited in the High Court at ..... to make this application on his behalf. A copy of the list of Beneficiaries named in the said Will of the said deceased is now produced and shown to me and marked as exhibit "……" and annexed hereto.

7. The address for service of the applicant is .....

8. Your Applicant prays that the Probate (or Letters of Administration) may be sealed with the seal of this Court.

I ..... do make oath (or affirm) and say that the statements contained in the foregoing Originating Summons are to the best of my knowledge, information and belief in all respects true.

Sworn (or affirmed) as in Form 74.

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No. 160

RENUNCIATION (O. 71, r. 31)
(*Title as in Form 6)*

(a) Of Administration
Whereas the abovenamed deceased ..... of ..... who at the time of his (her) death had property within Peninsular Malaysia/Sabah & Sarawak died on the..... day of ....., 20....., at.... intestate leaving me (insert name) .....his (her) ..... and next-of-kin:
Now, I....., do hereby renounce all my right and title to letters of administration of the estate of the said deceased.
Signed by the said ..... the ..... day of ....., 20.....

Before me,

.....
Solicitor
(or Commissioner for Oaths)

(b) Of Probate

Whereas the abovenamed deceased ..... of ..... who at the time of his (her) death had property within Malaya/ Sabah & Sarawak died on the ..... day of....., 20....., at ..... having made and duly executed his (her) last will and testament bearing date the ..... day of ....., 20..... (with a codicil .....thereto bearing date the.....day of....., 20....) and thereof appointed me the sole (or) one of the executor(s):
Now, I....., do hereby declare that I have not intermeddled in the estate of the said deceased and will not hereafter intermeddle therein with intent to defraud creditors; and I do hereby renounce all my right and title to the Probate and execution of the said will.
Signed by the said ..... the ..... day of ....., 20.....

Before me,

.....
Solicitor
(or Commissioner for Oaths)

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No. 161

ADMINISTRATION OATH (O. 71, r. 33)

(Title as in Form 6)

I (We) ..... of do make oath (or affirm) and say that I (we) will faithfully administer the estate and effects of ..... deceased by paying his debts so far as his estate and effects will extend and the law requires, and distributing the residue of his estate and effects according to law, and that I (we) will render a just and true account of my (our) administration when I (we) shall be thereto lawfully required.

Sworn (or affirmed) as in Form 74.

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No. 162

ADMINISTRATION BOND (O. 71, r. 34)

KNOWN ALL MEN BY THESE PRESENTS THAT WE (I).....of..... of..... of ....., and ..... of..... are jointly and severally bound unto the Registrar of the High Court, in the sum of Ringgit ..... (RM.....) to be paid to the said Registrar for the time being for which payment to be well and truly made we (I) bind ourselves (myself) and each of us our (my) heirs, executors and administrators by these presents Sealed with our (my) Seals this..... day of ....., 20.....

THE CONDITION of this obligation is that if the above bounden ..... the Administrator of the Estate and Effects of ..... late of ..... deceased who died on the .....day of ....., 20....., do well and truly administer according to law the movable and immovable property of the said deceased which has or shall come to ..... hands possession or knowledge or into the hands and possession of any other person for ..... then this obligation to be void and of none effect but otherwise to remain in full force and effect.

Truly translated to the ..... Obligators .....

Through the interpretation of.....

(Seal)

(Seal)

(Seal)

(Seal)

Before me,

....
(Commissioner for Oaths)

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No. 163

GRANTS (O. 71, r. 35)

(Title as in Form 6)

(a) Of Probate

BE IT KNOWN that at the date hereunder-written the Last Will and Testament (with codicils if such is the case) ..... (a copy whereof is hereunto annexed) of ..... late of..... deceased who died on the ..... day of ..... at ..... leaving property situate within the jurisdiction of this Court, was proved before this Court, and that Administration of all and singular the movable and immovable property of the deceased situate within the jurisdiction was granted by this Court to .... sole executor (or one of the executors or as the case may be) named in the said Will he (or they) being first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his Will (or will and codicils) and to render a just and true account thereof whenever lawfully required.

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

(Seal)

.....
Registrar

Date of issue: .....the .....day of ....., 20.....

.....
Registrar

(b) Of Letters of Administration

BE IT KNOWN that at the date hereunder-written Letters of Administration of all and singular the movable and immovable property situate within the jurisdiction of ..... late of No ....., deceased, who died on the.....day of....., 20....., leaving property situate within the Jurisdiction of the Court were granted to (;insert the name and character in which the Grant is taken) ..... he having been first sworn well and faithfully to administer the same by paying the just debts of the deceased and distributing the residue of his property according to law and to render a just and true account of his administration whenever lawfully required.

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

(Seal)

.....
Registrar

Date of issue: .....the ..... day of ....., 20.....

.....
Registrar

(c) Of Letters of Administration De bonds non

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BE IT KNOWN that .....late of ..... deceased died intestate on the ..... day of ....., 20..... Letters of Administration of all and singular his movable and immovable property situate within the jurisdiction were granted by the High Court to (insert the name and character in which the grant was taken) .....who after taking such administration intermeddled in the property of the said deceased and afterwards died on the ..... day of....., 20....., leaving part thereof unadministered and that on the ..... day of ....., 20.... Letters of Administration of the said property so left administered were granted by this Court to (insert the name and character in which grant was taken) he having been first sworn well and faithfully to administer the same by paying the just debts of the said intestate and distributing the residue of such his property according to law and to render a just and true account of his administration whenever lawfully required.

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

(Seal)

.....
Registrar

Date of issue: the ..... day of ....., 20.....

.....
Registrar

(d) Of Letters of Administration De Bonis non with will annexed

BE IT KNOWN that the last Will and Testament (a copy thereof is hereunto annexed) of ..... late of ..... deceased, was on the ..... day of ....., 20..... proved in the High Court and Probate thereof was granted to..... the Executor (or one of the executors) named therein who after taking such Probate died leaving the administration of the estate of the deceased incomplete and without having by his will appointed any executor thereto and be it further known that on the ..... day of ....., 20..... letters of administration with the said will annexed of all and singular the movable and immovable property of the deceased situate within the jurisdiction and left unadministered as aforesaid were granted by this Court to (insert the name and character in which the Grant is taken) he having been first sworn well and faithfully to administer the same according to the said will and to pay the just debts of the said deceased, and the legacies in the said will contained as far as the said property of the deceased shall extend and the law requires and to render a just and true account thereof when lawfully required.

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

(Seal)

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.....
Registrar

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

.....
Registrar

(e) To an Attorney

As in (b) above inserting after granted to..... the duly constituted attorney of .....(one of the lawful children and next-of-kin of the said deceased or as may be) for the use and benefit of the said ..... until he shall obtain a grant of letters of administration to himself.

(f) To a Guardian

As in (b) above inserting after; granted to .....; as the legal guardian of ..... the lawful infant, children and next-of-kin of the said deceased, limited until one of the said infants shall obtain a grant to himself.

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No. 164

CAVEAT (O. 71, r. 37)

(Title as in Form 6 or as may be)

Let no grant be sealed in the estate of..... late of..... deceased, who died on the ..... day of ....., 20..... at ..... unknown to ..... of ..... having interest as (here describe the nature of the interest).

Dated the .....day of ....., 20.....
Entered No ..... of 20.....

Clerk

.....
Caveator or Solicitor for the .....

My address for service is.....

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No. 165

WARNING TO CAVEATOR (O. 71, r. 37)

(Title as in Form 6 or as may be)

To ..... Of ..... a party who has entered a caveat in the estate of.....deceased.

You are hereby warned within 14 days after service hereof upon you, inclusive of the day of such service:
(1) to file a notice of appearance in Form 166 either in person or by your solicitor at the Registry of the High Court, setting forth what interest you have in the estate of the abovenamed ..... of ..... deceased, contrary to that of the party at whose instance this warning is issued; or

(2) if you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a notice for directions by the Registrar
And take notice that in default of your so doing the Court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat

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

(Seal)

.....
Registrar

Issued at the instance of (here set out the name and interest including the date of the will, if any, under which the interest arises) of the party warning, the name of his solicitor and the address for service. (If the party warning is acting in person, this must be stated).

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No. 166

APPEARANCE TO WARNING OR CITATION (O. 71, r. 37); (O. 71, r. 37)

(Title as in Form 6)

Caveat No ..... dated the ..... day of ..... , 20.....
(or Citation dated the ..... day of ..... , 20.....)

Full name and address of deceased ....

Full name and address of person warning (or citor) .....

Full name and address of caveator (or person cited) .....

Enter an appearance for the abovenamed caveator (or person cited) in this matter.

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

.....
Solicitors for the.....

The address for service is .....

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No. 167

CITATIONS (O. 71, r. 41)

(Title as in Form 6 or as may be)

(a) Citation by Brother to Father to Accept, or Refuse Administration

To..... of .....

Whereas it appears by an affidavit of ..... filed the ..... day of ....., 20..... that..... of ..... died there on ..... the ..... day of ....., 20..... a bachelor without a mother and intestate, leaving you, ... his natural and awful father and next-of-kin:
And whereas it also appears that ..... is the natural and lawful brother of the said ..... deceased and the natural and lawful son of you.....

Now this is to require you, the said..... that, within 14 days after service hereof, including the day of such service, you do cause an appearance to be entered by you in the Registry of the High Court, and accept or refuse letters of administration of the estate of the said deceased or show cause why the same should not be granted to the said .....

And take notice that in default of your so appearing and accepting and extracting the said letters of administration the Court will proceed in the premises according to law, your absence notwithstanding.

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

(Seal)

.....
Registrar

(b) Citation to Accept or Refuse Probate

To ..... of .....

Whereas it appears by the affidavit of..... filed the ..... day of ....., 20.....that, ... of .....deceased died on the ..... day of ....., 20..... at ..... having made and duly executed his last will and testament bearing date ..... (and now remaining in the Registry) and therein appointed you the said..... the sole executor (or sole executor and residuary legatee and devisee or as may be):
And whereas it further appears by the said affidavit that the said ..... is a creditor (or a legatee named in the said will or as may be):
Now this is to require you, the said ..... that, within 14 days after the service hereof, including the day of such service, you do cause an appearance to be entered by you in the Registry of the High Court, and accept or refuse probate and execution of the said will (or as may be) of the said deceased, or show cause why the same should not be granted to the said ..... as creditor of the said deceased (or as may be):
And take notice that in default of your so appearing and accepting and extracting the said probate of the said will the Court will proceed in the premises according to law, your absence notwithstanding.

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

(Seal)

.....
Registrar

(c) Citation to Bring in Probate (Another Will set up)

To ..... of .....

Whereas it appears by an affidavit of..... filed the ..... day of ....., 20....., that probate of the alleged last will and testament of.....deceased, was, on the ..... day of .....

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20.....granted to you by the High Court: And whereas it is alleged in the said affidavit that the said deceased made and duly executed his last will and testament, dated the ..... day of ..... 20....., and thereof appointed the said ..... executor (or as may be) and that the said probate ought to be called in, revoked, and declared null and void in law:

Now this is to require you, the said ..... that, within 14 days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the Registry of the High Court, the aforesaid probate in order that the said ..... may proceed in due course of law for the revocation of the same.

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

(Seal)

.....
Registrar

(d) Citation to Bring in Probate (Intestacy Alleged)

To ..... of .....

Whereas it appears by the affidavit of ..... filed the ..... day of ....., 20....., that probate of the alleged last will and testament of ..... of deceased, was on the .....day of ....., 20..... granted to you by the High Court, and that the said deceased died a bachelor, leaving the said ....., his natural and lawful father and next-of-kin: And whereas it is alleged in the said affidavit that the said deceased died intestate, and that the said probate ought to be called in, revoked, and declared null and void at law:
Now this is to require you, the said..... that, within 14 days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the Registry of the High Court, the aforesaid probate in order that the said ..... may proceed in due course of law for the revocation of the same.

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

(Seal)

.....
Registrar

(e) Citation to Bring in Administration (Will set up)

To ..... of .....

Whereas it appears by the affidavit of ..... filed the ..... day of ....., 20....., that letters of administration of all the estate and effects of ....., deceased, were, on the ..... day of ....., 20....., granted to you by the High Court: And whereas it is alleged in the said affidavit that the said deceased made and duly executed his last will and testament, dated the ..... day of....., 20...., and thereof appointed the said ....., executor (or as may be), and that the said letters of administration ought to be called in, revoked and declared null and void in law:
Now this is to require you, the said ..... that, within 14 days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the Registry of the High Court, the aforesaid letters of administration in order that the said ....., may proceed in due course of law for the revocation of the same.

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

(Seal)

.....
Registrar

(f) Citation to Bring in Administration (Administrator alleged not to be entitled)

To ..... of .....

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Whereas it appears by the affidavit of ..... filed the ..... day of ....., 20..... , that letters of administration of all the estate and effects of ....., deceased, were, on the ..... day of ..... 20....., granted to you by the High Court, as the natural and lawful brother and one of the next-of-kin of the said deceased:

And whereas it is alleged in the said affidavit that you are not one of the next-of-kin of the said deceased, and that ..... is the said lawful son and only next-of-kin (or as may be) and that the said letters of administration ought to be called in, revoked, and declared null and void in law:

Now this is to require you, the said ..... that, within 14 days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the Registry of the High Court, the aforesaid letters of administration in order that the said ..... may proceed in due course of law for the revocation of the same.

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

(Seal)

.....
Registrar

(g) Citation to See Proceedings

To ..... of .....

Whereas it appears by the affidavit of ..... filed the ..... day of ....., 20....., that there is now pending in the High Court, Probate suit entitled ..... and another against ....., No..... of 20....., wherein the plaintiffs are proceeding to prove in solemn form of law the alleged last will and testament, dated the.....day of ....., 20.....,at .....

And whereas it further appears by the said affidavit that you are the natural and lawful ..... and one of the next-of-kin of the said deceased (or a legatee under the alleged will, dated..... or as may be).

Now this is to give notice to you, the said ..... to appear in the said suit either personally or by your solicitor, should you think it for your interest so to do, at any time during the dependence of the said suit and before final judgment shall be given therein. And take notice that, in default of your so doing, the said Court will proceed to hear the said will proved in solemn form of law and pronounce judgment in the said suit, your absence notwithstanding.

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

(Seal)

.....
Registrar

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No. 168
MEMORANDUM OF RESEALING (O. 71, r. 49)

(Title as in action)

BE IT KNOWN that this..... having been produced, and a copy thereof deposited with this Court, is now sealed this .....day of.....20..... pursuant to the Probate and Administration Act1959 on the application of .....

(Seal)

.....

Registrar

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No. 169
FORM FOR NOTICE OF RESEALING (O. 71, r. 49)

REGISTRY,

O.S. No.....)
of 20.....)

NOTICE OF RESEALING OF GRANT

SIR,

Notice is hereby given that the undermentioned Grant, which was issued under the seal of your Court, was, on the date herein stated, resealed in the Registry of the Court.

Name of Deceased	Nature and Date of Grant	Date of Resealing

.....
Registrar,
High Court of Malaya/
Sabah & Sarawak.

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No. 170

CERTIFICATE OF ORDER FOR COSTS AGAINST THE GOVERNMENT (O. 73, r. 12)

(Title as in action)

By a judgment (or order) of this Court dated the ..... day of ....., 20..... it was adjudged (or ordered) that ..... (give particulars of the judgment or order).

I hereby certify that the costs payable to ..... by ..... in pursuance of the said judgment (or order) are RM..... (or have been taxed and certified by me at RM..... (and interest is payable thereon at the rate of RM..... per cent, per annum from the ..... day of ....., 20.... until payment).

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

(Seal)

.....

Registrar

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No. 171

ORDER TO ARREST ABSCONDING JUDGMENT DEBTOR (O. 74, r. 3)

(Title as in action)

To the Sheriff,

Whereas it has been shown to the satisfaction of the Court that ..... the abovenamed judgment debtor is about to abscond:

You are hereby commanded to arrest the said ..... and to bring him forthwith before the Court and if the Court is not sitting to deliver him to the officer- in-charge of the ..... Prison, there to be kept until the next sitting of the Court when you are to bring him forthwith before the Court.

And you are hereby further required forthwith, after the execution of this order, to return the same into this Court, with the place, time and mode of execution endorsed thereon.
Dated the ..... day of ....., 20.....

(Seal)

.....
Registrar

Entered No ..... of 20.....

Clerk

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No. 172

ORDER TO ARREST NON-APPEARING JUDGMENT DEBTOR (O. 74, r. 3A)

(General Title)

To the Bailiff

Whereas a Judgment Debtor Summons was personally served on ..... a judgment debtor. And whereas the said ..... failed to appear on the ..... day of ....., 20... (pursuant to the said Judgment Debtor Summons) you are hereby commanded to arrest the said .....and to bring him forthwith before the Court and if the Court is not sitting to deliver him to the officer-in-charge of the ..... Prison there to be kept until the next sitting of the Court when you are to bring him forthwith before the Court.

And you are hereby further required forthwith, after the execution of this Order to return the same into this Court, with the place, time and mode of execution endorsed thereon.

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

Entered No.....of 20...

Clerk

(Seal)

.....

Registrar

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No. 173

ORDER OF ARREST (O. 74, r. 6)

(Title as in action)

(a) Order to arrest before judgment

To the Sheriff,

Whereas ..... the plaintiff in the above action has proved to the satisfaction of the Court that there is reason able cause for believing that the defendant (here state the reasons for the order):

You are hereby ordered to arrest the said ..... and to bring him forthwith before the Court and if the Court is not sitting to deliver him to the office-in-charge of the ..... Prison there to be kept until the next sitting of the Court when you are to bring him forthwith before the Court in order that he may show cause why he should not furnish security in the sum of RM..... being the amount of claim and costs for his personal appearance before the Court, while the above action is pending and until satisfaction of any order that may be made against him in the action.

Dated the ..... day of ....., 20.....
Entered No..... of 20.....
Clerk

(Seal)

.....
Registrar

Plaintiff's address for service is.....
Note: the defendant shall not be arrested if he pays to you the said sum of RM..... to be deposited by you in Court to abide the trial of the action or further order of the Court.

(b) Order to attach property before judgment
To the Sheriff,
Whereas ..... the plaintiff in the above action has proved to the satisfaction of the Court that there is reason able cause for believing that the defendant (here state the reasons for the order):
You are hereby ordered to forthwith seize all movable property liable to be seized under a Writ of Seizure and Sale which shall be identified by or on behalf of ..... the plaintiff as belonging to .....the defendant to the value of RM.....being the amount of claim and costs as a pledge or surety to answer the just claim of the plaintiff amounting to RM..... and costs estimated at RM.....until the trial of this action and satisfaction of any judgment that may be given against the defendant herein.

Dated the .....day of ....., 20.....
Entered No ..... of 20.....

Clerk

(Seal)

.....
Registrar

Plaintiff's address for service is.....

Note: The property shall not he seized if the defendant pays you the sum of RM .....to be deposited by you in Court to abide the trial of the action or further order of the Court.

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No. 174

REQUEST FOR JUDGMENT DEBTOR SUMMONS (O. 74, r. 11A)

(Title as in action)

To the Registrar,
Please issue a Judgment Debtor Summons against (name and description of judgment debtor) of (address of judgment debtor) in respect of the judgment (or order) herein dated.....the.....day of 20.....which remains unsatisfied to the extent of RM.....

A sealed copy of the Judgment is attached hereto.
Dated this..... day of.....20.....

.....
Judgment Creditor
(or Solicitors for.....)

My address for service is.....

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No. 175

NOTICE OF APPLICATION FOR LEAVE TO ISSUE A JUDGMENT DEBTOR SUMMONS (O. 74, r. 11C)

(General Title)

Take notice that the abovenamed plaintiff intends to apply to the ..... Court at ..... on ..... the ..... day of ....., 20..., at.....a.m./p.m. for leave to issue a judgment debtor summons against ..... on the ground that the abovenamed is liable (as a partner in the firm of (name of defendant firm) or as the person carrying on business in the firm of (name of defendant firm)) to pay the sum payable under the judgment (or order).

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

Entered No..... of 20...

Clerk

(Seal)

.....

Registrar

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No. 176

AFFIDAVIT FOR LEAVE TO ISSUE A JUDGMENT DEBTOR SUMMONS
(O. 74, r. 11C)

(General Title)

I, (name, address and description of deponent) make oath (or affirm) and say as follows:

1. On the ..... day of ....., 20..., I (or the plaintiff obtained judgment (or an order) in this action in this Court against the defendants (state firm name in which defendants were sued) for the sum of RM..... and RM..... costs and there is now due and payable under the said judgment (or order) the sum of RM.....

2. I allege that (state name, residence and occupation) is liable as a partner in the said firm (or as the person carrying on business in the said firm name) to pay the sum payable under the said judgment (or order), and I make this allegation on the following grounds:

(State any ground on which the person named is alleged to be liable, with the deponent's sources of information and grounds of belief).

3. (Where the plaintiff does not make the affidavit, add) I am duly authorized by the plaintiff to make this affidavit on his behalf.

Sworn (or affirmed) (as in Form 74).

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No. 177

JUDGMENT DEBTOR SUMMONS (O. 74, r. 11D)

(General Title)

(a) To a person

You are hereby summoned to appear before the Court at ..... on ..... the ..... day of ....., 20..., at .....a.m./p.m. then and there to be examined respecting your ability to satisfy the judgment recovered against you in the above action on the ..... day of ....., 20..., for RM..... and RM..... costs upon which Judgment the sum of RM..... is still due.

Take notice that if you do not so appear an order for your arrest may be issued.

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

Entered No..... of 20...

Clerk

(Seal)

.....
Registrar

To ..... of .....the abovenamed Judgment Debtor.

(b) To a partner or person carrying on business in a name other than his own.

Whereas the plaintiff obtained judgment (or an order) against the defendant firm ..... in this Court on the ..... day of ....., 20..., for the sum of RM..... and costs upon which judgment the sum of RM..... is still due;

And whereas (on your own admission in the proceedings) (or having been individually served with the summons in this action as a partner you failed to appear at the trial) (or having been adjudged to be liable as a partner you are liable under the said judgment (or order) as (a partner in the said defendant firm) (or the person carrying on business in the name of the said defendant firm):

And whereas the Court has granted leave to issue this judgment debtor summons against you .....:

You are hereby summoned to appear before the ..... Court at ....., on ..... the day of ....., 20..., at ....a.m/p.m. then and there to be examined touching your ability to satisfy the said judgment (or order).

Take notice that if you do not so appear (or if person to be served has not admitted in the proceedings that he is liable as a partner, or has not been adjudged to be liable as a partner, or has not been individually served as a partner and failed to appear at the trial, add: you will be deemed to admit your liability to pay the amount, due under the said judgment or order and) an order for your arrest may be issued.

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

Entered No..... of 20...

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Clerk

(Seal)

.....
Registrar

To.....
(Name of person (one person only to each summons) alleged to be a partner in, or carrying on business in name of, the firm against which judgment (or order) obtained).
of.....

(c) To an officer of a corporation

You are hereby summoned to appear before the ..... Court at ....., on...the ..... day of ....., 20..., at...a.m./p.m. then and there to be examined touching the ability of the abovenamed defendant corporation to satisfy the judgment (or order) recovered (or made) against the said corporation in the above action on the ..... day of ....., 20..., for RM..... and RM..... costs upon which judgment (or order) the sum of RM..... is still due.

Take notice that if you do not so appear an order for your arrest may be issued.

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

Entered No..... of 20...

Clerk

(Seal)

.....
Registrar

To ..... of .....(an officer) of the abovenamed defendant corporation.

(d) In respect of an order of the Commissioner for Labour

(Title as in Form 177)

You are hereby summoned to appear before the ..... Court at ....., on. ..... the ..... day of ....., 20....., at ..a.m./p.m then and there to be examined respecting your ability to satisfy the order made against you by the Commissioner for Labour on the ..... day of ....., 20..., whereby you were ordered to pay RM..... to ..... and whereof a certificate signed and sealed by the Commissioner for Labour was on the ..... day of ....., 20..., filed and recorded in this Court under which order the sum of RM.....is still due.

Take notice that if you do not appear an order for your arrest may be issued.

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

Entered No..... of 20...

Clerk

(Seal)

.....
Registrar

To the abovenamed judgment debtor.

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No. 178

PRAECIPE FOR JUDGMENT NOTICE (O. 74, r. 12)

(Title as in action)

I, ... of ..... the abovenamed plaintiff (or defendant) and judgment creditor request that a Judgment Notice be issued against the judgment debtor to show cause why he should not be committed to prison for default in payment.
(a) Full name and address of judgment debtor.
(b) Date and particulars of the Order for payment in respect of which default has been made.
(c) The total amount which has been paid since the date of such order.
(d) The sum or instalment in respect of which default has been made.
(e) The date on which the same ought to have been paid according to the order.
(f) The debtor's occupation, circumstances and means of payment as far as they are known to the applicant.

Affidavit in support

I.....the abovenamed judgment creditor do make oath (or affirm) and say:

That the particulars stated above are to the best of my knowledge and belief in all respects true.

Sworn (or affirmed) as in Form 74.

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No. 179

JUDGMENT NOTICE (O. 74, r. 13)

(Title as in action)

To the judgment debtor,
Take notice that you are required to attend the Court at .....on ..... the..... day of ..... 20 .....at.....a.m./p.m. to show cause why you should not be committed to Prison for having disobeyed the order of the Court dated the day of.....20....., that is to say, in having made default in payment of the ..... instalment due thereunder (or here state the order disobeyed or not complied with).

Entered No.....of 20.....

Clerk

(Seal)

.....
Registrar

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No. 180

ORDER OF COMMITMENT (O. 74, r. 15)
(Title as in action)

To the Sheriff,

Whereas an order was made by the Court on the ..... day of ....., 20....., whereby it was ordered that ..... the abovenamed judgment debtor pay the judgment debt and costs by instalments of RM..... a month (or as may be):

And whereas he has made default in the payment of instalment amounting to RM.....(or as may be):

You are hereby commanded to arrest the said ..... and to deliver him to the officer-in-charge of the ..... Prison there to be kept for the term of .....days from the arrest under this Order or until earlier payment of the installment due amounting to RM.....(or as may be).

Dated the .....day of ....., 20.....
Entered No..... of 20.....

Clerk

(Seal)

.....
Registrar

Note: The judgment debtor shall not be arrested if he pays to you the said sum of RM.....to be deposited by you in Court.

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No. 181

CERTIFICATE OF SATISFACTION (O. 74, r. 17)

(Title as in action)

I, ... of ..... being the judgment creditor, hereby certify that the judgment debt in respect of which the judgment debtor ..... is imprisoned has been satisfied and I request that the said ..... be discharged from detention.
Dated the ..... day of ....., 20.....

Signed by ..... }
the .....day of .....}
20..... in the presence of: }

.....
Commissioner for Oaths,
Malaya/Sabah & Sarawak

To the Officer-in-charge of the ..... Prison,
This certificate is sufficient authority for the discharge of the judgment debtor from detention under the Order of Commitment No ..... of ....., 20..... issued in respect of non-payment of the judgment debt.
Dated the ..... day of ....., 20.....

(Seal)

.....
Registrar

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No. 182

ORDER OF DISCHARGE (O. 74, r. 17)

(Title as in action)

To the Officer-in-charge of the ..... Prison,

Whereas it has been shown to the satisfaction of the Court that the judgment debtor has satisfied the judgment debt in respect of which he is imprisoned under an Order of Commitment No ..... of ..... 20..... dated the ..... day of ..... 20....., in the above action.

You are hereby commanded to discharge from your custody the said judgment debtor for which this shall be your sufficient authority.

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

(Seal)

.....
Registrar

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No.183

ORDER SUSPENDING AN ORDER OF COMMITMENT OR FOR DISCHARGE OF DEBTOR (O. 74, r. 22A)

(General Title)

On the application of ..... and upon reading the affidavit of ..... filed the ..... day of ....., 20... and upon hearing ..... and the Court being satisfied that the defendant (or judgment debtor) is unable to pay the sum recovered against him (or the instalments due under the judgment (or order).

It is ordered that the said judgment (or order) be suspended for (state time) upon the following terms:- (state terms, (or that the defendant be discharged from custody under the Order of Commitment No..... of 20... upon the following terms, namely: (state terms, including, if so ordered, liability to rearrest if the terms are not complied with)).

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

(Seal)

.....
Registrar

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No. 184

AFFIDAVIT IN SUPPORT OF APPLICATION FOR DISTRESS (O. 75, r. 2)

(Title as in action)

I, ... of ..... do make oath (or affirm) and say that I am the landlord (or his attorney or duly authorised agent) and that (the defendant) is justly indebted to ..... in the sum of Ringgit .....(RM.....) being arrears of rent of the premises No ..... Malaysia due for ..... months from the ..... day of ..... 20..... to the..... day of ..... 20..... at the rate of Ringgit (RM.....) a month payable in advance (arrears) on the .....day of each month (less the sum of Ringgit..... (RM.....) paid to account).

Sworn (or affirmed) as in Form 74.

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No. 185

AUTHORITY TO DISTRAIN (O. 75, r. 2)

(Title as in action)

I (We), ...of ..... hereby authorise ..... of ..... to apply on my (our) behalf under the Distress Act 1951 for a writ of distress for all the arrears of rent now due to me (us) (or to be hereafter due) on property situated at (describe property) to which I (we) am (are) entitled to distrain as (owner, lessee, trustee, guardian or as may be (or together with.....)).
Dated the ..... day of ....., 20.....

Signed by .....}
the ..... day of..... 20.....in the presence of:}.} (Signed)

.....
Solicitor (or Commissioner for Oaths)

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No. 186

WRIT OF DISTRESS (O. 75, r. 3)

Distress No .....of 20.....

Between

..... *Plaintiff,*

and

..... *Defendant.*

To the Sheriff,

I hereby direct you to distrain the movable property found on the premises No. (give full address) .....for the sum of.....Ringgit and ..... sen (RM .....) being the amount of .....months' rent due to ..... for the same, from the ..... day of ....., 20..... to the..... day of ....., 20....., together with costs amounting to RM.....and the prescribed fees and the expenses of executing this Writ, according to the provisions of the Distress Act 1951.

But you are hereby expressly prohibited from taking any property not legally liable to a distress for rent.

Dated the ..... day of ....., 20.....
Entered No..... of 20.....

Clerk

(Seal)

.....
Registrar

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No. 187

AUTHORITY TO FOLLOW GOODS (O. 75, r. 10)

(Title as in action)

Upon the application of the Sheriff and upon hearing the evidence of..... (or reading the affidavit of ..... filed the ..... day of ....., 20.....) and it appearing from the said evidence (or affidavit) that on the ..... day of ....., 20..... certain property liable to be seized under the Writ of Distress issued herein namely (specify the property liable to be seized alleged to have been removed) was removed from the premises No ..... with the intention of hindering or preventing the distraint thereof.

It is ordered that the Sheriff do follow and seize the said property in execution of the writ, wherever it may be found and deal therewith as if it had been seized upon the said premises in accordance with the provisions of the Distress Act 1951.

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

(Seal)

.....

Registrar

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No. 188

CONSENT OF LITIGATION REPRESENTATIVE OF PERSON UNDER DISABILITY (O. 76, r. 3)

(Title as in action)

I, ...of ..... consent to be litigation representative of the abovenamed plaintiff (or defendant), an minor (or a patient) in this action, and I authorise ..... of ..... Advocates and Solicitors, to act on my behalf.
Dated the ..... day of ....., 20.....

Signed by the said..... }
the ..... day of ....., }
20....., in the presence of: }

.....
Solicitor (or Commissioner for Oaths)

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No. 189

CERTIFICATE BY SOLICITOR FOR PERSON UNDER DISABILITY (O. 76, r. 3)

(Title as in action)

I, ...of .....solicitor for the litigation representative hereby certify that I know (or believe) that (name of minor) (or name of patient) is (a minor) (or a patient) (give the grounds of knowledge or belief) and that the abovenamed (name of litigation representative) has no interest in the cause (or matter) in question adverse to that of the minor (or the patient).

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

.....

Solicitor for the.....

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No. 190

ORDER FOR PARTICULARS (PARTNERSHIP) (O. 77, r. 2)

(Title as in action)

Upon the application of ..... and upon reading the affidavit of ..... filed the ..... day of ……..……....., 20……....., and upon hearing ……..……..……..……..……..…

It is ordered that the ..... furnish the ..... with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the Rules of Court 2012, Order 77 rule 2, and that the costs of this application be……..……..……

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

(Seal)

……..…….....

Registrar

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No. 191

NOTICE OF SERVICE ON MANAGER OF PARTNERSHIP (O. 77, r. 3)

(Endorsed on Writ)

Take notice that the writ is served on you as the person having the control or management of the partnership business of the abovenamed defendant firm of .....(and also as partner in the said firm *(a)*).

……
Solicitors for the Plaintiff

Note – (a) If the person served with the writ is served in the two capacities of manager and partner, the clause should be left standing. If he is served as manager only, it should be struck out.

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No. 191A

ORIGINATING SUMMONS UNDER HIRE PURCHASE ACT, 1967 (O. 85, r. 2)
(General Title)

Take notice that you are required to attend the..... Court at.....on..... the.....day of.....,20....., at....a.m./p.m, on the hearing of an application by the plaintiff for the following orders:

(a) an order re-opening the hire-purchase transaction between the plaintiff and the defendant;

(b) an order directing an account to be taken between the plaintiff and defendant in respect of the transaction;

(c) an order relieving the plaintiff from payment of any sum in excess of RM.....;

(d) an order setting aside the hire-purchase agreement made between the plaintiff and the defendant on ……. (date);

(e) an order giving judgment for the plaintiff against the defendant for the sum of RM.....;

(f) an order adding as a party to this application one X.Y.;

(g) an order giving judgment for the plaintiff against the said X.Y. for such sum as this Court shall think fit; and

(h) such further and other relief as this Court shall think fit.

Upon the grounds:
(i) that the transaction is harsh and unconscionable;

(ii) that the transaction is such that a court of equity would grant relief to the applicant therefrom; and

(iii) that the said X.Y. has shared in the profits of or has had a beneficial interest prospectively or otherwise in the transaction.

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

Entered No.....of 20.....

Clerk

(Seal)

……
Registrar

This summons is issued by, etc.
To:

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No. 192

REQUEST FOR ENFORCEMENT OF ORDER OF DIRECTOR GENERAL OF LABOUR (O. 86A, r. 2)

(Title as in Form 194)

Please enforce the order of the Director General of Labour under section.....of the Employment Act 1955, in No. E..... of 20.....dated the.....day of....., 20.....for the sum of RM.....against.....of..... in favour of.....of..... by way of judgment debtor summons (or writ of seizure and sale)

.

	RM
Amount paid to account	
Amount paid to account	
Balance due	_____
	_____

The person to be served (or the property to be seized) will be pointed out by.....the (or one of the) complainant(s) who will pay the transport expenses of the process server (or the expenses of the bailiff for executing the writ of seizure and sale and any deposit required).

The sealed copy of the certificate of order is attached.

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

(Seal)

.....

Director General of Labour

To the Registrar,

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No. 193

REGISTER OF ORDERS OF THE DIRECTOR GENERAL OF LABOUR (O. 86A, r. 4)

(Record one order on each page as follows)
(Title as in Form 194)

Date of Registration.....,20.....

Serial Number: No. E.....of 20.....

In the matter of an Order dated the..... .....day of....., 20....., made by the Director General of Labour under section..... of the Employment Act, 1955, in Case No. E.....20..... on the complaint of.....

.....*Employees*
against

.....*Employer*
Order – (Here set out the order)

Date of proceedings	*Nature*	*Result*

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No. 194

TITLE OF PROCEEDINGS ENFORCEMENT OF ORDER OF DIRECTOR GENERAL OF LABOUR (O. 86A, r. 6)

Serial Number: E.....of 20.....

In the matter of an Order dated the.....day of..... 20....., made by the Director General of Labour under section 69 of the Employment Act 1955, on the complaint of.....

.....*Employees*

against

.....*Employer*

(In the case of a prohibitory order under section 73 of the Employment Act, 1955, add:

And in the matter of a prohibitory order dated the.....day of ....., 20....., made by the Director General of Labour under the Employment Act 1955, against.....)

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No. 195

ORDER FOR POSSESSION UNDER ORDER 89 (O. 89, r. 6)

(Heading as in originating summons)

Upon hearing .....and upon reading the affidavit of ..... filed the ..... day of ..... 20....., it is ordered that the plaintiff A.B. do recover possession of the land described in the originating summons as ..... (and the defendant ..... do give possession of the said land on .....) (and that the defendant ..... do pay the plaintiff RM..... costs (or costs to be taxed)).

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

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No. 196

AUTHORITY TO COMPANY TO REGISTER TRANSFER (O. 90, r. 4)

(Title as in action)

To the .....Co. Ltd.,
Peninsular Malaysia/Sabah & Sarawak.

Please register transfer of share Nos ..... from ..... to ..... the Accountant-General.

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

.....
Account-General

CERTIFICATE OF TRANSFER

The abovementioned shares have this day been transferred as authorised.

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

.....
Secretary of the ..... Co. Ltd

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No. 197

STATUTORY DECLARATION (O. 90, r. 11)
(Title as in action)

Ledger Account (if the same as the cause state as above;). I (name and address of applicant) solemnly and sincerely declare that I am the (degree of relationship) and next or one of the next-of-kin of (name of deceased) and that I am entitled to take out administration to his estate and to receive the sum of RM .....directed to be paid to him by the Order dated the .....day of ....., 20.....And I further declare that the total value of the assets of the deceased including the above sum does not exceed RM 10,000 and I certify that the funeral and other testamentary expenses of the deceased have been paid. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1960.

.....
Applicant

Declared before me this ..... day of ....., 20....
(Name and designation of officer administering oath).

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No. 197A

ACCOUNT BOOK (O. 90, r. 18)

RECEIPTS

Date	From whom received	No. of action or proceedings	To whose credit paid	No. of Receipt	Amount Received	Amount Banked	Date of Payment

PAYMENTS

Date	To whom paid	No. of action or Proceedings	No. of cheque	Amount paid in cash	Amount Paid in cheque	Page and Book No. of Account Book (Receipts)

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No. 198

WRIT (O. 93, r. 3)

IN THE MAGISTRATES' COURT

AT.....
IN THE STATE OF .....MALAYSIA
CASE NO.....

Name of Plaintiff---------- NRIC No…….. Address
Name of Defendant---------- NRIC No…….. Address

Statement of Claim

Plaintiff's claim is for a sum ringgit: Particulars:

....
Date *Signature/Right thumb print of Defendant*

....
Date of Filing *Magistrate*

ORDER TO DEFENDANT:

1. If you dispute the plaintiff's claim, you must file in your statement of defence in Form 199 on or before .....
2. You must appear in this Court on the trial date and at the time shown below if you do not agree with the plaintiff's claim.
3. Bring all witnesses, books and other papers with you to support your case.

TRIAL DATE .....TIME.....

....

Date of Filing *Magistrate*

(Seal)

INSTRUCTIONS TO PLAINTIFF:
(1) The plaintiff must fill in his name in full and his identity card number in the first part.

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(2) In the second part of the plaintiff must fill in the name of the defendant in full and his last known address.

(3) In the third part, the plaintiff must state exact amount claimed. The amount claimed should be exceed RM5,000.

(4) In the same part, the plaintiff must state the particulars of his claim. The particulars must state the relevant date and how the claim has arisen or what is the basis of the claim.

(5) Having filled in the particulars, the plaintiff must sign the form personally.

(6) Having completed the form, the plaintiff must file the form in 4 copies in the Registry of the Second Class Magistrates' Court. He must pay filing fee of RM10. The Registry will put the seal of the Court on the 4 Copies of the form and fill in the hearing date. A copy of the form will be returned to the plaintiff.

(7) You may consult a lawyer but cannot be represented by a lawyer at the hearing.

INSTRUCTIONS TO DEFENDANT:

(1) When you receive this form sealed with the seal of the Court, you are. being sued by the plaintiff.

(2) If you dispute the claim you must state your defence, with particulars, in Form 199.

(3) You must file in your statement of defence in the Court Registry.

(4) If you fail to file in your defence within the prescribed time or if you fail to appear in Court on the hearing date, the Court will give judgment to the plaintiff with costs.

(5) You may consult a lawyer but cannot be represented by a lawyer at the hearing.

[This form is given free of charge]

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No. 199

STATEMENT OF DEFENCE/ COUNTER CLAIM (O. 93, r. 6)

IN THE MAGISTRATES' COURT

AT.....
IN THE STATE OF.....MALAYSIA
CASE NO.....

Name of Plaintiff…… NRIC No……..   Address
Name of Defendant : ……..NRIC No……   Address

Statement of Defendant:

-

Counterclaim :

....

Date *Signature/Right thumb print of Defendant*

....

Date of Filing *Magistrate*

INSTRUCTIONS TO THE DEFENDANT:
(1) If you admit the plaintiff's claim, you may state in the space for the statement of defence that you admit the claim.

(2)If you dispute the claim, your statement of defence must contain particulars as to why you dispute the claim.

(3) If you have any counterclaim, you must state your counterclaim with particular. in the space for counterclaim.

(4) You must file your defence (and counterclaim if any) within the time limit, otherwise judgment will be entered in favour of the plaintiff.

(5) You must sign Form 201 personally and then file it in 4 copies in the Court Registry. If defence is filed the filing fee is RM4 and if defence and counterclaim are filed the filing fee is RM24. The Registry will put the seal of the Court on the 4 copies of the form and return to you a copy.

[This form is given free of charge]

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No. 200

DEFENCE TO COUNTERCLAIM (O. 93, r. 6)

IN THE MAGISTRATES' COURT

AT.....
IN THE STATE OF ..... MALAYSIA
CASE NO.....

Name of Plaintiff…… NRIC No…… Address……
Name of Defendant…… NRIC No…….. Address……

Defence to counterclaim :

....
Date *Signature/Right thumb print of Defendant*

....
Date of Filing *Magistrate*

INSTRUCTIONS TO THE PLAINTIFF:
(1) If you admit the defendant's counterclaim, you may state in the space for defence to counterclaim that you admit the counterclaim.

(2) If you dispute the counterclaim, your defence to the counterclaim must contain particulars as to why you dispute the counterclaim.

(3) You must sign Form 200 personally and then file it in 4 copies in the Court Registry. The filling fee is RM4. The Registry will put the seal of the Court on the 4 copies of the form and return to you a copy.

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No. 201

JUDGMENT FOR PLAINTIFF WHERE DEFENDANT DID NOT FILE STATEMENT OF DEFENCE (O. 93, r. 8)

IN THE MAGISTRATES' COURT

AT.....

IN THE STATE OF.....MALAYSIA

CASE NO.....

Between

.....Plaintiff

and

.....Defendant

The Writ having been duly served on the defendant and the defendant having failed to file his defence within the stipulated time, it is hereby ordered that the defendant do pay the plaintiff RM..... and RM..... costs

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

(Seal)

.....
Magistrate

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No. 202

JUDGMENT FOR PLAINTIFF WHERE DEFENDANT ABSENT (O. 93, r. 8)

IN THE MAGISTRATES' COURT

AT.....
IN THE STATE OF.....MALAYSIA
CASE NO.....

Between
.....Plaintiff
and
.....Defendant

-

This action having this day been called on for hearing before His/Her Honour ..... in the presence of the plaintiff, and the defendant not appearing, it is ordered that-
**(a)* the defendant do pay the plaintiff RM..... and RM.....costs;
(b) the defendant's counterclaim be dismissed.

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

(Seal)

.....
Magistrate

*Delete as the case may be

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No. 203

JUDGMENT FOR DEFENDANT WHERE PLAINTIFF ABSENT
(O. 93, r. 8)

IN THE MAGISTRATES' COURT

AT.....
IN THE STATE OF.....MALAYSIA
CASE NO.....

Between
.....Plaintiff
and
.....Defendant

This action having this day been called on for hearing before His/ Her Honour.....in the presence of the defendant, and the plaintiff not appearing, it is ordered that-

**(a)* the action be dismissed;
(b) the plaintiff do pay the defendant RM..... on the counterclaim;
(c) the plaintiff do pay the defendant RM..... costs.

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

(Seal)

.....
Magistrate

**Delete as the case may be*

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No. 204

JUDGMENT WHERE DEFENDANT ADMITS CLAIM (O. 93, r. 9)

IN THE MAGISTRATES' COURT

AT.....

IN THE STATE OF.....MALAYSIA

CASE NO.....

Between

.....Plaintiff

and

.....Defendant

The defendant having admitted the claim, it is this day ordered that the defendant do pay the plaintiff RM..... and RM.....cost.

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

(Seal)

.....
Magistrate

[This form is given free of charge]

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No. 205

APPLICATION FOR SETTING ASIDE JUDGMENT OR ORDER (O. 93, r. 10)

IN THE MAGISTRATES' COURT

AT.....

IN THE STATE OF.....MALAYSIA

CASE NO.....

Name of Plaintiff……..NRIC No……
Address……..

Name of Defendant…….. NRIC No……..
Address……..

1. A judgment /order has been obtained against me on ……

2. I hereby apply to set aside the judgment/order.

I was not present at the hearing because :

I did not file my defence because :

Signature/Right thumb print of Plaintiff/Defendant
Date.....

NOTICE TO PLAINTIFF/DEFENDANT

The plaintiff/defendant has applied to this Court to set aside the judgment/order dated .....The date and time of hearing of the application are shown below:

Hearing date ..... Time.....

Date of filing

Magistrate.....

(Seal)

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No. 206

CONSENT JUDGMENT (O. 93, r. 13)

IN THE MAGISTRATES' COURT

AT.....

IN THE STATE OF.....MALAYSIA

CASE NO.....

Between

.....Plaintiff

And

.....Defendant

This action having this day been called on for hearing before His/ Her Honour ..... in the presence of the plaintiff and the defendant, and both parties having consented, it is hereby ordered that—

**(a)* the defendant do pay the plaintiff RM.....;

(b) the defendant do pay the plaintiff RM..... after deducting the counterclaim;

(c) the plaintiff do pay the defendant RM.....;

(d) ..... day pay ..... RM..... costs.

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

(Seal)

.....

Magistrate

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No. 207

JUDGMENT AFTER HEARING (O. 93, r. 13)

IN THE MAGISTRATES' COURT

AT.....

IN THE STATE OF.....MALAYSIA

CASE NO.....

Between

.....Plaintiff

and

.....Defendant

This action having been heard before His/ Her Honour ..... it is hereby ordered that—

**(a)* the defendant do pay plaintiff RM.....

(b) this action be dismissed;

(c) the plaintiff do pay the defendant RM..... on the counterclaim;

(d) the counterclaim be dismissed;

(e) ..... do pay ..... RM.....costs

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

(Seal)

.....
Magistrate

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No. 208

NOTICE TO JUDGMENT DEBTOR TO SHOW CAUSE IN THE MAGISTRATES' COURT (O. 93, r. 16)

(Small Claims Procedure)

AT .....

IN THE STATE OF .....

CASE NO. .....

BETWEEN

.....Judgment Creditor

and

.....Judgment Debtor

The Judgment Creditor applies to the Court for the enforcement of the judgment/order of this Court given on ..... which was served on the Judgment Debtor by registered post on .....

This is to require you the Judgment Debtor to appear before this Court on ..... at ..... a.m./p.m. to show cause why an order for the enforcement of this judgment/order should not be made against you.

....

Date *Signature/Right thumb print of Judgment Creditor*

....

Date of filing *Magistrate*

INSTRUCTIONS TO THE JUDGMENT DEBTOR:

(1) You may within ten days of the receipt of this notice deposit in this Court cash or money order in the name of the Judgment Creditor. If you do this, you are not required to appear in Court on the date stated in this notice.

(2) If you do not within ten days as required in paragraph (1) settle your debt, you must appear in the Magistrate's Court on the date stated in this notice. If you do not appear in Court, a warrant will be issued for your arrest.

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APPENDIX B1

HIGH COURT FEES

No.	*Items*	*Fees*		*Document on which the stamp is to be affixed and remarks*
		ringgit	sen	
	GENERAL COMMENCEMENT OF A CAUSE OR MATTER			
1	On sealing a writ of summons for the commencement of an action	400	00	*Praecipe*
2	On sealing an originating summons	160	00	*Praecipe*
3	On sealing a concurrent or renewed writ of summons or a concurrent originating summons	20	00	*Praecipe*
4	On sealing an amended writ of summons or an amended originating summons	20	00	*Praecipe*
5	On presenting a petition where no other fee is specifically provided	160	00	*Praecipe*
6	On any other form of commencement of a cause or matter where no fee is specifically provided	160	00	*Praecipe*
7	On amending any mode of commencement of a cause or matter	20	00	*Praecipe*
8	On marking the renewal of any writ of summons or other mode of commencement of a cause or matter	20	00	*Praecipe*
	APPEARANCE			
9	On entering an appearance for each person	20	00	*Praecipe*
10	On amending the same	20	00	*Praecipe*
	IN INTERLOCUTORY APPLICATIONS			
11	On sealing a notice of application	40	00	*Praecipe*
12	On sealing a notice for attendance at Chambers on an originating summons to which an appearance is required to be entered	20	00	*Praecipe*
13	On filing a notice of motion	80	00	*Praecipe*

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14	On sealing a notice under Order 16 rule 1, 8 or 9	300	00	*Praecipe*
15	On bespeaking a request for the service of process or notice thereof out of the jurisdiction	80	00	*Praecipe*
16	On sealing a commission or letter of request for the examination of witnesses abroad	80	00	*Praecipe*
17	On every appointment for the examination of a witness by an officer of the Court	40	00	*Praecipe*
18	On every witness sworn and examined by an officer of the Court, for each hour or part of an hour	80	00	*Praecipe*
	ENTERING OR SETTING DOWN FOR TRIAL OR HEARING IN COURT			
19	On setting down a cause or matter including an application for hearing or judgment or on a point of law	200	00	*Praecipe*
20	On entering or setting down any cause or matter for further consideration	120	00	*Praecipe*
	WRITS			
21	On sealing a writ of subpoena to testify or to produce documents, for each witness	8	00	*Praecipe*
22	On sealing an instanter subpoena for each witness Note: An instanter subpoena is one issued less than 3 days before the trial of an action.	24	00	*Praecipe*
23	On sealing every writ of execution, distress, order of committal, arrest or attachment of property	160	00	*Praecipe*
24	On an originating summons for the issue of a writ of distress	400	00	*Praecipe*
	JUDGMENT AND ORDERS			
25	On entering or sealing any order made in Chambers	80	00	*Praecipe*
26	On entering or sealing a judgment or order given, directed or made in the trial, hearing or further consideration of a cause or matter in Court	300	00	*Praecipe*
27	On entering or sealing a judgment pursuant to an order or certificate made in Chambers	40	00	*Praecipe*
28	On entering or sealing any other judgment or order where no other fee is specifically provided for	80	00	*Praecipe*

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	MISCELLANEOUS			
29	On presenting a petition of course	80	00	*Praecipe*
30	On adjourning from Chambers into Court— an originating summons	160	00	*Praecipe*
31	On taking an account of moneys received by a receiver, committee or guardian, consignee, bailee, manager, provisional official or voluntary liquidator, or of an executor, administrator or trustee, agent, solicitor, mortgagee, co-tenant, co-partner, execution creditor, or other person liable to account, when the amount found to have been received without deducting any payment shall not exceed RM1,000	40	00	*Praecipe*
32	Where such amount shall exceed RM1,000 for every RM500 or fraction of RM500 Note: In the case of any such receiver, committee, guardian, consignee, bailee, manager, liquidator, or execution creditor, the fees shall upon payment be allowed in the account, unless the Court shall otherwise direct, and in the case of taking the accounts of such other accounting parties the fees shall be paid by the party having the conduct of the order under which such account is taken as part of his costs in the cause or matter, unless the Court shall otherwise direct and in such case shall be taken upon the certificate of the result of any such account, but the fees shall be due and payable although no certificate is required on the account taken or such part thereof as may be taken, and the solicitor or party suing in person shall in such case cause the proper stamps, the amount thereof to be fixed by the Registrar, to be impressed on the account.	4	00	*Praecipe*
33	On signing, settling or approving an advertisement	40	00	*Praecipe*
34	On settling a lodgment schedule for payment into Court of purchase or other money	20	00	*Praecipe*
35	On settling— *(a)* a deed or other instrument or *(b)* particulars and conditions of sale, whether together or separately	80	00	*Praecipe*
36	On fixing the reserve on a sale out of Court	80	00	
37	On every reference to an officer of the Court	120	00	*Praecipe*

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38	On sealing a notice of appeal from a Registrar to a Judge in Chambers	40	00	*Praecipe*
	PROBATE			
39	On filing an originating summons for Probate or Letters of Administration, or for resealing the same, including the fees for taking and filing the affidavit, verifying the summons and on answering and setting down the summons for hearing in Court	160	00	*Praecipe*
40	On extracting Grant of Probate or Letters of Administration or for resealing the same	400	00	*Praecipe*
41	On engrossing copy of a will or codicil or of any translation thereof or other document to annex to grant or for exemplification	4 2	00 plus 00 per folio	*Praecipe*
42	If in any other language per folio of the English translation	2	00	*Praecipe*
43	On every exemplification of a Probate or Letters of Administration, with or without the will annexed in addition to the fees for engrossing	40	00	*Praecipe*
44	On entry of every caveat including notice to the other Registries and notice to the petitioner	20	00	*Praecipe*
45	On withdrawing a caveat including notice	20	00	*Praecipe*
46	On settling or sealing a citation (where the estate exceeds RM1,000)	40	00	*Praecipe*
	ADMIRALTY			
47	On filing— *(a)* a consent to release *(b)* a *praecipe* under Order 70 rules 4(3), 5(1), 7(3), 12(5)*(b)*, 13(1), 22(1) or a notice under Order 70 rule 12(2) *(c)* an agreement under Order 70, rule 33 *(d)* an admission of liability *(e)* a request for the attendance of assessors *(f)* any other document	 40 40 40 40 20	 00 00 00 00 00	 *Praecipe* *Praecipe* *Praecipe* *Praecipe* *Praecipe*

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48	*(a)* On entering a reference for hearing by the Registrar *(b)* Such further fee for any assessor as the Registrar may consider reasonable	240 -	00	*Praecipe*
49	On a certificate by the Registrar as to a judgment or order	40	00	*Praecipe*
50	On lodging with the Sheriff a warrant, release, decree, order, Commission or other instrument	160	00	*Praecipe*
51	On the appointment and swearing of appraisers including the drawing of the affidavit for the appraiser	120	00	*Praecipe*
52	On the delivery of a ship or goods to a purchaser	160	00	To be deducted by Sheriff
53	On the sale of a ship commission of 5 per cent to be charged on the first RM1,000 and 2½ per cent upon all above that sum, such sum to include the auctioneer's commission Note: Where the sale is made by private contract, only half the commission will be payable	-		To be deducted by Sheriff
54	For attending the discharge of a cargo or the removal of a ship or goods for each day of attendance Note: Day means from 9 am to 4pm. For each hour or part thereof before 9 am or after 4pm	200 60	00 00	To be deducted by Sheriff To be deducted by Sheriff
	APPEAL FROM HIGH COURT			
55	On filing a notice of appeal (and cross-appeal)	400	00	*Praecipe*
56	Any interlocutory application	80	00	*Praecipe*
57	(Memorandum) of Appeal	80	00	*Praecipe*
58	Judgment or Order of Federal Court— *(a)* Order on any interlocutory application *(b)* Final order on appeal	 80 120	 00 00	 *Praecipe* *Praecipe*

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59	Appeal from Subordinate Courts and Statutory Bodies—			*Praecipe*
	(a) On presentation of memorandum of appeal from—			
	(i) Sessions Court	80	00	*Praecipe*
	(ii) Magistrates' Court	80	00	*Praecipe*
	(b) On filing any appeal or reference from any authority or body other than a Sessions or Magistrates' Court or from a Collector under the Small Estate (Distribution) Act 1955, not otherwise provided for	40	00	*Praecipe*
	(c) On entering or sealing an order on appeal or reference from—			
	(i) a Sessions Court	40	00	*Praecipe*
	(ii) a Magistrates' Court or any other body or authority	20	00	*Praecipe*
	FILING			
60	On filing any document in the Registry (not provided) in this Appendix	16	00	*Praecipe*
61	On amending each pleading	16	00	*Praecipe*
62	On an application to search for appearance, for each defendant in respect of whom search is made including certificate of the result of such search	16	00	*Praecipe*
63	On any other search, including inspection, for each half hour or part thereof occupied	12	00	*Praecipe*
64	On every certificate or report by the Registrar not otherwise provided for	40	00	*Praecipe*
65	Certificate of Urgency	40	00	
	COPIES OF DOCUMENTS			
66	On making a copy (or a certified copy) for each folio. For every second or subsequent copy if carbon or by duplicating process for each folio Note: Where a certified copy of a Judges note or judgment is by his leave made and supplied by his secretary or Court stenographer, the above fee shall be paid to and retained by such secretary or Court stenographer for his personal benefit, (provided that	4	00	*Praecipe*

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	this fee shall be payable only if such secretary or stenographer does not claim overtime allowance from the Government for preparing such certified copy)			
67	For examining a plain copy and marking the same as an office copy— *(a)* in the case of a photographic or xerox copy for each sheet *(b)* in any other case for each folio	 2 4	 00 00	 *Praecipe* *Praecipe*
68	On an application to be allowed to copy any document filed or lodged in Court, for each document	4	00	*Praecipe*
	TRANSLATIONS			
69	On a certified translation by an Interpreter of the Court	8 4	00 plus 00 per folio	*Praecipe*
70	On checking, correcting and certifying a translation not made by an Interpreter of the Court Note: On presentation of the *praecipe* which must be signed and dated, it must bear a stamp for at least the first folio of translation. The folios will be reckoned on the English translation when ready and the fee must be made up to the full amount before the translation can be delivered.	8 4	00 plus 00 per folio	*Praecipe*
	ACCOUNTANT GENERALS OFFICE			
71	On a certificate of the amount and description of any moneys, funds, or securities, including the request therefor	16	00	Request
72	On a transcript of an account for each opening, including the request thereof	16	00	Request
73	*(a)* On paying, lodging, transferring or depositing funds in Court *(b)* On paying out of Court any money lodged or deposited in Court	16 16	00 00	Direction Direction
74	On a request to the Accountant-General for information in writing respecting any moneys, funds or securities in Court or any transaction in his office	16	00	Request
75	On allocatur	16	00	*Praecipe*

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	COMPANIES			
76	On presenting a petition or originating summons (as the case may be) under one or more of the following:	300	00	*Praecipe*
	(a) section 60, to confirm the reduction of a share premium account;	-		-
	(b) section 59, to approve the issue of shares at a discount;	-		-
	(c) section 61, to confirm a reduction of a capital redemption reserve fund;	-		-
	(d) section 64, to confirm a reduction of capital;	-		-
	(e) section 176, to approve a compromise or scheme of arrangement.	-		-
77	On presenting a originating summons under one or more of the following:	300	00	*Praecipe*
	(a) section 28, to cancel an alteration of objects;	-		-
	(b) section 65, to cancel any variation of the rights attached to any class of shares;	-		-
	(c) section 308, to restore a name to register of companies;	-		-
	(d) section 354, for relief by officers of a company.	-		-
78	On presenting a petition for which no fee is specifically provided	300	00	*Praecipe*
79	On a certificate as to debts under section 7 or 59	400	00	*Praecipe*
	COMMISSIONS			
80	On sealing or issuing a Commission to take oaths or affidavits or acknowledgments in the High Court	400	00	*Praecipe*
81	Upon an application for the production of records or documents to be given in evidence—			
	(a) where the records or documents are left in Court	16	00	*Praecipe*
	(b) where an officer is required to produce the records or documents in Court	120	00	*Praecipe*
82	For the attendance of an officer of the Court as a witness for every half day or part thereof that he is necessarily absent from his office	120	00	*Praecipe*

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83	On taking or re-taking an affidavit or a declaration in lieu of an affidavit, or a declaration or an acknowledgment for each person making the same And in addition for each exhibit referred to therein and required to be marked	8 6	00 00	*Praecipe* *Praecipe*
84	On each document referred to in a deposition and required to be marked	6	00	*Praecipe*
85	On taking an affidavit before an Advocate and Solicitor who is appointed as Commissioner for Oaths Note: The fees under Fee Nos 85 and 86 shall be payable to the Commissioner and shall be in lieu of the Court fees of RM4.00 and RM3.00 chargeable under Fee No 83	6	00	*Praecipe*
86	For each exhibit referred to in an affidavit sworn before an Advocate and Solicitor who is appointed as a Commissioner for Oaths	8	00	*Praecipe*
87	*(a)* On approving— (i) a guarantee (ii) an undertaking in lieu of a guarantee *(b)* (i) On vacating a guarantee (ii) on discharging an undertaking in lieu of a guarantee: Provided that, when the vacating or discharge is unconditional, Fee No 87*(b)* shall be impressed after the order has been made but before it is perfected	 40 10 40 20	 00 00 00 00	 *Praecipe* *Praecipe* *Praecipe* *Praecipe*
88	On taking a recognisance or bond, whether one or more than one recognizer or obliger, and whether entered into by all at one time or not	80	00	*Praecipe*
89	On assignment of a bond	40	00	*Praecipe*
90	On vacating a recognizance	32	00	*Praecipe*
91	On re-registering the same	16	00	*Praecipe*
92	On sealing or issuing any document, not being a judgment or order, where no other fee is prescribed by this Appendix:	20	00	*Praecipe*

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	Provided that this fee is not payable on a writ of habeas corpus			
	SHERIFF'S OFFICE			
93	For each attempt at service on each person of any process or proceeding required to be served by the Court or Sheriff	8	00	*Praecipe*
94	And if more than 2 kilometers from the High Court, for every additional kilometer	4	00	*Praecipe*
95	For executing every writ of execution, distress, order of committal, arrest or attachment of property	40	00	*Praecipe*
96	On marking a writ of execution for renewal	20	00	*Praecipe*
97	For releasing property seized by instruction of party issuing the writ of execution or distress, order of attachment arrest or attachment of property	32	00	*Praecipe*
98	Commission as follows to be charged on the gross amount realised upon any sale of property in execution or otherwise under the direction of the Court: *(a)* for the first RM1,000 realised 5% *(b)* on subsequent amounts ..... 2½% Note: Where the sale is made by private contract, only half the commission will be payable)			
99	Commission of 4 per cent to be charged on all money received by the Sheriff under garnishee summons			To be deducted by the Sheriff
100	Commission of 4 per cent to be charged on all money received by the Sheriff under an Order for the attachment before judgment of money belonging to the debtor in the hands of a third party			To be deducted by the Sheriff
101	Commission of 2 per cent to be charged on all money received by the Sheriff in satisfaction of a writ of seizure and sale or distress where an execution is withdrawn, satisfied or stopped			To be deducted by the Sheriff
102	Commission of 2 per cent to be charged on the estimated value of the property seized or the amount stated in the writ whichever is the lesser where the execution is withdrawn, satisfied or stopped			To be paid in cash to the Sheriff by the Execution Creditor

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103	For each man in possession necessarily employed in taking charge of any property under seizure	Actual Cost		Paid in cash to the Sheriff or direct payment on vouchers certified by the Sheriff
104	For removal of goods or animals to a place of safe keeping, when necessary	Actual Cost		Paid in cash to the Sheriff
105	Where goods or animals are removed for warehousing and taking charge of the same, including feeding of animals, 6 per cent on the value of the goods or animals removed or the sum endorsed on the writ of execution, whichever is the less. No fees for keeping possession of the goods or animals shall be charged after the goods or animals have been removed	6%		Paid in cash to the Sheriff
106	For advertising and giving publicity to the sale by auction Note: *(a)* In every case where the execution is withdrawn, satisfied or stopped the fees shall be paid by the person at whose instance the sale is stopped, and the amount of any costs of charges payable under this Appendix shall be taxed by the Judge, in case the Sheriff and the party liable to pay such costs and charges differ as to the amount thereof. *(b)* The charges laid down under items 103, 104, 105 and 106 shall be collected in cash and deposited in Court and the amounts actually incurred for the services specified in the said items shall be paid out of such deposit by the Sheriff to the persons employed to render such services, any balance to be paid out to the person making the deposit.	Actual Cost		Paid in cash to the Sheriff
107	For the return of any writ or process and filing same, exclusive of the fee paid on filing	16	00	*Praecipe*

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APPENDIX B2
SUBORDINATE COURT FEES

No.	*Items*	*Fees*		*Documents on which the stamp is to be affixed and remarks*
		ringgit	sen	
	GENERAL			
1	On sealing a writ or originating summons for the commencement of an action or filing a counterclaim—			
	**(a)* where the claim is for a liquidated sum under Order 93	20	00	*Praecipe*
	(b) where the proceedings are in a Magistrates' Court	100	00	*Praecipe*
	(c) where the proceedings are in a Sessions Court	200	00	*Praecipe*
2	On sealing an originating application: Provided that no fee shall be payable under this item in respect of any application for maintenance under the Married Women and Children (Maintenance) Act 1950	80	00	*Praecipe*
3	On sealing a concurrent or renewed writ or a concurrent or renewed originating summons	12	00	*Praecipe*
4	On sealing an amended writ or an amended originating summons	12	00	*Praecipe*
5	On sealing any other form of commencement of a cause or matter where no fee is specifically provided	80	00	*Praecipe*
6	On marking the renewal of any writ or originating summons	12	00	*Praecipe*
7	On filing a notice of appearance for each person	8	00	*Praecipe*
8	On sealing a notice of interlocutory application	20	00	*Praecipe*

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9	On sealing a third party notice under Order 12—			
	*(a) where the claim is for a liquidated sum under Order 93	20	00	*Praecipe*
	(b) where the proceedings are in a Magistrates' Court	80	00	*Praecipe*
	(c) where the proceedings are in a Sessions Court	200	00	*Praecipe*
10	On bespeaking a request for the service of process or notice thereof out of the jurisdiction	40	00	*Praecipe*
11	On every appointment for the examination of a witness by an officer of the Court	20	00	*Praecipe*
12	On every witness sworn and examined by an officer of the Court, for each hour or part of an hour	40	00	*Praecipe*
	WRITS			
13	On sealing a writ of subpoena, other than an instanter subpoena, for each witness	8	00	*Praecipe*
14	On sealing an instanter subpoena for each witness Note: An instanter subpoena is one issued less than 3 days before the trial of an action.	24	00	*Praecipe*
15	On sealing every writ of execution, distress, order of committal, arrest, notice of garnishment or attachment of property—			
	*(a) where the claim is for a liquidated sum under Order 93	10	00	*Praecipe*
	(b) where the proceedings are in a Magistrates' Court	40	00	*Praecipe*
	(c) where the proceedings are in a Sessions Court	80	00	*Praecipe*
16	On an application for the issue of a writ of distress—			
	(a) where the proceedings are in a Magistrates' Court	100	00	*Praecipe*
		200	00	*Praecipe*

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	(b) where the proceedings are in a Sessions Court			
	JUDGMENTS AND ORDERS			
17	On entering or sealing any order made in Chambers	40	00	*Praecipe*
18	On entering or sealing a judgment or order given, directed or made in the trial, hearing or further consideration of a cause or matter in Court—			
	(a) where the claim is for a liquidated sum under Order 93	20	00	*Praecipe*
	(b) where the proceedings are in a Magistrates' Court	80	00	*Praecipe*
	(c) where the proceedings are in a Sessions Court	200	00	*Praecipe*
19	On entering or sealing any other judgment or order where no other fee is specifically provided for	40	00	*Praecipe*
	APPEALS			
20	On sealing a notice of appeal from a Registrar to a Judge in Chambers	20	00	*Praecipe*
21	On filing a notice of appeal to High Court	200	00	*Praecipe*
22	On filing a respondent's notice to High Court	80	00	*Praecipe*
23	Any interlocutory application pending appeal	40	00	*Praecipe*
24	On making a copy or a certified copy for each folio	2	00	*Praecipe*
	For every second or subsequent copy if "carbon" or by duplicating process for each folio	1	00	*Praecipe*
	Note: (1) Where a certified copy of a Judge's or Magistrate's notes or grounds of judgment is by his leave made and supplied by his stenographer or typist, the above fee shall be paid to and be retained by such stenographer or typist for his personal benefit. This fee is payable only if such stenographer or typist does not claim overtime allowance from the Government for preparing such certified copy.			

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	(2) This fee is not claimable by the stenographer or typist where the notes or judgment is supplied to the Attorney General or State Legal Advisers.			
25	For examining a plain copy and marking the same as a certified copy— *(a)* in the case of a photographic or xerox copy for each sheet *(b)* in any other case for each folio 28	 2 4	 00 00	 *Praecipe* *Praecipe*
26	On an application to be allowed to copy any document filed or lodged in Court, for each document	4	00	*Praecipe*
	TRANSLATIONS			
27	On a certified translation by an Interpreter of the Court	8 4	00 plus 00 per folio	*Praecipe*
28	On checking, correcting and certifying a translation not made by an Interpreter of the Court Note: On presentation of the *praecipe* which must be signed and dated, it must bear a stamp for at least the first folio of translation. The folios will be reckoned on the English translation when ready and the fee must be made up to the full amount before the translation can be delivered.	8 2	00 plus 00 per folio	*Praecipe*
	ACCOUNTANT GENERAL'S OFFICE			
29	On a certificate of the amount and description of any moneys, funds or securities, including the request therefore	8	00	*Praecipe*
30	On a transcript of an account for each opening, including the request therefore	8	00	*Praecipe*

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31	*(a)* On paying, lodging, transferring or depositing funds in Court *(b)* On paying out of Court any money lodged or deposited in Court	8 8	00 00	*Praecipe* *Praecipe*
32	On a request to the Accountant General for information in writing respecting any moneys, funds or securities in Court or any transaction in his office	8	00	*Praecipe*
	MISCELLANEOUS			
33	On taking an account of moneys received by a committee or guardian, consignee, bailee, manager, provisional official or voluntary liquidator, or of an executor, administrator or trustee, agent, solicitor, mortgagee, co-tenant, co-partner, execution creditor, or other person liable to account, when the amount found to have been received without deducting any payment shall not exceed RM1,000	40	00	*Praecipe*
34	Where such amount shall exceed RM1,000 for every RM500 or fraction of RM500 Note: In the case of any such committee, guardian, consignee, bailee, manager, liquidator, or execution creditor, the fees shall upon payment be allowed in the account unless the Court shall otherwise direct, and in the case of taking the accounts of such other accounting parties the fees shall be paid by the party having the conduct of the order under which such account is taken as part of his costs in the cause or matter, unless the Court shall otherwise direct and in such case shall be taken upon the certificate of the result of any such account, but the fees shall be due and payable although no certificate is required on the account taken or such part thereof as may be taken and the solicitor or party suing in person shall in such case cause the proper stamps, the amount thereof to be fixed by the Registrar, to be impressed on the account	8	00	*Praecipe*
35	On every reference to an officer of the Court	40	00	*Praecipe*
36	On filing any document in the Registry not provided for in this Schedule	8	00	*Praecipe*

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37	On amending or filing an amended pleading	8	00	*Praecipe*
38	On any search, including inspection, for each half hour or part thereof occupied	8	00	*Praecipe*
39	On every certificate or report by the Registrar not otherwise provided for	20	00	*Praecipe*
40	Certificate of Urgency	20	00	
41	Upon an application for the production of records or documents to be given in evidence— *(a)* where the records or documents are left in Court *(b)* where an officer is required to produce the records or documents in Court	 8 80	 00 00	 *Praecipe* *Praecipe*
42	For the attendance of an officer of the Court as a witness for every half day or part thereof that he is necessarily absent from his office	80	00	*Praecipe*
43	On taking or re-taking an affidavit or a declaration in lieu of an affidavit, or a declaration or an acknowledgment for each person making the same And in addition for each exhibit referred to therein and required to be marked	8 6	00 00	*Praecipe*
44	On each document referred to in a deposition and required to be marked	6	00	*Praecipe*
45	On taking an affidavit before an Advocate and Solicitor who is appointed as Commissioner for Oaths Note: The fees under Fee Nos 45 and 46 shall be payable to the Commissioner and shall be in lieu of the Court fees of RM4 and RM3 chargeable under Fee No 43.	8	00	
46	For each exhibit referred to in an affidavit sworn before an Advocate and Solicitor who is appointed as a Commissioner for Oaths	6	00	
47	*(a)* On approving— (i) a guarantee (ii) an undertaking in lieu of a guarantee	 20 20	 00 00	 *Praecipe* *Praecipe*

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	(b) (i) on vacating a guarantee	20	00	*Praecipe*
	(ii) on discharging an undertaking in lieu of a guarantee:	20	00	*Praecipe*
	Provided that, when the vacating or discharge is unconditional, Fee No 47*(b)* shall be impressed after the order has been made but before it is perfected			
48	On taking a recognisance or bond, whether one or more than one recognizer or obligor, and whether entered into by all at one time or not	40	00	*Praecipe*
49	On assignment of a bond	20	00	*Praecipe*
50	On vacating a recognizance	20	00	*Praecipe*
51	On sealing or issuing any document, not being a judgment or order, where no other fee is prescribed by this Schedule	20	00	*Praecipe*
	SERVICE AND EXECUTION			
52	For each attempt at service on each person of any process or proceeding required to be served by the Court	4	00	*Praecipe*
53	And if more than 2 miles from the Subordinate Courts for every additional mile	4	00	*Praecipe*
54	For executing every writ of execution, distress, order of committal, arrest or attachment of property	20	00	*Praecipe*
55	On marking a writ of execution for renewal	12	00	*Praecipe*
56	For releasing property seized by instruction of party issuing the writ of execution or distress, order of attachment arrest or attachment of property	16	00	*Praecipe*
57	Commission of 5 per cent to be charged on the first RM1,000 and 2½ per cent upon all above that sum when levied by seizure and sale or distress, such sum to include the auctioneer's commission Note: Where the sale is made by private contract, only half the commission will be payable			To be deducted by the Registrar

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58	Commission of 4 per cent to be charged on all money received by the Registrar on a garnishee summons		To be deducted by the Registrar
59	Commission of 4 per cent to be charged on all money received by the Registrar under an order for the attachment before judgment of money belonging to the debtor in the hands of a third party		To be deducted by the Registrar
60	Commission of 2 per cent to be charged on all money received by the Registrar in satisfaction of a writ of seizure and sale or distress where an execution is withdrawn, satisfied or stopped		To be deducted by the Registrar
61	Commission of 2 per cent to be charged on the estimated value of the property seized or the amount stated in the writ whichever is the lesser where the execution is withdrawn, satisfied or stopped		To be paid to the Registrar by the Execution Creditor
62	For each man necessarily employed in taking charge of any property under seizure	Actual Cost	To be paid to the Registrar or direct on vouchers certified by the Registrar
63	For removal of goods or animals to a place of safe keeping, where necessary	Actual Cost	Actual Cost To be paid to the Registrar or direct on vouchers certified by the Registrar
64	Where goods are warehoused or animals are kept and fed	Actual Cost	Actual Cost To be paid to the Registrar or direct on vouchers certified by the Registrar

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65	For advertising and giving publicity to the sale by auction Note: In every case where the execution is withdrawn, satisfied or stopped the fees shall be paid by the person at whose instance the sale is stopped, and the amount of any costs or charges payable under this Schedule shall be taxed by the Judge, in case the Registrar and the party liable to pay such costs and charges differ as to the amount thereof	Actual Cost	To be paid to the Registrar or direct on vouchers certified by the Registrar
66	Request for payment out of monies paid into Court under installment order Note: The fee under this item shall be paid by the person requesting payment out	5 per cent of sum to be paid out	Request

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APPENDIX C

LIST OF EXEMPTED LAWS

(1) *Item*	*(2)* *Proceedings*	*(3)* *Written law*
1.	Bankruptcy proceedings	Bankruptcy Act 1967
2.	Proceedings relating to the winding up of companies and capital reduction	Companies Act 1965
3.	Criminal proceedings	Criminal Procedure Code [*Act 593*]
4.	Proceedings under the Elections Offences Act 1954	Elections Offences Act 1954 [*Act 5*]
5.	Matrimonial proceedings	Law Reform (Marriage and Divorce) Act 1976 [*Act 164*]
6.	Land reference	Land Acquisition Act 1960 [*Act 486*]
7.	Admission to the Bar	Legal Profession Act 1976 [*Act 166*] Advocates Ordinance of Sabah [*Sabah Cap. 2*] Advocates Ordinance of Sarawak [*Sarawak Cap. 110*]

Made 29 June 2012
[JK/MP 322 Jld. 11; PN(PU2)153/XIV]

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[*To be laid before the Dewan Rakyat pursuant to subsection 17(5) of the Courts of Judicature Act 1964*]

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[*To be laid before the Dewan Rakyat pursuant to section 8 of the Subordinate Courts Rules Act 1955*]

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